

Court No. - 40

Case :- WRIT - C No. - 35235 of 2023

Petitioner :- Smt. Baby

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

Counsel for Petitioner :- Anurag Kumar

Counsel for Respondent :- CSC

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard Shri Anurag Kumar, learned counsel for the petitioner and Shri F.A. Ansari, learned Standing Counsel for the State-respondents.

2. Present writ petition has been preferred for following reliefs:-

"(i) Issue a writ, order or direction in the nature of mandamus directing the respondent nos.3 and 4 to ensure the petitioner regarding the distance from the middle road as per the Rules, to construct her residential house and to measure the land of the petitioner in accordance with law.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondent nos.3 and 4 to decide the Application of the petitioner dated 27.9.2023 in accordance with law."

3. The petitioner claims to be the owner of land (Aarazi Nos. 477 and 478) situated in Village- Belwar, Pargana- Gadwara, Tehsil- Machhalishahar, District- Jaunpur. It is contended that the said land of the petitioner is situated at the distance of 45-50 ft. from the middle of the road, which is under the process for declaration as State Highway. He submits that the respondents may be directed to permit the petitioner to raise construction over the land in question.

4. On the other hand, Shri F.A. Ansari, learned Standing Counsel has vehemently opposed the writ petition. He submits that the land in question falls within the restricted area, and as such, the same is hit under the provisions of U.P. Roadside Land Control Act, 1945 (in short "the Act of 1945"). He has also placed Reliance on Rule 7 of the Uttar Pradesh Roadside Land Control Rules, 1964 (in short "the Rules of 1964), wherein permissible distance for construction of building from the each category of roads has been provided. If any construction falls under the restricted area, the restriction can be imposed. He submits that Section 3 of the Act of 1945 provides for declaration of controlled area and Section 6 proceeds to make

mention regarding application for permission to build and the grant or refusal of such permission. Form-1 in First Schedule also provides that in case a person is interested to seek permission to raise construction under the Regulated area, he has to proceed in accordance with Form 1 issued under Rules 3, 4 and 5 to the Collector on the given format.

5. We have proceeded to examine the record in question and find that in the present matter highly disputed questions of facts have been agitated. As per the provisions of the Act of 1945, if the area is regulated, then as per the provisions contained in Rule 7 regarding each categories of roads, there is clearcut demarcation of the open and agricultural areas as well as urban and industrial area. In the present facts and circumstances, we cannot extend reprieve to the petitioner but in case the petitioner pursuant to Form 1 quoted above applies to the concerned Collector, the same shall be considered and decided as per the provisions contained in the Act of 1945 and the Rules of 1964 expeditiously.

6. The writ petition stands **disposed of** accordingly.

Order Date :- 29.11.2023

Rama Kant