

Court No. - 40

Case :- WRIT - C No. - 28971 of 2023

Petitioner :- Hosila Prasad And 11 Others

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

Counsel for Petitioner :- Surendra Kumar Singh, Udai Shanker Mishra

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 Sharad Chandra Upadhyay, learned Standing Counsel.

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

"(A) issue a writ, order or direction in the nature of mandamus directing the respondents to stop the further demolition of Pakka House and shop of the petitioners and further construction, until further orders of this Hon'ble High Court.

(B) issue a writ, order or direction in the nature of mandamus directing the respondent no.1 and 5 to decide the representation dated 14.8.2023 (Annexure No.5) within a month and communicate to the petitioners speedily and till then no further demolition and construction may be done over the disputed land.

(C) issue a writ, order or direction in the nature of mandamus directing the respondent no.1 and 5 to pay appropriate compensation to the petitioners before acquisition of their land/ house by the respondents within a reasonable time fixed by this Hon'ble Court."

3. At the very outset, learned Standing Counsel has placed the detailed instructions sent by the Executive Engineer, Construction Division-1, Public Works Department, Varanasi, which is taken on record. On the basis of instructions, he has stated that the widening of road has become unavoidable for the interest of public at large due to increasing traffic. It is contended that some of the petitioners have already removed their encroachment. He further submits that even the road widening would not only increase the free traffic movement but even increase valuation of the property, which is situated over the widened road. The widening of road is being made for the convenience of public at large strictly in accordance with law and as such no interference is required in the matter. In support of his submissions, he has placed reliance on the judgment of Hon'ble the Apex Court in Special Leave to Appeal (C) No(s).9314-9315/2022, G. Narsing Rao (Died) Thr. LRs. v. The national Highways Authority of India & Anr. Dated 8.6.2022; Civil Appeal No (S) 11141 of 2018 (National Highways Authority of India & Ors. v. Madhukar Kumar & Ors.) dated 23.9.2021; Civil Appeal No(s) 3189 of 2022 (Kalyai (Dead)

through Lrs. & Ors. v. The Sulthan Bathery Municipality & Ors.) dated 26.4.2022 as well as the judgment of this Court in Writ-C No.15737 of 2022 (Intezamia Committee Shahi Masjid v. State of U.P. & Ors.) dated 16.8.2022; Misc. Bench No.13474 of 2016 (Lavkush & Ors. v. State of U.P. & Ors.) dated 3.6.2016 and Writ-C No.21866 of 2018 (Praachin Maa Kali Mandir & Anr. v. State of U.P. & Ors.) dated 13.7.2018.

4. Learned Standing Counsel has further submitted that in similar circumstances, the Division Bench of this Court in Writ-C No. 7255 of 2018 (**Manmohan Sachdeva and Another Vs. State of U.P. and Another**) has declined to interfere in the matter as the land in question was required for public utility purposes for widening the highways and disposed of the writ petition vide order dated 17.4.2018, as such it is contended that present writ petition is also liable to be decided in the same terms.

5. Learned counsel for the petitioners submits that the petitioners have absolutely no objection for using the land in question for the purpose of road widening but adequate compensation must be provided to the petitioners.

6. The Court has proceeded to examine the record in question and find substance in the contention raised by learned Standing Counsel. For ready reference the operative portion of the order dated 17.4.2018 is quoted as under:-

"It is open to respondent no. 4 Executive Engineer to take all steps, if not already taken, to demolish the petitioner's house for road widening purpose. The petitioner shall not obstruct demolition of house or construction of the road/widening of the road. It is open to the petitioner to approach respondent no. 2-District Magistrate, Allahabad, seeking compensation for the land, as prayed for, which, according to her, is his free-hold land, within a period of two weeks from today. If the petitioner makes such an application, respondent no.2 shall examine the same and, if they find that the petitioner is entitled for compensation, they may proceed to pass appropriate order, as expeditiously as possible and preferably, within a period of ten weeks from the date of receipt of application. While doing so, it is needless to mention, respondent no.2 shall examine whether the land which is being used for road widening purpose belongs to the petitioner and if yes, how much compensation she is entitled for the said land. Respondent no.2 shall grant an opportunity of being heard to the petitioner."

7. In view of above, we are satisfied that the aforesaid order, having due regard to the prayers made in the writ petition, shall meet the ends of justice. Consequently, present writ petition is also **disposed of** in same terms as in Manmohan Sachdeva & Anr. (Supra).

Order Date :- 16.10.2023

SP/