

Court No. - 40

Case :- WRIT - C No. - 28908 of 2023

Petitioner :- Mobeen Ahmad

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Girish Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard learned counsel for the petitioner and Shri F.A. Ansari, learned Standing Counsel for the State respondents.

2. Present writ petition is preferred assailing the validity of order Notice/order dated 26.07.2023 passed by Sub Divisional Magistrate, Tehsil Pooranpur, District Pilibhit-third respondent, appended as Annexure no.11 to the writ petition asking the petitioner to displace his shop from the 500 meter radius of Abadi.

3. According to the petitioner, he has established a small poultry farm on 10.01.2017 on his own agricultural land and obtained Udyam Registration Certificate under the Ministry of Micro, Small and Medium Enterprises of Government of India. The petitioner has earlier approached to this Court by preferring Writ C No.33346/2022 (Mobeen Ahmad vs. State of U.P. and others) assailing the validity of impugned notice dated 08.10.2022 on the ground that petitioner is running poultry farm handling upto 3000 birds in number. According to the petitioner, as per Environmental Guidelines for Poultry Farms, the poultry farm handling birds about 25,000 at single location will have to obtain consent to establish (CTE) and consent for operate (CTO) under the Water Act, 1974 and Air Act, 1981 from the State Pollution Control Board/Pollution Control Committee. While pressing the relief in the said writ petition, it was argued that the impugned notice dated 08.10.2022 was issued with a pre-conceived mind and the same is in the nature of an order and that too issued by the said respondents without any authority under law. Vide order dated 03.02.2023, the Division Bench of this Court had disposed of the said writ petition asking the petitioner to move an objection/representation within three weeks and the Competent Authority was also asked to redress the grievance of the petitioner within three weeks with further direction that the impugned notice

dated 08.10.2022 would be subjected to decision, as may be taken by the respondent on the said representation.

4. In this backdrop, learned counsel for the petitioner states that inspite of said order, till date the said proceeding has not been finalised and in most arbitrary manner, the present impugned notice has been issued, which is liable to be set aside.

5. Per contra, Shri F.A. Ansari, learned Standing Counsel opposed the writ petition and raised objection on the maintainability of the writ petition on two fold grounds. Firstly, the present writ petition has been preferred against the impugned notice and the proceedings are yet to be culminated to its logical end. Secondly, at no point of time, the petitioner has filed any objection to both the notices issued to him. He has placed reliance on paragraph 7 of the Environmental Guidelines for Poultry Farms, which refers 'Siting Criteria' for new poultry farms (set up after issuance of guidelines). It is provided therein that the poultry farms (set up after issuance of guidelines) should preferably be established 500m from residential zone in order to avoid nuisance caused due to odour and flies. It also creates mandate to the incumbent, who is inclined to establish poultry farm with further riders.

6. For ready reference, the paragraph 7 of the said guidelines are reproduced as under:-

"(i) 500 m from residential zone in order to avoid nuisance caused due to odour and flies.

(ii) 100 m from major water course like River, Lakes, canals and drinking water source like wells, summer storage tanks, in order to avoid contamination due to leakages/spillages, if any.

(iii) 100m from national Highway (NH) and 50 m from State Highway (SH) in order to avoid nuisance caused due to odour and flies.

(iv) 10-15 m from rural roads/internal roads/village pagdandis.

(v) The Poultry sheds should not be located within 10m from farm boundary for cross ventilation and odour dispersion."

7. In this backdrop, Shri Ansari submits that in view of the aforesaid, nothing is brought on record to indicate that the proposed site is beyond 500 meters and that is why the petitioner is avoiding to file response/objection to the show cause notice, therefore, no permission can be accorded to the petitioner and as such, the writ petition is liable to be dismissed.

8. Considering the facts and circumstances, at this stage, we are not inclined to issue any direction in the matter. Needless to say that in case the petitioner files an objection to notices dated

08.10.2022 and 26.07.2023 within a week, we hope and trust that the said objection would be considered by the Competent Authority on its merit in further two weeks' time. For the period of three weeks, the parties shall maintain status quo on the spot as of today.

9. With these observations, the writ petition is ***disposed of***.

Order Date :- 2.11.2023

A. Pandey