

**Court No. - 46**

**Case :-** WRIT - C No. - 36506 of 2023

**Petitioner :-** Heera Lal

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Yanendra Pandey, Deepesh Kumar  
Ojha, Sumit Kumar

**Counsel for Respondent :-** CSC

**Hon'ble Ashwani Kumar Mishra, J.**

**Hon'ble Syed Aftab Husain Rizvi, J.**

Heard learned counsel for the parties.

This petition has been filed challenging a notice dated 30.05.2023, as also subsequent notices, whereby petitioner is called upon to remove structures raised on the public road or the adjoining patri. A further prayer has been made to command the respondent to restore the demolished house of the petitioner. According to petitioner, his house situated on the land owned by him which has been arbitrarily demolished in the garb of removing encroachment from the public road and patri.

Learned State Counsel opposes the petition on the ground that the issues raised would require determination of disputed facts by the competent civil court. The petitioner had otherwise approached the civil court earlier but the plaint was returned for non observance of procedure specified under Section 80 of C.P.C.

So far as notice of Nagar Nigam is concerned, it is admitted on record that pursuant to it petitioner's constructions have already been demolished. Whether the construction of petitioner existed on his own land or on public road, as alleged by the local authority, are issues of fact which would require leading of evidence before

the appropriate forum. The petitioner had already approached the civil court for the purpose by instituting original Suit no.21 of 2023. Merely because the plaint has been returned as procedure stipulated under section 80 has not been complied would not mean that a writ petition would be entertained in respect of such cause.

In the facts of the case, remedy of the petitioner lies before the civil court and filing of the writ petition is not the appropriate remedy for redressal of petitioner's grievance.

Subject to the above observations, the writ petition is dismissed.

**Order Date :- 20.11.2023**

C. MANI