

Court No. - 40

Case :- WRIT - C No. - 36963 of 2023

Petitioner :- Munnu Lal

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Jaswant Singh, Anil Kumar Dubey

Counsel for Respondent :- CSC

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Ms. Nand Prabha Shukla, J.

1. Heard learned counsel for the petitioner, learned Standing Counsel for State-respondents and perused the record.

2. By means of the instant writ petition, petitioner has prayed for following principal reliefs:-

"(i) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent no.2 to 5 to remove the unlawful possession of respondent no.6 to 8 from Gata no.545 Rakba 0.1500 hectare, Gata no.543 Rakba 0.0200 hectare, Gata no.544 Rakba 0.0080 hectare, Gata no.542 Rakba 1.1490 hectare and Gata no.540 Rakba 0.0610; total area 1.3880 hectares, out of which total share 1/3 as 0.4627 hectare of the petitioner, which is situated at 8th Lane Kanpur-Etawah Road, Resident of Village-Madhupur, Pargana and District Auraiya.

(ii) Issue any other writ, order or direction in the nature of mandamus directing the respondent nos.2 to 5 to prevent the respondent nos.6 to 8 not to make any construction upon the aforesaid land in dispute, and to take necessary action against them."

3. In pith and substance, the petitioner is aggrieved by the encroachment made by the private respondents over his property.

4. At the very outset, learned Standing Counsel raised a preliminary objection regarding the maintainability of the instant petition by submitting that highly disputed facts are being pressed in the writ petition and in case petitioner is aggrieved with the intervention in his property, either by private party or even the State, he has got the efficacious remedy to approach to the competent civil or revenue Court. The said disputed facts cannot be adjudicated under Article 226 of the Constitution of India.

5. Once an objection is raised, we find that the core issue is as to whether in such facts, the writ petition is maintainable for enforcement of such disputed rights, which are claimed against the private individuals or even against the State.

6. Normally, the settlement of dispute relating to property rights between the private persons or even against the State, the same cannot be adjudicated or pressed under Article 226 of the Constitution of India. It is repeatedly held by the Hon'ble Apex Court as well as this Court that regular suit is the appropriate remedy for settlement of disputes relating to the property rights.

7. The High Court cannot allow the constitutional jurisdiction to be used for deciding disputes for which remedies, under general 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. Considering the facts and circumstances of the case, we are not inclined to adjudicate the matter. Needless to say, it is open to the petitioner to approach the competent civil/ revenue court.

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

Order Date :- 28.10.2023

A. Pandey