Court No. - 40

Case :- WRIT - C No. - 33065 of 2023

Petitioner :- Kasmiri And 2 Others
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Akhilesh Kumar
Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.
Hon'ble Prashant Kumar,J.

1. Heard Shri Akhilesh Kumar, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. Present writ petition has been preferred for a direction to respondent no.2 to recognise the petitioner as "other traditional forest dweller" as provided in Section 1 (0) of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and further direction to the respondent no.2 to provide consequential benefits of Section 3 of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 to the petitioner.

3. It is contended that the petitioner belongs to Scheduled Caste community and the forefather of the petitioner was engaged by Colonials for Taungiya plantation from 1920 and still continued after independence till the enactment of Forest Conservation Act, 1980. The claim of the petitioner is to be considered in the light of the Act of 2006 but till date the same has not been decided by the respondent authorities. It is further contended that similar controversy has earlier been raised before this Court by way of **Public Interest Litigation (PIL) No.56003 of 2017 (A*divasi Vanvasi Maha Sabha, Chandauli v. Union of India & Ors.*)**, which was disposed of on 11.10.2018 leaving it open to the petitioners' association to make individual application under Section 6 of the Act of 2006 for seeking recognition of their forest rights. It was also provided that in case any such application is made, the Gram Sabha/ Authority shall consider the same and take decision in the matter expeditiously and preferably within 12 weeks. Reliance has also been placed on the order dated 29.8.2013 in **Writ-C No. 44551 of 2013 (*Rameshwar Chaudhary v. State of U.P. & Ors.*)**, wherein similar controversy has been decided with following observations:-

"Heard learned counsel for the parties.

In view of the submission advanced from both sides and in the light of the facts so stated this court is not to go into the details for disposing this petition, as keeping the matter pending will be futile exercise and that will just delay the finality of the things.

Petitioner claims protection as provided in The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of various Rights) Act, 2006.

Accordingly, we need not to go into the merits of the matter so as to record a finding either way but at the same time we propose to dispose of this petition by giving following directions-

i) Petitioner is to file certified copy of this order within a period of one month from today before the competent authority.

ii) On receipt of the move it will be the concern of the concerned competent authority to proceed as provided under the Act and to pass appropriate orders in accordance with law within shortest possible time preferably within a period of three months from the date of receipt of the move.

iii) It is observed that except in accordance with law there will be no interference in the rights of the petitioner.

It is made clear that this Court has not expressed any opinion on merits as we have not gone into the merits of the petitioner's claim and thus decision of the concerned competent authority will be his independent exercise as may be permissible in law.

With the aforesaid directions, this petition stands disposed of."

4. Learned counsel for the petitioner, in this backdrop, has contended that the petitioner being on similar footing is also entitled for similar indulgence.

5. Learned Standing Counsel submits that the claim of the petitioner will be considered in accordance with law expeditiously.

6. Considering the facts and circumstances of the case, without expressing any opinion on merits of the issue and with consent, the writ petition stands ***disposed of*** asking the authority concerned to look into, examine and redress the grievance of the petitioner in accordance with law and considering the judgments cited above expeditiously but certainly after giving opportunity to all the stake holders in the matter.

Order Date :- 19.10.2023
Sachin

Digitally signed by :-
SACHIN TIWARI
High Court of Judicature at Allahabad