

Court No. - 52

Case :- WRIT - C No. - 63181 of 2017

Petitioner :- Jabbarnath

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Jagadeesh Prasad Chaurasi

Counsel for Respondent :- C.S.C., Bhupendra Kumar Tripathi, Manoj Kumar Yadav

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Jagdish Prasad Chaurasia, learned counsel for petitioner and Sri Prabhakar Tripathi, learned Standing Counsel for the State-respondent nos.1 to 3 as well as Sri Kamlesh Kumar Sharma, Advocate holding brief of Sri Bhupendra Kumar Tripathi, learned counsel for respondent no.4.

2. The present petition has been instituted for seeking order or direction in the nature of mandamus commanding the respondents to remove the chakroad constructed over plot no.99, situated at Village Noorpur, Tehsil Machhali Shahar, District Jaunpur which is bhumidhari land of petitioner.

3. In response to the contention raised in the instant petition, respondent nos.2 and 3 preferred counter affidavit, wherein specific stand has been taken that no physical partition has ever been made between tenure holders of plot no.99 and plot no.98 comprising area of 0.0400 hectare has been recorded as main road and most of the part of said road has been constructed in the said plot. Moreover, there is hardly any objection except the petitioner who is recorded as co-tenure holder in same plot i.e. plot no.99 and 94.

4. Learned Standing Counsel also submitted that for the same cause of action, a civil suit bearing Suit No.1233 of 2008 (Jabbarnath Vs. State) has already been preferred before learned Civil Judge (S.D.), Jaunpur but till today, no relief has been granted by learned Civil Judge, whereas plot no.98 comprising area of 0.0400 hectare is recorded in the revenue records as main road which is adjacent to the plot recorded against the name of petitioner along with other tenure holders.

5. Learned Standing Counsel as well as learned counsel for Gram

Sabha vehemently opposed the prayer as made in the petition on the ground that no partition has ever been finalized amongst co-sharers of plat nos.99 and 94 and as such, proper demarcation with regard to adjacent plot i.e. plot no.98 has been not carried out, grievance of petitioners is pertaining to the year 2007 and till today, the same is still pending at the behest of not taking proper legal remedy available to petitioner whereas the civil suit which has already been preferred by petitioners, has been dismissed in default which clearly shows that petitioner is not at all interested to raise his grievances before the appropriate forum.

6. In view of the aforesaid facts and circumstances, there is hardly any scope available in pursuance to the prayer as sought through the instant petition as well as the averments made in the counter affidavit are seems to be justified and as such, the instant petition stands **dismissed**.

Order Date :- 5.12.2023

Vivek Kr.