

**Court No. - 80**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 16473 of 2023

**Petitioner :-** Ram Vilash

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Pawan Giri, Himanshu Goswami

**Counsel for Respondent :-** G.A.

**Hon'ble Subhash Chandra Sharma, J.**

Heard learned counsel for the petitioner as well as learned A.G.A. for the State and perused the material on record.

The present writ petition under Article 226 of the Constitution of India has been moved with following prayers :-

I- To issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 23.08.2023 passed by the District Magistrate, District Kaushambi (respondent no.3) in Case No.466/2023, Computerized Case No.D202302420000466 (State vs. Ram Vilash) under Section 3(3) of the U.P. Control of Gundas Act, 1970.

II- To issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 21.09.2023 passed by the Commissioner, Prayagraj Division/Region, Prayagraj in Appeal Case No.1528/2023, Computerized Case No.C202302000001528 (Ram Vilash vs. State of U.P.)

III- Issue a writ, order or direction in the nature of Mandamus directing the respondent no.2 i.e. Commissioner, Prayagraj Division/Region, Prayagraj to stay the impugned order dated 23.08.2023 passed by the District Magistrate, District Kaushambi i.e. respondent no.3 in Case No.466/2023, Computerized Case No.D202302420000466 (State vs. Ram Vilash) under Section 3(3) of the U.P. Control of Gundas Act, 1970 and further direct the Commissioner, Prayagraj Division/Revision to decide the Appeal Case No.1528/2023, Computerized Case No.C202302000001528 (Ram Vilash vs. State of U.P.) under Section 6 of the U.P. Control of Gundas Act, 1970 filed by the petitioner within stipulated time period.

It is submitted by learned counsel for the petitioner that an order for externment under Section 3(3) U.P. Control of Goondas Act, 1970 was passed by the District Magistrate, District Kaushambi, in Case No.466/2023 vide order dated 23.08.2023 on the basis of report dated 12.05.2023 against which an appeal was filed before the Commissioner, Prayagraj Division, Prayagraj which was admitted and is still pending but no stay order of externment was passed. In this way, during the pendency of appeal, if the affect of order in question is not stayed the purpose of appeal would be defeated, therefore, requested to direct the court concerned not to take any coercive action against the petitioner in pursuance of externment order dated 23.08.2023 during the pendency of appeal and to decide the appeal as expeditiously as possible.

Learned A.G.A. urged that in this case order was passed by the District Magistrate on the basis of material on record and against which appeal was filed but he has nothing to object about the stay of operation of order for externment during the pendency of appeal.

Considering the facts and circumstances of the case, submissions made by learned counsel for both the parties, perusal of record and the order passed by the Commissioner at the time of admission of appeal, it appears that though the appeal has been filed and is still pending before the court of Commissioner for final hearing but no order for staying the implementation of externment was passed which cannot be said to be lawful.

As a result, it is directed that the order dated 23.08.2023 passed by the District Magistrate, Kaushmbi for externment and under challenge in appeal shall remain in abeyance during the pendency of appeal.

It is also directed that Commissioner, Prayagraj Division, Prayagraj shall make his endeavour to decide the appeal of the petitioner as expeditiously as possible preferably within a period of **90 days** from the date of production of certified copy of this order.

Accordingly, this writ petition is ***disposed of*** finally.

**Order Date :- 18.10.2023**

Ashok Gupta