

Court No. - 40

Case :- WRIT - C No. - 34033 of 2023

Petitioner :- Atimullah

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Devendra Kumar Yadav, Amita Kumari

Counsel for Respondent :- C.S.C., Kamlesh Singh

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard Mr. D.K. Yadav, learned counsel for the petitioner, Mr. Devesh Vikram Singh, learned Additional Chief Standing Counsel for the State-respondents and Mr. Kamlesh Singh, learned counsel for the respondent No.7.

2. By means of the present writ petition, petitioner has prayed for following principal reliefs:-

"(i) Issue a writ, order or direction in the nature of writ of mandamus directing the respondent No.3 to decide the application/representation dated 17.08.2023 moved by the petitioner within stipulated period as fixed by this Hon'ble Court.

(ii) Issue a writ, order or direction in the nature of writ of mandamus directing the respondent authorities to vacate the encroachment made by respondent no.7 over P.W.D. land in front of land having arazi no. 420, 333, 335 in Village- Patkhauri situated between Kanchanpur Baghaut Ghat P.W.D. road in Village-Khutaha Patkhauri."

3. At the very outset, Mr. Kamlesh Singh, learned counsel appearing for the respondent No.7 raised a preliminary objection regarding the maintainability of the instant petition by submitting that the instant writ petition is preferred with concealment of material facts as well as for the same cause of action as the earlier, the petitioner had instituted a writ petition bearing **WRIT - C No. - 8716 of 2018 (Atimullah Vs. State of U.P. and 4 others)** wherein the learned Single Judge has proceeded to dismiss the matter with an observations that *"the record reveals that the road infact runs on the Plot No.333. The Plot No.335 is a Bhumidhari land. No interference therefore can be made in the matter. It is accordingly dismissed."* He next submits that in spite of dismissal of the aforesaid writ petition, the petitioner had again instituted a PIL being **PUBLIC INTEREST LITIGATION (PIL) No. - 1125 of 2023 (Atimullah Vs. State of U.P. and 10 others)** wherein the learned Single Judge had dismissed the writ petition as *"dismissed as withdrawn"*. He next

submits that either one reason or another, the petitioner herein continued to file the petitions for the same cause of action which is abuse of process of the law as well as the same is not permissible in the eyes of law, therefore, the instant petition is liable to be dismissed with an exemplary cost.

4. When confronted with above, learned counsel for the petitioner submits that he does not wish to press the instant petition and the same may be dismissed as not pressed with an undertaking that no further proceedings shall be drawn for the same cause of action before this Court.

5. In view of the above, the instant petition stands ***dismissed*** as not pressed.

Order Date :- 6.11.2023

Sachin