

Court No. - 52

Case :- WRIT - C No. - 49400 of 2017

Petitioner :- Madarasa Islamiya Arabiya Imadadiya And Another

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

Counsel for Petitioner :- Jai Singh Yadav

Counsel for Respondent :- C.S.C., Manish Chandra Tiwari, Mridul Chandra Tiwari, Rahul Mishra, Rahul Singh

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Jai Singh Yadav, learned counsel for petitioner and Sri Tarun Gaur, learned Standing counsel appearing on behalf of respondent no. 1 to 3.

2. Although the caveat has already been preferred by respondent no. 4 to 6 but no representation has ever been made before the Court at any time when the matter has been taken by the Court.

3. Pleadings have been exchanged between petitioners and respondent no. 1 to 3.

4. Present petition has been filed seeking following reliefs:

"(a) issue order or direction in the nature of certiorari to quash the order dated 20.4.2017 passed by Sub Divisional Magistrate (Sadar) Moradabad as contained the (Annexure no. 13 to this petition).

(b) issue order or direction in the nature of mandamus commanding the respondents not to interfere in the peaceful possession over the Gata no. 405 area 0.425 hectare and Gata no. 410 area 0.1540 hectare on which the institution/Madarsa is situated."

5. It is the case of petitioner that dispute in regard to plot no. 421 was pending consideration in suit no. 414 of 2017 (Haji Irfan Vs. Kulwa and others) wherein the learned Single Judge, Junior Division, District Moradabad has already passed an order dated 04.10.2017 directing the parties to maintain status quo, but during pendency of the suit an administrative order has been passed over miscellaneous application preferred by private respondents through which respondent no. 3 was directed by respondent no. 2 for ensuring the removal of the alleged encroachment carried out by the petitioner by way of using police force vide order dated 20.04.2017 which rises cause of action in favour of the petitioner for filing the instant petition wherein the interim protection has already been granted by co-ordinate Bench vide order dated

13.11.2017.

6. Learned counsel for petitioner informed that during pendency of the instant writ petition, original suit no. 414 of 2017 (Haji Irfan Vs. Kulwa and others) has already been decided finally on merits vide judgment and order dated 03.10.2022 although copy of the same has not been preferred along with any supported affidavit but photocopy of the certified copy of the order dated 03.10.2022 has been provided by learned counsel for the petitioner which is taken on record, through which permanent injunction has been granted and the defendants in shape of respondent no. 4 to 6 were restrained not to interfere in the impartment of education from conduction of the Madarsa by the petitioner and also restrained not to take possession over the plot no. 405 measuring area 0.4250 hectare, plot no. 410 measuring 0.1540 hectare wherein the boundaries of both the plots has been mentioned at the last of the plaint preferred by the petitioner.

7. Learned counsel for the petitioner while assailing the order dated 20.04.2017, specifically mentioned that without holding any proceedings under the statutory provision, respondent no. 2 issued the order for evicting the petitioner from the property which solely belongs to the petitioner and as such the same was not permissible in the eye of law, since under the specific proceedings, the provision for seeking response in shape of opportunity of hearing is provided but avoiding the same, respondent no. 2 exceeded his jurisdiction for directing his subordinate officers to take action against the petitioner which is not permissible and contrary to the provisions of U.P. Revenue Code, 2006.

8. Per contra, learned Standing counsel although opposed the prayer as made in the petition but showed his agreement that the entire proceedings whatsoever has been carried out by respondent no. 2 is not consonance with any specific provisions as laid down in the statutory rules as provided in U.P. Revenue Code, 2006, and it is also found that at no point of time the opportunity of hearing has been afforded to the petitioner.

9. In view of the aforementioned facts and circumstances, and in the light of the judgment and order dated 03.10.2022 passed by learned Civil Judge, Junior Division, District Moradabad, order dated 20.04.2017 is hereby set aside.

10. Writ petition stands ***allowed*** accordingly.

Order Date :- 6.12.2023

Shaswat