

Court No. - 46

Case :- WRIT - C No. - 35535 of 2023

Petitioner :- Jalaluddin

Respondent :- State Of U.P. And 9 Others

Counsel for Petitioner :- Shyam Singh, Rajesh Kumar Nishad

Counsel for Respondent :- C.S.C, Anand Prakash Paul, Sandeep Kumar Srivastava

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Syed Aftab Husain Rizvi, J.

Heard learned counsel for the parties.

The petitioner is aggrieved by an order passed by the District Magistrate, Kanpur, dated 11.09.2023, as also the consequential order of the Pollution Control Board which prohibits the petitioner from running a tannery on the plots of petitioner situated at village Gajju Purwa, Kanpur Nagar. The primary ground of challenge to the impugned proceedings are the denial of opportunity of hearing to petitioner in the matter.

Sri Sandeep Srivastava, appears for the Pollution Control Board states that the activity undertaken by the petitioner falls within the prohibited zone under the Aircraft Act 1934 and as the activity undertaken is likely to create a security concern for Chakeri Airport, as such the order had to be necessarily passed for prohibiting such activity.

Learned counsel for the petitioner contends that the villages indicated in the communication of the Indian Air Force do not include petitioner's land and had an opportunity of hearing was given to the petitioner, he could have pointed out such facts.

Section 5 (2) (qq) of the Aircraft Act, 1934 provides as under:

"the prohibition of slaughtering and flaying of animals and of depositing rubbish, filth and other polluted and obnoxious matter within a radius of ten kilometers from the aerodrome reference point;"

We have heard learned counsel for the parties and perused the material on record.

In the opinion of the court, it would be appropriate to afford an opportunity of post decisional hearing to the petitioner, so that the contention advanced by the petitioner that his land falls beyond the prohibited zone indicated in the orders of the competent authority, be examined. In such circumstances, we provide that in the event petitioner makes a representation before the Pollution Control Board within a week from today alongwith a certified copy of this order, the concerned respondent would get the facts verified and would pass a fresh order within a period of six weeks.

The order impugned in the writ petition shall remain subject to the fresh order to be passed by the authority concerned. The question as to whether petitioner's unit situates within the prohibited distance is an aspect which is left open for examination by the competent authority, in accordance with law. at the first instance.

Subject to above observation, the petition stands disposed of.

Order Date :- 13.10.2023

C. MANI