

Court No. - 21

Case :- WRIT - C No. - 11003 of 2023

Petitioner :- Ram Awadhesh

Respondent :- Addl. Commissioner Judicial, Lucknow
Division, Lucknow And Others

Counsel for Petitioner :- Mohammad Aslam Khan

Counsel for Respondent :- C.S.C.

Hon'ble Manjive Shukla,J.

1. Heard Mr. Mohd. Arif Khan, learned Senior Advocate assisted by Mr. Mohd. Aslam Khan, learned counsel appearing for the petitioner, Mr. Hemant Pandey, learned Standing Counsel appearing for the Respondent No.1 and Mr. Umesh Singh, learned counsel appearing for the Respondent No. 6.

2. In view of the order to be passed by this court, notices to Respondents No. 2 to 5 are dispensed with.

3. Mr. Hemant Pandey, learned Standing Counsel appearing for the Respondent No.1, at the very outset, has raised a preliminary objection regarding maintainability of this writ petition on the ground that against the order impugned in this writ petition i.e. order dated 10.11.2023 passed by the Additional Commissioner (Judicial) First, Lucknow Division, Lucknow in Case No.3120/2023, petitioner has got a statutory remedy of revision under Section 210 of U.P. Revenue Code, 2006.

4. Petitioner through this writ petition has challenged the order dated 10.11.2023 passed by Additional Commissioner (Judicial), First, Lucknow Division, Lucknow in Case No. 3120 of 2023, Computerized Case No. C202310000003120 (Rama Kant Singh vs. Ram Prasad and others) whereby appeal filed by Mr. Rama Kant Singh under Section 331(3) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 has been admitted and order dated 30.10.2023 passed by Additional Magistrate First, Raibareli in Case No. 250 of 2012-2013, Ram Autar Vs. Sarda Rani has been stayed and further parties have been directed to maintain status-quo on the spot.

5. Facts of the case, in brief, are that petitioner filed a suit for declaration of his rights under Section 229-B of U.P. Zamindari Abolition and Land Reforms Act, 1950, which has been finally decided vide order dated 30.10.2023. Respondent No.2 Sri

Rama Kant Singh has filed appeal against the order dated 30.10.2023, which has been registered as Computerized Case No.C202310000003120 (Rama Kant Singh vs. Ram Prasad and others) in the court of Additional Commissioner (Judicial) First, Lucknow Division, Lucknow.

6. Learned Senior Advocate appearing for the petitioner has submitted that since petitioner was a caveator before the appellate court, as such at the time of hearing of appeal on the issue of admission, arguments advanced by his counsel should have been considered. Learned Senior Advocate appearing for the petitioner has further submitted that since Mr. Rama Kant Singh was not party before the Sub Divisional Magistrate in the suit filed under Section 229-B of U.P. Zamindari Abolition and Land Reforms Act, 1950, therefore unless appellate court grants leave, he could not have filed the appeal, as such the appeal without there being any application seeking leave of the appellate court, is liable to be dismissed.

7. Learned Senior Advocate appearing for the petitioner has argued that at the time of arguments in appeal, two judgments rendered by the Hon'ble Supreme Court were cited from the side of caveator, i.e., **(1974) 2 SCC 70 State of Punjab (now Haryana) and others vs. Amar Singh** and **AIR 1971 SC 374, Smt. Jatan Kanwar Golcha vs. M/s. Golcha Properties Private Ltd.** and on the strength of aforesaid judgments, it was argued before the appellate court that unless leave of appellate court is sought and is granted, appeal against the order passed by the Sub Divisional Magistrate is not maintainable as Mr. Rama Kant Singh was not party at the stage of suit.

8. Learned Senior Advocate appearing for the petitioner has vehemently argued that the Additional Commissioner (Judicial) First, Lucknow Division, Lucknow, while passing order dated 10.11.2023, which is impugned in this writ petition, has even not considered the arguments advanced by the learned counsel appearing for the caveator and even the judgments rendered by the Hon'ble Supreme Court which were cited by the learned counsel appearing for the caveator have not been considered.

