

Court No. - 40

Case :- WRIT - C No. - 28305 of 2023

Petitioner :- Javaid Iqbal and another

Respondent :- State Of U.P. and 2 Others

Counsel for Petitioner :- Zafeer Ahmad

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard Sri Zafeer Ahmad, learned counsel for the petitioners and Sri Devansh Rathore, learned Additional Chief Standing Counsel for the State respondents.

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

"(i) Issue a writ, order or direction in the nature of mandamus directing/ commanding the respondents to decide the representation dated 25.2.2023 of petitioners with inquired the matter in regarding the petitioners land as Arazi Nos.130 and 138 Village- Lalpur Hameer, Pargana- Kundarki, Tehsil Bilari, District Moradabad are within the limit to circle of 200 meter from the Abadi and ensure to the petitioners to execute the sale deed as per the rate of Abadi Circle rate and also the same circle rate paid consideration alongwith benefit of Road side lands;"

3. On the matter being taken up on 22.8.2023, the Court has proceeded to pass the following order:-

"1. As per information supplied to the petitioner under the Right to Information Act, it is indicated that certain portion of Plot No. 130 and 138 are to be acquired for the construction of Canal. However, neither that land has been identified or demarcated nor any compensation has been paid out.

2. Learned Additional Chief Standing Counsel prays for and is granted ten days time to obtain clear written instructions that may clearly establish which portion of the petitioners' land is to be acquired and what steps have been taken for that purpose.

3. Put up as fresh on 12.09.2023."

4. In response to the aforesaid order, Shri Devansh Rathore, learned Addl. Chief Standing Counsel has placed the detailed instructions dated 20.09.2023 sent by the Sub Divisional Magistrate, Bilari, which is taken on record. On the basis of instructions, he submits that the spot inspection has been carried out in the presence of Sub Divisional Magistrate, Billari and the

Tehsildar Bilari and the same has also been approved by the D.G.C. (Civil) Moradabad. For ready reference, the said inspection report is reproduced hereunder:-

"1- कार्यालय उपजिलाधिकारी बिलारी के पत्रांक सं० 167/गंगानेज-3/अग० दि० 02-05-22 में ग्राम लालपुर हमीर के गाटा सं० 130 मिनजुमला व गाटा सं० 138 की वास्तविक स्थिति के संबंध में जाँच कराई गई और जाँच के समय सिंचाई विभाग के अधिकारीगण कर्मचारी मौके पर उपस्थित थे। गाटा सं० 130 रकबा 1.611 हे० भूमि मौके पर अमरूद का बाग है। मौके पर गाटा सं० 130 पर एक गेट लगा है व गाटा सं० 138 रकबा 0.380 हे० भूमि मौके पर खाली पड़ी है जो स्वतः लालपुर हमीर से रूस्तम रसाय लिंक मार्ग पर स्थापित है तथा आबादी से दूर है।"

5. In this backdrop, learned Addl. Chief Standing Counsel submits that highly disputed facts have been urged herein this writ petition. On the basis of instructions, he submits that the claim set up by the petitioner is unsustainable as the facts are otherwise and as such no interference is required in the matter.

6. Considering the facts and circumstances of the case as well as the categorical instructions, we are not inclined to adjudicate the matter at this stage. Needless to say, the petitioners may approach the concerned Sub Divisional Magistrate, who shall look into, examine and redress the grievance of the petitioners as per law expeditiously. Writ petition is ***dispose of***.

Order Date :- 22.11.2023

Vikram