

Court No. - 51

Case :- WRIT - C No. - 36485 of 2023

Petitioner :- Haribans

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Kamla Kant Mishra, Varun Mishra

Counsel for Respondent :- CSC

Hon'ble Chandra Kumar Rai, J.

1. Heard Varun Misha, learned counsel for the petitioner and Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents.

2. The instant writ petition has been filed for the following relief:

"(i) issue a writ, order or direction in the nature of certiorari quashing the notice dated 08.04.2023 and 11.04.2023 issued by the respondent No.3 Assistant Collector-Ist/ Tehsildar, Tehsil-Machhalishahar, District-Jaunpur (Annexure Nos.8 and 9 to the writ petition)

(ii) issue a writ, order or direction in the nature of mandamus commanding the respondent No.3/ Assistant Collector-Ist/ Tehsildar, Tehsil- Machhalishahar, District-Jaunpur not to proceed in Case No. T2023143600302039 of 2023 (Gaon Sabha Vs. Radhey Sham and Haribans) pertaining to Gata No.1157 area 2.90 acre, situated in Village-Amara, Pargana-Ghisua, Tehsil-Machhalishahar, District-Jaunpur except in accordance with law."

3. Learned counsel for the petitioner submitted that R.C. Prapatra No.20 issued under Rule 67 (2) and 67 (5) of U.P. Revenue Code Rules 2016 against the petitioner is wholly illegal. He further submitted that there is no declaration in favour of the petitioner in respect to the plot in dispute granted by Sub Divisional Officer/ Additional Up-Ziladhikari-I, Tehsil-Machhalishahar, District-Jaunpur in the proceeding under Section 229-B of U.P. Z.A.& L.R. Act. He further submitted

that certain proceedings are pending before the District Magistrate as well as before this Court, as such issuance of R.C. Prapatra 20/notice dated 08.04.2023 and 11.04.2023 against the petitioner is malafide act of the authorities. He further submitted that authorities are adamant to demolish the petitioner's construction, as such necessary direction be issued restraining the authorities from taking coercive action against the petitioner's construction in respect to the plot in dispute.

4. On the other hand, Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents submitted that petitioner can raise objection before the Tehsildar in the pending proceeding rather writ petition before this Court under Article 226 of the Constitution of India. He further submitted that land in dispute is recorded as public utility land in the revenue record, as such R.C. Prapatra/notice dated 08.04.2023/11.04.2023 have been rightly issued against the petitioner.

5. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

6. There is no dispute about the fact that R.C. Prapatra 19 & 20/notice dated 08.04.2023 and 11.04.2023 under Rule 66, 67 (2) and 67 (5) of U.P. Revenue Code Rules, 2016 has been issued against the petitioner, accordingly Case No. T202314360302039 has been registered under Section 67(1) of U.P. Revenue Code, 2006 before Assistant Collector/Tehsildar, Machali Sahar, Jaunpur. There is also no dispute about the fact that disputed plot is 1157 M which is public utility plot (Charagah) according to respondents but according to petitioner, the same is bhumidhari plot of petitioners.

7. Petitioner has not annexed the revenue entry of the plot in

dispute as such it is not clear whether plot No.1157 M is petitioner's bhumidhari or not.

8. In view of the provisions contained under Section 67 of U.P. Revenue Code, 2006 read with rules 66, 67 of U.P. Revenue Code Rules, 2016 petitioner should file his objection before Respondents No.3/Assistant Collector/Tehsildar, Machhalishahar, Jaunpur in pending case No. T202314360302039 in support of his title if any as well as in respect to the maintainability of the proceeding which shall be considered by the respondent no.3 in accordance with law.

9. Considering the entire facts and circumstances of the case, **the instant writ petition is finally disposed of** directing the petitioner to file objection against the notice issued to the petitioner in Case No. T202314360302039 in respect to the plot in question before respondent No.3 Assistant Collector/Tehsildar, Machhalishahar, Jaunpur who shall consider the objection and decide the Case No. T202314362302039 under Section 67 (1) of U.P. Revenue Code, 2006 expeditiously and preferably within a period of **three months** from the date of production of certified copy of this order after giving opportunity of hearing to the parties concerned and without granting unnecessary adjournments to either of the parties.

Order Date :- 31.10.2023

PS*