

Court No. - 40

Case :- WRIT - C No. - 30179 of 2023

Petitioner :- Smt. Afroz Begum And Another

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

Counsel for Petitioner :- Saurabh Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

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

2. Present writ petition is preferred *inter-alia* with following reliefs:-

"(I) Issue a suitable writ, order or direction calling for the records and demolition notice issued subsequent to the earlier notice dated 30.10.2021 by the respondent no.3 and may further be pleased to quash/set aside the said notice.

(II) Issue a writ, order or direction in the nature of mandamus commanding the respondents not to disturb the peaceful possession of the petitioners over their property admeasuring 90 sq. yards situated at Town and Pargana Shahi, Tehsil and District Bareilly in any manner whatsoever without giving notice and due opportunity of hearing as envisaged under the law."

3. It appears that petitioners had purchased a property admeasuring 90 sq. yard at Town and Pargana Shahi, Tehsil and District Bareilly over which he has constructed a shop. Earlier a notice dated 30.10.2021 was issued to the petitioner no.2, whereby, the petitioners were asked to remove the alleged encroachment/construction of the shop from the public land. The said notice was assailed by petitioners in Writ C No.14427/2022 (Smt. Afroz Begum and another vs. State of U.P. and others), which was disposed of by order dated 26.05.2022 passed by the Division Bench of this Court. While passing the order dated 26.05.2022, the Court has considered the order dated 19.05.2022 passed in Writ C No.13049/2022 (Smt. Krishna Devi vs. State of U.P. and others), wherein, Smt. Krishna Devi had challenged the notice dated 31.03.2021 issued by the Divisional Magistrate Sadar, District Moradabad requiring the petitioners to remove encroachment over public land. In Writ C No.13049/2022, it was also claimed that neither the land nor the nature of occupation/encroachment has been specified, even at no point of time proper opportunity of hearing has been provided to the petitioners. The Division

Bench of this Court had disposed of the Writ C No.13049/2022 by order dated 19.05.2022, which is reproduced as under:-

"The grievance of the petitioner is that she has been visited with a notice dated 31.03.2021 issued by the respondent no. 3, Divisional Magistrate Sadar, District Moradabad requiring the petitioner to remove encroachment over public land. However, neither the plot of land nor the nature of occupation/encroachment has been specified. Therefore, the petitioner claims violation of principle of natural justice in as much as she has not been confronted with the true facts giving rise to the eviction notice.

Submission advanced by the learned counsel for the petitioner is well founded.

The impugned notice is completely mute.

In view of the above, no useful purpose would be served in keeping this present petition pending or calling for a counter affidavit. The writ petition is disposed of with the following directions:-

1. If the respondent nos. 2 and 3 proposes to proceed against the petitioner with respect to any particular property they may be at liberty to issue a specific notice giving details of the nature of occupation i.e. at least the area occupied and its approximate location in the total land claimed to be unauthorizedly occupied. Such notice may be issued within a period of two weeks.

2. Upon issuance of the such notice appropriate opportunity of hearing may be granted to the petitioner to file a written objection and the matter may be proceeded thereafter, accordingly."

4. While disposing of the aforesaid writ petition preferred by petitioners, the Court has considered the order dated 19.05.2022 and accordingly disposed of the writ petition with a further rider that if the respondent nos.2 and 3 proposes to proceed against the petitioners with respect to any particular property, they may be at liberty to issue a specific notice giving details of the nature of occupation i.e. at least the area occupied and its approximate location in the total land claimed to be unauthorizedly occupied. The said notice is to be issued within a period of two weeks and thereupon the respondents were further directed to accord opportunity to the petitioners to file written objection and thereafter the matter may proceeded in accordance with law.

5. In this backdrop, learned counsel for the petitioners vehemently contended that till date the respondents have not complied with the aforementioned mandate. Even though similar notices have been given to other house owners, as an exemplar one notice which is given to neighbour of petitioner namely Mr. Inam Miyan s/o Shri Abdul Shamad R/o Village/Area Bali Nagar, Town Shahi, P.S. Shahi, Tehsil Mirganj, District Bareilly, appended as Annexure no.10 to the writ petition. He submits that there is eminent threat of demolition even the red mark is already made by the respondents for carrying out the demolition. In case no reprieve is accorded by this Court, the petitioners would suffer irreparable loss and injury.

6. Considering the facts and circumstances of the case, no useful purpose would be served in keeping the writ petition pending consideration. Once the Division Bench of this Court has already accorded indulgence in the matter and the petitioners are raising concern that their property would be demolished, then we hope and trust that in case the respondent authorities wishes to proceed further in the matter pertaining to the disputed property, they may proceed strictly in accordance with law, as mandated by the Division Bench vide order dated 26.05.2022 passed in Writ C No.14427/2022.

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

Order Date :- 8.11.2023

A. Pandey