

Court No. - 52

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 2490 of 2023

Petitioner :- Samsuddin

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

Counsel for Petitioner :- Shesh Narain Mishra,Rajendra Prasad Mishra

Counsel for Respondent :- C.S.C.,Pankaj Kumar Gupta

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Rajendra Prasad Mishra, learned counsel for petitioner and Sri Tarun Gaur, learned Standing counsel appearing on behalf of respondent no. 1 and 2.

2. Present petition has been filed seeking following reliefs:

"a) Issue a writ, order or direction in the nature of mandamus commanding/directing the respondent no. 2 to remove illegal encroachment over gram sabha Banjar land Arazi no. 33C area 1.3560 hectare village Revli, Tehsil/district- Basti u/s 67 of U.P. Revenue Code by considering and deciding the application dated 20.07.2022 as per order dated 23.03.2023 u/s 67 U.P. Revenue Code while taking action against respondents no. 4 to 7 within short stipulated period."

3. It is the case of the petitioner that certain portion of plot no. 33C measuring 1.356 hectare situated at village Rewali, Tehsil and District Basti has been encroached by respondent no. 4 to 7. For substantiating the arguments raised by learned counsel for the petitioner he relied upon the orders passed by respondent no. 2 on dated 23.3.2023 through which the determination of the encroachment carried out by private respondents have been determined by the duly constituted team by the respondent no. 2.

4. Sri Tarun Gaur, learned Standing counsel sought the attention of the Court over the report dated 28.10.2022 submitted by respondent no. 2 before District Magistrate, Basti in which has been intimated that four cases have already been instituted for determining the illegal encroachment carried out by private respondents which is still pending to be adjudicated finally by the concerned Tehsildar as reported by respondent no. 2 before the District Magistrate, Basti.

5. Learned counsel for the petitioner submitted that although proceedings under Section 67 of U.P. Revenue Code, 2006 have been initiated against the respondent no. 4 to 7 but during pending of the proceedings as intimated through the report dated 28.10.2022 certain more area of the same plot number are being encroached by the private respondents, whereas the determination has been under adjudication in respect of the encroachment which has been carried out way back in the year 2022 that is before the fresh encroachment as alleged by the petitioner.

6. Sri Tarun Gaur, learned Standing counsel opposed the institution of the petition on the ground that once the proceedings has already been initiated under Section 67 of U.P. Revenue Code, 2006 against the private respondents there is hardly any cause of action in favour of the petitioner for institution of fresh petition for seeking direction in the nature of mandamus commanding the respondents to proceed fresh against same cause of action which is still pending to be adjudicated finally by the Tehsildar.

7. After having the rival submissions extended by learned counsel for the parties, the apprehension of the petitioner is not liable to be accepted since the proceedings under Section 67 of U.P. Revenue Code, 2006 has already been initiated and once it is presumed that the same shall be finalised with regard to the respective plot number the same shall not be confined only to the area which was encroached before 2023 by respondent no. 4 to 7 but the authorities will be duty incumbent to remove the encroachment from the entire plot if the same does not belong to the private respondents.

8. In view of the aforementioned facts and circumstances, arguments raised by Sri Tarun Gaur, learned Standing counsel seems to be forceful and as such the writ petition is hereby ***disposed of*** with the observation that the proceedings whatsoever has been initiated against the private respondents shall be expedited as early as possible but after due opportunity of hearing afforded to all concerned.

Order Date :- 23.11.2023

Shaswat