

Court No. - 47

Case :- WRIT - C No. - 33424 of 2023

Petitioner :- Rama Singh

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Sita Ram Yadav

Counsel for Respondent :- CSC

Hon'ble Manish Kumar Nigam,J.

1. Heard learned Counsel for the parties and perused the record.

2. The present writ petition has been filed for the following prayer :

"a) Issue a writ, order or direction in the nature of Mandamus commanding the respondent no.2 to appoint the Advocate Commission for conducting the survey of the land having Gata No.974/1337 measuring an area about 0.0700 Hectare, recorded as Dev Sthal land in the revenue records situated at Village Gadaipur, Pargana Bahariyabad, Tehsil Jakhaniya, District Ghazipur and to submit its report within some specific time period, as may be fixed by this Hon'ble Court.

b) Issue a writ, order or direction in the nature of Mandamus commanding the respondent no.2 to decide the pending application dated 11.8.2023."

3. Contention of learned Counsel for the petitioner is that Gata No.974/1337, area 0.0700 hectare situated at Village-Gadaipur, Pargana-Bahariyabad, Tehsil-Jakhaniya, District-Ghazipur is recorded as *Dev Sthal* in the revenue records. Certain persons name of whose are mentioned in paragraph 6 of the writ petition have encroached upon the land recorded as *Dev Sthal* and when a complaint being made by the petitioner, no action was taken by the respondents, then the petitioner filed Public Interest Litigation No.1370 of 2023, Rama Singh Vs. State of U.P., which was disposed of by order dated 21.7.2023. It has been further contended that the report submitted by respondent no.5 in the aforesaid Public Interest Litigation was misleading and incorrect, therefore, the present PIL has been filed.

4. Learned Standing Counsel has raised a preliminary objection as to maintainability of the present Public Interest Litigation on the ground that in view of Rule 7 of Chapter XXIII of the High Court Rules, 1952 and judgment of Apex Court in case of ***State of U.P. Vs. Labh Chand*** reported in **1993 (2) AWC 1139** and judgment of this Court in case of ***Ram Prakash Rastogi Vs. Bhagirath Gramin Bank*** reported in **2019 (2) ADJ 711**, the second petition is not maintainable. It has been further contended by learned Standing Counsel that the relief claimed in the present writ petition that a direction be issued to the respondent no.2 to appoint an Advocate Commissioner for conducting the survey of the land is not permissible in

view of the fact that in case the petitioner desires to get the land survey by means of an Advocate Commissioner, he may apply under the relevant provision of the C.P.C., which are applicable in proceedings under U.P. Revenue Code, 2006.

5. In view of the same, I am not inclined to interfere in the matter as the second petition for substantially the same relief is not maintainable and also that in case, the petitioner desires to get the survey by an Advocate Commissioner, he may move an appropriate application in accordance with law before the respondent no.2.

6. Accordingly, the writ petition is **dismissed**.

Order Date :- 7.11.2023

S. Singh