

Court No. - 40

Case :- WRIT - C No. - 35922 of 2023

Petitioner :- Smt.Pushpa Devi

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

Counsel for Petitioner :- Shashi Kumar Mishra

Counsel for Respondent :- C.S.C.,Avinash Chandra Srivastava

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard Shri S.K. Mishra, learned counsel for the petitioner and Shri Manish Goel, learned Additional Advocate General assisted by Shri Seema Agrawal, learned counsel for respondent nos.1 to 4.
2. Present writ petition is preferred seeking a direction commanding the respondent nos.3, 4 and 5 not to run Annapurna Model shop in the petitioner's property situated on Gata no.144ka/0.0120 hectare situated in Village Cheetai, Pargana and Tehsil Ghiror, District Mainpuri.
3. Shri Manish Goel, learned Additional Advocate General raised an objection regarding maintainability of the writ petitioner on two fold grounds. Firstly, highly disputed facts have been urged, which cannot be adjudicated under Article 226 of the Constitution of India. Secondly, the plot in question is minjumla plot and the petitioner is having stake only over some part of the land. So far as the establishment/construction of Annapurna Model Shop is concerned, the same is being carried out over the land earmarked for Gaon Sabha. Thirdly, the petitioner has already preferred a suit for injunction bearing O.S. No.1155/2022, wherein notices have been issued and the same is still pending consideration. In this backdrop, he submits that the relief as has been sought for cannot be accorded as such, the writ petition is liable to be dismissed.
4. Considering the facts and circumstances, as the land is already demarcated for establishment/construction of Annapurna Model Shop and the petitioner is having stake only on the part of the land, the petitioner cannot claim and press the aforementioned relief

under Article 226 of the Constitution of India. Needless to say that it is open to the petitioner to press the relief in the on-going suit proceeding

5. With the above observations, the writ petition is *disposed of*.

Order Date :- 16.11.2023

A. Pandey