

Court No. - 40

Case :- WRIT - C No. - 24025 of 2023

Petitioner :- Mohd. Hussain And Another

Respondent :- Union Of India And 5 Others

Counsel for Petitioner :- Brijesh Kumar Yadav, Ankit Kumar Sahu

Counsel for Respondent :- A.S.G.I., Akhilesh Kumar Singh, Manoj Kumar Singh, Punit Kumar Gupta

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard learned counsel for the petitioners and Shri Raj Kumar holding brief of Shri Manoj Kumar Singh, learned counsel for Union of India.

2. Present writ petition has been preferred for following reliefs:-

"(i) Issue writ, order or direction in the nature of certiorari to quash the impugned order dated 26.9.2022 passed by Estate Officer IInd NCR Railway Prayagraj and issue notice dated 6.3.2023 and 25.3.2023 given by Section Engineer/ Work / Line NCR Prayagraj passed by respondent no.3, regarding demolish house of the petitioners.

(ii) Issue a writ, order or direction in the nature of ad-interim mandamus commanding the respondent no.3 not to interfere in the demolish house and shop of petitioners."

3. The petitioners claim to be tenants of the premise in question being Plot No.143/127 (New No.145/129) situated at Hewett Road, Mohatsimganj, Allahabad. It is contended that the property in question is individual property of Shri Ali Hussain and his name is also shown in the revenue/municipal record. The said Ali Hussain had given the said property to the family of the petitioners for their livelihood and they are living there from last more than 45 years. The family of the petitioners are regularly paying house tax, water tax, electricity bill continuously from 10.3.1980 and till date the possession of the aforesaid plot is in favour of the petitioners. Once a dispute arose that the property in question is waqf property, the same was challenged by the petitioner and other persons in Matters Under Article 227 No.9212 of 2018 (Sirajul Haq & Ors. v. Majood Ahmad Khan) as well as in Writ-C No.18948 of 2022 (Sharif Ahmad & Ors. v. State of U.P. & Ors.). In Matters Under Article 227 No.9212 of 2018, interim order was accorded by this Court on 11.12.2018 by staying the injunction order passed by the U.P. Waqf Tribunal, Lucknow granted against the petitioners (in the said writ petition) in Suit No.59 of 2018. The Writ-C No.18948 of 2022 was disposed of on 11.7.2022 directing the Chief Executive Officer, U.P. Sunni Central Waqf Board to conclude the

enquiry in the complaint made before him in the manner provided under Section 54 of the Waqf Act within twelve weeks and thereafter to take consequential action, if warranted in accordance with law. It is alleged that inspite of the aforesaid order, till date the respondent no.6 has not decided the matter. It is contended that the said property has not been registered in the name of railway or waqf board and as such the entire action taken by the respondents is unsustainable and liable to be set aside.

4. Per contra, learned counsel for Union of India has vehemently opposed the writ petition. He has submitted that the railway department had never been impleaded in any of the aforesaid proceeding. The aforequoted lis was between two private parties, therefore, any restraint order by the competent court or injunction would have no bearing over the railway's claim. He has also raised an objection that the land in question belongs to railway and time to time notices were issued to the occupier but neither the petitioner nor the waqf, at any point of time, could substantiate their claim by providing substantial evidence/ documents qua their title. In spite of notices the petitioners for either one reason or the other has not vacated the land, which is causing immense loss to the railway for laying railway line.

5. Learned counsel for Union of India submits that against each and every occupier the proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (in short "PPE Act") were drawn and the same was finalised way back on 26.9.2022. Immediately, thereafter, notices were sent to the parties to 26.9.2022, 6.3.2023, 25.3.2023 and 2.6.2023 to remove the encroachment but inspite of repeated notices, they have not vacated the encroached land and even they have not replied the aforesaid notices. Instead of assailing the order dated 26.9.2022 before the competent court under the PPE Act, the petitioners has invoked the writ jurisdiction, which is not justified. Along with the instructions, the respondents have also annexed the authenticated land plan showing railway land in Village Shaharar Bagh, Tehsil Chail, Distt. Allahabad between NYN-ALD to substantiate that the land belongs to railway. Relevant revenue record is also annexed showing that the land in question is recorded in the name of railway. Moreover, it is also stated that highly disputed facts have been raised before this Court, which cannot be pressed under Art.226 of the Constitution of India.

6. We have proceeded to examine the record in question and find substance in the objection raised by learned counsel for Union of India. The PPE Act was enacted to provide for a speedy machinery

for the eviction of unauthorised occupants of public premises. The proceeding under the PPE Act was initiated for evicting the unauthorised occupants from the railway land for the purposes of laying the railway line. The said proceeding was finalised on 26.9.2022 and the petitioners were directed to be evicted. Consequent thereto, several notices were sent to the petitioners to remove the unauthorised occupation. Instead of replying the said notices and challenging the said order under the PPE Act, the petitioners have directly approached this Court with aforequoted relief, which in our opinion is not sustainable and liable to be set aside at the first instance. Full fledged mechanism is provided under the PPE Act and against the impugned order the petitioner has efficacious alternative remedy to challenge the same before the appellate authority under Section 9 of the PPE Act. The petitioners have not been able to provide any evidence/ document, which can substantiate that they are having title or claim over the property in question. By way of filing the frivolous petition, they are creating hindrance in laying down railway line, which is in the interest of public at large. Moreover, we also find that highly disputed facts have been raised herein this writ petition, which cannot ordinarily be adjudicated by this Court under Art.226 of the Constitution of India and as such we are not inclined to interfere in the matter.

7. In view of above, the writ petition sans merit and is accordingly **dismissed.**

Order Date :- 16.11.2023

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