

Court No. - 40

Case :- WRIT - C No. - 27118 of 2023

Petitioner :- Vinod

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Yashwant Pratap Singh, Renu Sharma

Counsel for Respondent :- C.S.C., Sudhir Bharti

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard learned counsel for the petitioner and Sri Devansh Rathore, learned Additional Chief Standing Counsel for the State respondent nos. 1 and 2.

2. By means of this petition, the petitioner has sought following reliefs:-

"I. issue a Writ, order or direction in the nature of writ of mandamus directing and commanding the respondent no. 2 to comply with order dated 28.04.2023 passed by the District Magistrate, Kushinagar upon the application of the petitioner dated 28.04.2023 regarding compliance of the order dated 16.03.2021 and 18.02.2019, within stipulated period as may be fixed by this Hon'ble Court..

II. issue a Writ, order or direction in the nature of writ of mandamus directing and commanding the respondent no. 2 to restrain the respondent nos. 4 and 5 forthwith not to interfere in the peaceful possession of the petitioner and not to open road in Arazi No. 24, Area 0.409 Hectare, recorded as Abadi shreni 6(2) land, which is under possession of the petitioner since last 40 years, within stipulated period as may be fixed by this Hon'ble Court.

III. issue a Writ, order or direction in the nature of writ of mandamus directing and commanding the respondent no. 2 to decide the application dated 05.03.2023 moved by the petitioner before the respondent no. 2 within stipulated period as may be fixed by this Hon'ble Court."

3. Learned Additional Chief Standing Counsel has raised an objection regarding maintainability of this writ petition on the ground that there is a civil dispute between the petitioner and private respondent nos. 4 and 5 and in case, the private respondent nos. 4 and 5 are interfering in the peaceful possession of the petitioner, he has got efficacious remedy to

approach the competent civil/revenue court. In the guise of the allegation against respondent nos. 4 and 5, no reprieve can be extended to the petitioner and the writ petition is liable to be dismissed.

4. The petitioner is seeking enforcement of common law rights for protection of his property. The impleadment of the State respondents is not for claiming any constitutional or statutory rights against the State. They have been impleaded for taking action, for protection of the property rights against the private individual nos. 4 and 5.

5. A writ petition for enforcement of the extraordinary remedies under Article 226 of the Constitution of India is not ordinarily maintainable for such reliefs against persons, who do not have any public duties to perform.

6. Considering the facts and circumstances as well as arguments advanced by the counsel for the parties, we are not at all inclined to interfere in the matter. However, The petitioner has adequate and efficacious alternative remedies of approaching the civil or revenue courts, at the first instance for seeking the remedies.

7. With the above observation, the writ petition is disposed of.

Order Date :- 22.11.2023

Vikram