9. Learned Senior Advocate appearing for the petitioner has concluded his arguments by submitting that order dated 10.11.2023 passed by the Additional Commissioner (Judicial) First, Lucknow Division, Lucknow, reflects total non-application of mind as none of the arguments advanced from the side of the caveator have been considered and none of the judgments cited by the learned counsel appearing for the caveator find mention in the said order and in absolutely vague manner, appeal has been admitted and direction has been issued

to the parties for maintaining status-quo over the property in question.

10. I have considered the submissions advanced by the learned counsel appearing for the petitioner and Mr. Hemant Pandey, learned counsel appearing for the State respondent.

11. I find that there are pleadings in the writ petition that arguments were advanced by the learned counsel appearing for the caveator in the appeal before the Additional Commissioner (Judicial) First, Lucknow Division, Lucknow regarding maintainability of appeal and it was argued that once appellant was not party in the suit, then order passed in the suit cannot be challenged by the appellant unless he seeks leave of appellate court and leave is granted. Learned counsel appearing for the caveator has also cited judgments rendered by the Hon'ble Supreme Court reported in **(1974) 2 SCC 70 State of Punjab (now Haryana) and others vs. Amar Singh and another** and **AIR 1971 SC 374, Smt. Jatan Kanwar Golcha vs. M/s. Golcha Properties Private Ltd.**

12. This court finds that not even a single reason has been assigned for admitting appeal. It has been vaguely mentioned that appellate court has seen the facts mentioned in the memo of appeal and judgments which find mention in the appeal cited by the appellant. In the order dated 10.11.2023, none of the arguments raised by the learned counsel appearing for the caveator have been considered.

13. This court is surprised to note that once arguments were raised on behalf of the caveator regarding maintainability of appeal without leave of appellate court and further, in that regard certain judgments rendered by the Hon'ble Supreme Court were cited, then how appeal could have been admitted without considering those arguments and judgments. Appellate court while passing order dated 10.11.2023 has not recorded any finding regarding arguments advanced on behalf of the caveator.

14. So far as preliminary objection raised by Mr. Hemant Pandey, learned counsel appearing for the Respondent No.1 is concerned, this court finds that definitely against any order passed in appeal, revision lies before the Board of Revenue under Section 210 of U.P. Revenue Code, 2006, but petitioner in this writ petition has challenged the order passed by the Appellate Court on the ground that arguments advanced by the learned counsel appearing for the caveator relating to maintainability of the appeal have not been considered and without referring the judgements cited from the side of

caveator, appeal has been admitted which amounts to the abuse of process of the court. Once the abuse of the process of the court is apparent on the face of order and judicial impropriety has been done by the appellate court by not considering the arguments advanced and judgements cited from the side of the caveator then against the said order, writ petition filed under Section 226 of the Constitution of India is maintainable.

15. It is well settled proposition of law that once arguments are advanced and judgements are cited by any party regarding maintainability of the case then while passing the order for admission of the case, the said arguments and judgements must be considered.

16. In view of the aforesaid reasons, this court finds that the order dated 10.11.2023 passed by the Additional Commissioner (Judicial) First, Lucknow Division, Lucknow in Case No. 3120/2023, Computerized Case No. C202310000003120, Rama Kant Singh vs. Ram Prasad and others is not sustainable in the eyes of law.

17. Accordingly, this writ petition is **allowed**. Order dated 10.11.2023 passed in Case No. 3120/2023, Computerized Case No. C202310000003120, Rama Kant Singh vs. Ram Prasad and others is quashed. Appellate Authority i.e. Respondent No. 1 is directed to pass fresh order regarding admission of the appeal by considering the arguments and judgements cited from the side of the petitioner/ caveator within three weeks from today.

18. To avoid any further complication in the matter, this court directs that for three weeks, parties shall maintain status-quo regarding land in question and will not create any third party rights.

Order Date :- 16.12.2023

Salim