

Court No. - 18

Case :- WRIT - C No. - 11430 of 2023

Petitioner :- Harish Chandra

Respondent :- State Of U.P. Thru. Prin./ Addl. Chief Secy.,
Revenue, Lucknow And Others

Counsel for Petitioner :- Dileep Kumar Mishra

Counsel for Respondent :- C.S.C.,Mohan Singh

Hon'ble Shree Prakash Singh,J.

Heard Sri Dileep Kumar Mishra, learned counsel for the petitioner, Sri Vijay Kumar Yadav, advocate, holding brief of Sri Mohan Singh, learned counsel for gaon sabha, Sri Hemant Pandey, learned standing counsel for the State and perused the record.

Instant petition has been filed with following reliefs:-

i) issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 2.12.2023, passed by the Additional Divisional Magistrate, Sultanpur.

ii) issue a writ, order or direction in the nature of Mandamus commanding the Sub Divisional Officer Tehsil- Kadipur, District- Sultanpur to decide the application for recall dated 15.11.2023 pending before him in the proceeding under Section 101 L.R. Act.

iii) issue a writ, order or direction in the nature of Mandamus commanding the respondents not to demolish the House of petitioner and same part of Gata No.1751, situated at Kadipur Khurd, Tehsil- Kadipur, District- Sultanpur.

iv) issue any other appropriate writ, order or direction in favor of the petitioners as the Hon'ble Court may deem fit in the circumstances of the case.

v) award the cost of writ petition in favor of the petitioner.

Learned counsel for the petitioner submits that a suit for ejectment of the petitioner was dismissed and thereafter, he moved a revision that too was dismissed. He added that both the orders are under challenge. He next added that the during

course of pendency, the petitioner also initiated proceeding under section 101 of Revenue Code, 2006 which was dismissed on the premises that since the revision is pending therefore, no decision can be taken of such applications. He added that now, position is that the petitioner has handed over the land to the Gaon Sabha and chak road has been constructed over there, though, in fact the proceeding under section 101 which is prescribed for exchange of the land is not done. He added that since pakka construction of a house over the land in question and there is a apprehension that if this Court has not passed the restraining order for demolishing of the house, the state shall demolish the same.

Adding his argument he submits that this Hon'ble Court may also be pleased to direct the S.D.O concerned that he may take decision on recall application pending in the case no. 4400 of 2022.

Learned counsel for the State has vehemently opposed the contentions aforesaid and submits that unless any order is passed on recall application, the order passed under revision would have its effectiveness and therefore, there is no merit in the case and this may be dismissed.

Considering the submissions of learned counsel for the parties and after perusal of material placed on record, it transpires that the order dated 02.12.2023 has been passed ignoring the provisions of law and that too is contrary to the law as the perverse findings have been recorded. He added that it has been born out that the petitioner has already handed over the land in question for which he is praying for lawful exchange under section 101 of Code, 2006.

It has also been brought into the notice of the Court that an

application of recall of the order dated 28.10.2022 is pending consideration and interest of justice would be sub-served if the same is decided.

In view of the aforesaid submissions, the instant petition is **disposed of** with the direction to S.D.O. concerned to decide the recall application of the petitioner dated 28.10.2022, within a period of three months from the date of this order, in accordance with law, after affording opportunity of hearing to all the parties, if there is no legal impediment.

The aforesaid order is subject to cooperation of the petitioner.

Till the decision is taken, the house of the petitioner shall not be demolished.

Order Date :- 22.12.2023

Mayank