

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 220 of 2024

Appellant :- Radhey Shyam And Another

Respondent :- Manish Sood And 7 Others

Counsel for Appellant :- Gulrez Khan, Javed Husain Khan, Sr. Advocate

Counsel for Respondent :- C.S.C., Krishna Kumar Chaurasia, Pradeep Singh

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

1. Heard Sri Gulrez Khan, learned counsel for the appellants, learned Standing Counsel for State respondents and Sri K.K. Chaurasia, learned counsel for respondent no. 1.

2. This appeal is directed against the order dated 09.01.2024 passed by learned Single Judge in Writ C No. 39481 of 2023 (Manish Sood v. State of U.P. & 8 others) whereby the petition filed by the respondent no. 1 has been disposed of with the direction to the respondent no. 3/Commissioner, Vindhyachal Mandal, Mirzapur to decide the appeal filed by the respondent no. 1 under Section 207 of U.P. Revenue Code, 2006 (for short the 'Code, 2006') within a period of six months from the date of production of certified copy of the said order. It has further been provided that till the pendency of the appeal, effect and operation of the order dated 07.10.2023 passed by the Assistant Collector, Ist Class, Tehsil - Obra, District - Sonbhadra under Section 134 of the Code, 2006 shall remain stayed till disposal of the appeal.

3. Writ petition was filed by the respondent no. 1 seeking a relief directing the respondent no. 3/Commissioner, Vindhyachal Mandal, Mirzapur to decide the stay application dated 16.10.2023 pending before the respondent no. 3 within a time period fixed by the Court. The Court, after hearing the parties, came to the conclusion that no useful purpose would be served in keeping the writ petition pending and passed the order impugned.

4. Learned counsel for the appellants made submissions that the petition was filed only seeking expeditious disposal of the stay application pending before the Commissioner. However, learned Single Judge instead has directed that the appeal be heard within a period of six months and interim order has been granted during pendency of the appeal, which order cannot be sustained. Submission has been made that while the stay application continues to remain pending before the appellate authority, direction given by this Court to decide the appeal and stay in the meanwhile amounts to disposal of the stay application, without considering the merit of the case and therefore, the order impugned deserves to be set aside.

5. Counsel for the respondent no. 1 attempted to make submissions that learned

single Judge was justified in passing the order impugned inasmuch as the respondent no. 1 had a strong case in appeal and therefore, the order impugned does not call for any interference.

6. We have considered the submissions made by counsel for the parties and have perused the material available on record.

7. It is not in dispute that the respondent no. 1 had approached this Court *inter alia* seeking relief of disposal of the stay application at an early date/within a time period fixed by the Court, and the stay application before the Commissioner continues to remain pending even now. Direction given by learned Single Judge essentially decides the pending stay application and the interim order has been granted during the pendency of the appeal. The said exercise without considering the merit of the appeal/stay application filed by the respondent no. 1 cannot be countenanced.

8. Once the stay application was pending before the Commissioner, in terms of the relief claimed by the respondent no. 1 and in case, the Court was of the view that the stay application was required to be considered at an early date, such direction could have been issued. However, directing that during the pendency of the appeal, which appeal was ordered to be decided within a period of six months, there shall be stay on the operation of the order, cannot be sustained.

9. Consequently, the appeal is **allowed**. The order dated 09.01.2024 passed by learned Single Judge is set aside.

10. It is stated that next date fixed before the Commissioner is 02.04.2024. The said date is ordered to be preponed to 15.03.2024, when both the parties shall appear before the Commissioner, who would hear the parties on the pending stay application and pass appropriate order in accordance with law. The directions given by the learned Single Judge would continue till 15.03.2024.

11. It is made clear that the Commissioner while deciding the stay application, would not get influenced either by the order dated 09.01.2024 or the order passed today.

Order Date :- 4.3.2024
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(Vikas Budhwar, J.) (Arun Bhansali, CJ)