

Court No. - 51

Case :- WRIT - C No. - 23223 of 2023

Petitioner :- Kamla Prasad

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Virendra Kumar Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Chandra Kumar Rai,J.

1. Heard Sri Virendra Kumar Yadav, learned counsel for the petitioner and Sri Abhishek Shukla, learned Addl. C.S.C. for the state-respondents.

2. Rejoinder affidavit filed on behalf of the petitioner is taken on record.

3.The instant petition has been filed for following relief:-

"1. Issue a writ, order or direction in the nature of mandamus commanding and directing the District Magistrate/Collector, District-Varanasi/respondent no.2 to decide the representation/application of petitioner dated 18.04.2023 which is pending before him within stipulated period or so fix by this Hon'ble Court.

2. Issue any other suitable writ, order or direction and/or further order which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

3. Award the cost of this writ petition to the petitioner."

4. This court has directed the learned standing counsel to obtain instruction in the matter and after filing of instruction this Court vide order dated 10.10.2023 directed the learned standing counsel to file counter affidavit within two week and petitioner was directed to file rejoinder affidavit.

5. In compliance of the order of this Court dated 30.10.2023 parties have exchanged their affidavit.

6. Counsel for the petitioner submitted that the petitioner is recorded owner of plot no.1115, area 0.071 hect. but the authorities have interfered with the right as well as possession of the petitioner, as such, an application was filed before the District Magistrate with the prayer that the statue of Dr. Bheem Rao Ambedkar and that of Sant Ravidas be removed from plot no.1115, belonging to the petitioner.

7. Mr. Abhishek Shukla, learned Addl. C.S.C. submitted that specific averment has been made in paragraph no.8 of the counter affidavit that the

petitioner has admitted that the statue of Dr. Bauthority concernedheem Rao Ambedkar and that of Sant Ravidas were set up in August, 2003 and the application has been filed after 20 years before the District Magistrate for removal of the statue which cannot be entertained by way of miscellaneous application. He further submitted that an enquiry was conducted with regard to the alleged allotment made in favour of the petitioner but no document of allotment has been found. He further submitted that on the basis of the application dated 18.4.2023 filed by the petitioner, a revenue team made spot inspection on 6.10.2023. It is also submitted that the Land Management Committee has given a proposal to the petitioner to exchange the land over which the statue has been set up but the petitioner has not filed any reply to the proposal of the Land Management Committee. He also submitted that no specific reply has been given by the petitioner to the averment made in paragraph nos. 8 & 10 of the counter affidavit.

8.I have considered the argument advanced by learned counsel for the parties and perused the records.

9. There is no dispute about the fact that petitioner is recorded tenure holder of Plot No.1115 area 0.0770 hectare and copy of Khatauni of 1429-1434 fasli has been annexed as Annexure No.5 to the writ petition. There is also no dispute about the fact that statue of Dr. Bhim Rao Ambedkar and Sant Ravidas have been fixed long back in Plot No.1115.

10. In order to appreciate the controversy, the perusal of averment made in Paragraph No.12 of the writ petition, Paragraph Nos. 8 &12 of the Counter Affidavit and Paragraph No.9 &13 of the rejoinder affidavit will be relevant for perusal which are as under:-

"Paragraph No.12 of the writ petition:-

12. That when failed all effort by the muscle power person belong to the village then a new process was started and establishing Sant Ravidas and Dr. Bheem Rao Ambedkar Statue and when the knowledge, on 22.08.2003 then the petitioner approached before the concerned Police Station- Jansa, Varanasi but all are vain and thereafter the petitioner approached before the higher authorities and thereafter, Concerned tehsil authorities has tried to resolve the dispute but being a muscle power person/miscreant person, proceeding of non-establishment of statue can be done and same is still existence.

Paragraph Nos. 8 &12 of the Counter Affidavit:-

8. That the contents of paragraph no.12 of the Writ Petition are not admitted hence denied. There is no material evidence on record with regard to the averments made by the petitioner in paragraph under reply. It is further submitted that the petitioner admitted that in the

month of August, 2003 on the disputed land, other musclemen have taken possession over the land and established the statue of Sant Ravidas and Dr. Bhim Rao Ambedkar, which on the spot is still found. In the year 2023, in spite of dispossession, the petitioner has not filed any case before the Civil Court and after 20 years only on administrative application, possession cannot be transferred, which is against the law.

12. That the contents of Paragraph Nos. 19,20,21,22,23 and 24 of the Writ Petition are not admitted hence denied. In reply, it is submitted that the proceeding upon the application is being initiated as per rules.

Paragraph No.9 &13 of the rejoinder affidavit:-

9. That the contents of Paragraph No.8 of the Counter Affidavit as stated are not admitted. In reply to it is submitted that some facts mentioned in answering paragraph are agree but. However, the averment made in Paragraph No.12 of the affidavit are reiterated and reaffirmed.

13. That the contents of Paragraph no.12 of the Counter Affidavit as stated are not admitted. However, the averment made in Paragraph Nos. 19,20,21,22,23 and 24 of the affidavit are reiterated and reaffirmed."

11. Perusal of spot inspection report dated 6.10.2023 annexed as Annexure No.C.A.1 to the counter affidavit of state will be also relevant for perusal which is as under:-

की गयी कार्यवाही

माननीय उच्च न्यायालय, इलाहाबाद में योजित याचिका संख्या 23223 सन् 2023 में कमला प्रसाद पुत्र निद्धि उर्फ निसारी वगैरह बनाम उ०प्र० सरकार बजरिये सचिव व जिला अधिकारी, वाराणसी में इन्स्ट्रक्शन के बाबत आज दिनांक 06.10.23 ई० को ग्राम भतसार में स्थित विवादित आराजी सं० 1115 रकबा 0.77 हे० व 1116 रकबा 0.024 में याची कमला प्रसाद सहित ग्रामीणों के समक्ष तहसीलदार महोदय, राजातालाब वाराणसी व राजस्व टीम सहित मौके पर उपस्थित हुआ मौके पर याची कमला प्रसाद पुत्र निद्धि व प्रेम पुत्र मटरू सहित ग्रामीण के बीच यह निश्चय हुआ कि दिनांक 15.10.23 ई० को याची अपना अन्तिम निर्णय लेगा तथा ग्रामीण भी इस तथ्य से सहमति जतायी गयी। मौके पर ग्राम प्रधान- भतसार भी उपस्थित थे। साक्ष्य स्वरूप मौके पर उपस्थित लोगों का हस्ताक्षर करा लिया गया। तथा याची के पुत्र द्वारा भी हस्ताक्षर किया गया।

12. Considering the facts and circumstances of the case specially the averment made in Paragraph No.8&10 of the counter affidavit, petitioner is directed to file reply to the proposal of the respondent in pursuance of Annexure No.C.A.1 of the counter affidavit, before the respondent no.2 within a period of two weeks from today and the respondent no.2 shall consider the reply of the petitioner and proceed with the matter, in accordance with law, expeditiously. Respondent no.2 shall conclude the matter within 3 months from date of production of certified copy of this order before him.

13. With the aforesaid observations, the instant writ petition is finally disposed of.

Order Date :- 30.11.2023

C.Prakash