

Court No. - 51

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 1900 of 2022

Petitioner :- Dharmendra And 2 Others

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Ashok Kumar Pandey

Counsel for Respondent :- CSC, Abhitab Kumar Tiwari, Sunil Kumar Singh

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. Ashok Kumar Pandey, Counsel for the petitioners, Mr. O.P. Sharma, learned Additional Chief Standing Counsel for the State-respondents, Mr. Amitabh Kumar Tiwari, learned Counsel appearing for respondent nos. 6 and 7 and Mr. Sunil Kumar Singh, Counsel for Gaon Sabha.

2. Brief facts of the case are that petitioners have filed the instant public interest litigation being simple villager of Village Saroorpur Khurd, Block and Tehsil Sardana District Meerut in the interest of the entire villagers of the Village for constructing the pakki nali from both side of main street in the village Saroorpur Khurd. Respondent nos. 6 and 7 are stated to be influential person of the Village, are not permitting Gaon Sabha to construct nali straight away which will terminate in the pond. Petitioners as well as other villagers of the village have filed application before respondent no.3/ Sub Divisional Officer, Sardana for conducting the survey with respect to construction of nali in the Village but no action has been taken by the respondents hence the instant public interest litigation on behalf of the petitioners for the following reliefs:-

" (i) Issue a writ, order or direction in the nature of public interest litigation commanding the respondent nos. 2, 3,4 and 5 to construct pacca nali from both side of main street in pursuance of the proposal of Gram Panchayat dated 10.8.2022 and report dated 14.7.2022 submitted by the Khand Vikas Adhikari and consent of the respondent no.3 by using the police force in Village Saroorpur, Tehsil Sardhana, District Meerut.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent no.2 to execute the proposal dated 10.8.2022 submitted by the Gram Panchayat for the construction of pacca nali in the Village Saroorpur Khurd, Tehsil Sardhana, District Meerut for the exit of water filling in

the stree of Village Saroorpur Khurd, Tehsil Sardhana, District Meerut."

3. Counsel for the petitioners submitted that construction of pakki nali on both sides of the rasta will be in the interest of the entire villagers of the Village but authorities are not considering the grievance of the petitioners/ villagers of the Village in question. He further submitted that proposal has been passed by Gaon Sabha for the construction of the nali but the same has not been given affect on account of the influence of private respondent nos. 6 and 7. He further submitted that in view of the provisions contained under Article 49 of the Constitution of India, the authorities are bound to construct nali in the Village in question on both side of the main street.

4. Mr. Amitabh Kumar Tiwari, learned Counsel appearing for respondent nos. 6 and 7 submitted that petitioners have illegally encroached the drainage system of the Village in question by constructing their house, as such, the instant public interest litigation cannot be entertained. He further submitted that Tehsildar has recommended to initiate the proceeding under Section 133 of the Code of Criminal Procedure against the petitioners due to the illegal encroachment made by petitioners. He further submitted that Sub Divisional Magistrate has already passed a conditional order under Section 133 (1) of the Code of Criminal Procedure on 1.9.2022 against the petitioners hence the instant public interest litigation on behalf of petitioners cannot be entertained at all. He further submitted that present Village Pradhan is colluded with petitioners and the alleged resolution of the Gram Sabha is the result of the collusion of the petitioners and Gram Pradhan. He submitted that no interference is required in the matter and the instant public interest litigation is liable to be dismissed.

5. Mr. O.P. Sharma, learned Additional Chief Standing Counsel for the State-respondents and Mr. Sunil Kumar Singh, Counsel for respondent no.4, Gaon Sabha submitted that instant public interest litigation at the instance of the petitioners cannot be entertained in view of the averment made in the instant public interest litigation. They submitted that instant public interest litigation is liable to be dismissed.

6. I have considered the arguments advanced by learned Counsel for the parties and perused the records.

7. In order to appreciate the controversy involved in the instant public interest litigation, Court has perused the order dated

1.9.2022 passed by Sub-Divisional magistrate in the proceeding u/s 133 of the Criminal Procedure Code in particular which fully demonstrates that the instant public interest litigation has been filed on behalf of the petitioners who are himself facing the proceeding under Section 133 of the Code of Criminal Procedure for encroaching the public Nala in the same vicinity, as such, petitioners are not entitled to maintain the instant public interest litigation for constructing the nali in the same village in question in order to dilute the proceeding which petitioners are facing as well as to regularize their encroachment.

8. It is also material that petitioners have also failed to demonstrate from the documentary evidence regarding the status of the plot over which they are praying for construction of the Nali, as such, prayer made in the public interest litigation cannot be accepted.

9. Considering the entire facts and circumstances, no interference is required in the matter. The instant public interest litigation is accordingly **dismissed**.

Order Date :- 6.12.2023

Vandana Y.