

Court No. - 40

Case :- WRIT - C No. - 30725 of 2023

Petitioner :- Sushil Chandra and another

Respondent :- State of U.P. and 4 Others

Counsel for Petitioner :- Vijay Singh Sengar, Satish Chandra Dubey

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard learned counsel for the petitioners; Shri F.A. Ansari, learned Standing Counsel for the State respondent nos.1, 2, 4 and 5 and Sri Anurag Singh, learned counsel for Nagar Palika Parishad, Akbarpur, District Kanpur Dehat (respondent no.3).

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

"a. Issue an appropriate writ, order or direction in the nature of certiorari quashing the impugned notices nos.180/1C-AE1/Comp and 199/1C-AE1-Comp dated 8.08.2023 being issued by the respondent no.5 i.e. Assistant Engineer, Nirman Khand-I, Public Works Department, Kanpur Dehat.

b. Issue an appropriate writ, order or direction in the nature of mandamus directing the respondents to consider and take an appropriate decision in pursuance of petitioners' reply dated 23.08.2023."

3. At the very outset, learned Standing Counsel has placed detailed instruction sent by the Executive Engineer, Nirman Khand-1, Public Works Department, Kanpur Dehat and the same is taken on record. Copy of the instruction is also given to learned counsel for the petitioner. He has raised an objection regarding maintainability of the writ petition on three fold submissions, firstly on the ground that without substantiating any claim, right or title over the land in question, the petitioners have invoked the writ jurisdiction and such disputed fact cannot be adverted. Secondly, he submits that there are two disputed land i.e. Gata No.180, which is recorded in the name of Public Works Department and Gata No.203 & 146, which is recorded in the name of UPSIDC and thirdly, adequate notice has been given to the petitioners way back on 08.08.2023 regarding the encroachment over the State land and accordingly, seven days' time was accorded to the petitioners to submit their reply, otherwise the proceeding under Section 441/447 Cr.P.C. shall be initiated against them. He further apprises to the Court that said place is situated at very critical crossing and the said road joins National Highway No.27 (Kanpur Jhansi road) and without any title, right or claim, the petitioners cannot encroach the

roadside land. 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.

4. In support of his submissions, learned Standing Counsel has placed reliance on the judgments 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.

5. We have occasion to peruse the impugned notice and the response, which had been filed by the petitioner on 17.08.2023 in which we do not find any material or evidence to substantiate the claim that the petitioners are owners of the land in dispute. In absence of any title, we are not inclined to entertain the writ petition.

6. Accordingly, the writ petition is misconceived and the same is dismissed.

Order Date :- 17.10.2023

RKP