

Court No. - 40

Case :- WRIT - C No. - 36269 of 2023

Petitioner :- Haribhan Singh

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

Counsel for Petitioner :- Bholeswar,Arun Kumar Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard learned counsel for the petitioner and Sri S.C. Upadhyay, learned Additional Chief Standing Counsel for the State respondents.
2. Learned counsel for the petitioner states that the petitioner is a recorded tenure holder of arazi no.1062 and gata no.748 area 0.354 hectare and his tube-well is also installed in his land. He further submits that in most arbitrary manner the respondents are installing tube-well over gata no.1040 K and 1040 Kh under the Jal Jivan Mission Scheme due to which the tube-well of the petitioner will be affected as according to norms no deep boring should be installed in the radius of 250 meters from other borings.
3. In pith and substance the petitioner has invoked writ jurisdiction for injunction against the respondents for restraining them not to install the water tank/tube-well in the radius of 250 meters from his tube-well.
4. Sri Upadhyay, learned Additional Chief Standing Counsel raised an objection regarding maintainability of the writ petition on the ground that disputed questions of facts are involved in this matter. Moreover, the claim of the petitioner has already been addressed by the respondents vide order dated 08.09.2023 .
5. The core issue before us is whether the writ jurisdiction in the High Court is available for enforcement of such rights claimed against private individuals or against the State.
6. We do not agree that the petitioner is entitled to maintain this writ petition before this Court. It has repeatedly been held by this Court that regular suit is the appropriate remedy for settlement of dispute relating to property rights between the private persons or with the State and the remedy under Article 226 of Constitution of India shall not be available, except where violation of some statutory duty on the part of a statutory authority is alleged.
7. The High Court cannot allow the constitutional jurisdiction to be used for

deciding disputes for which remedies, under common law, civil or criminal, are available. The jurisdiction under Article 226 of Constitution of India is special and extraordinary and should not be exercised casually or lightly.

8. Once an efficacious remedy is available to the petitioner to approach the competent civil court, we are not inclined to entertain the instant writ petition. Needless to say, it is always open to the petitioner to press the relief before the appropriate forum/Court.

9. With the aforesaid observation, the writ petition stands disposed of.

Order Date :- 30.11.2023

S.P.