

Court No. - 45

Case :- MATTERS UNDER ARTICLE 227 No. - 10977 of 2023

Petitioner :- Smt Geeta Shakya And 4 Others

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

Counsel for Petitioner :- Indra Deo Mishra, Giri Ram Rawat, Shri Ram (Rawat)

Counsel for Respondent :- G.A., Sunil Kumar Misra

Hon'ble Vinod Diwakar, J.

1. Heard Shri I.D. Mishra, learned counsel for the petitioners, Shri Sunil Kumar Mishra, learned counsel for the opposite party, and perused the record.

2. Submission of learned counsel for the petitioners is that the petitioners are resident of Trans Yamuna Colony, Phase-2, Mauza Narayach Tehsil Etmadpur, District Agra, and are living there for the last twenty years, and the colony was constructed by Awas Vikas Parishad, Agra. As per learned counsel for the petitioners, the government contractor broke the wall constructed by the Awas Vikas to transport the construction materials to the adjacent site without taking permission from the Awas Vikas Parishad. The matter was reported to the Sub Divisional Magistrate, whereof cognizance was taken under section 133 Cr.P.C. and the contractor was ordered to rebuild the wall.

3. Aggrieved by the order passed by the Sub Divisional Magistrate, Etmadpur, the private respondent no.4 filed a revision before the first revisional court and by order dated 16.5.2023, the revisional court remanded the matter to the Sub Divisional Magistrate, Etmadpur with a direction to revive the proceedings in terms of the procedure established under section 133/138 Cr.P.C. Aggrieved by the order passed by Additional District & Sessions Judge, Agra, the petitioner has preferred instant petition before this Court.

4. Shri S.K. Mishra, learned counsel for the respondent no.3 requested a week's time to ascertain the facts with regard to the construction of the boundary wall by Awas Vikas Parishad.

5. Be that as it may, after going through the material placed on record and on perusal of the order passed by the Sub Divisional Magistrate, Etmadpur, this Court is conscious of the fact that the

boundary wall was broken by the contractor without taking any permission from Awas Vikas Parishad or whosoever had constructed the boundary wall. The boundary wall was existing for the last twenty years and the Contractor cannot, for his own convenience, demolish the boundary wall against the settled procedure of law. No permission has been placed on record by the respondent no. 4, neither such permission is observed in the impugned order passed by the revisional court or by the Sub Divisional Magistrate. Therefore, it can be safely presumed that no such permission was sought by the Contractor from any of the agency involved in the construction of the wall neither from the President for Welfare Association, who is before the Court.

6. In view of the findings, revision petition is allowed with a direction to the Sub Divisional Magistrate, Etmadpur to ensure the reconstruction of the boundary wall by the contractor at the earliest.

Order Date :- 23.11.2023

Ujjawal