

Court No. - 6

Case :- WRIT - C No. - 37694 of 2023

Petitioner :- Sri Panch Dashnam Juna Akhara

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

Counsel for Petitioner :- Shivam Yadav,Udai Bhatia

Counsel for Respondent :- C.S.C.,Dharmendra Singh Chauhan

Hon'ble Mrs. Manju Rani Chauhan,J.

1. Heard Mr. Shivam Yadav, learned counsel for the petitioner, Mr. Dharmendra Singh Chauhan, learned counsel for the respondent nos.2 to 4 and Mr. Ravindra Kumar Tripathi, learned Standing Counsel for the State-respondents.

2. This writ petition has been filed with a prayer to quash the impugned orders dated 09.05.2023, 25.02.2021 and 08.04.2019 passed by the respondents and a further prayer to restrain the respondents from taking any coercive steps against the petitioner.

3. Brief facts of the case are that:-

(i) The petitioner is a Society, which was registered in the year 1940-41 and had the responsibility of looking after the religious functions of the public at large and maintaining various religious places including temples and other Akharas. One such temple, namely, Bankhandi Nath Mahadev is situated at Village Nawada Jogayan, Pargna and Tehsil-Bareilly, District-Bareilly, which is an old and ancient temple of Lord Shiva Ji. In the aforesaid temple, various religious activities including Bhandara are organized under the patronage of the petitioner. There also exists Gaushala as well as pond, which is associated with temple.

(ii) The petitioner's society has carried out construction work over certain area, which includes 20 shops, in order to avoid encroachment over the land registered in the name of temple. It appears that some complaints were received by the Mayor of Bareilly in the year 2018 regarding encroachment by the petitioner's society over the pond land. Coming to know about the aforesaid, the petitioner's society, immediately, filed a suit before the Civil Judge, Senior Division, Bareilly bearing

Original Suit No.40 of 2018 for grant of interim injunction and by means of order dated 27.01.2018, the court below directed the parties to maintain status quo.

(iii) Thereafter, the Bareilly Development Authority tried to demolish certain portion of property in question, therefore, an application was moved by the petitioners before the court below which was decided in their favour on 31.05.2022. Thus, the interim injunction as granted in favour of the petitioner's society by order dated 27.07.2018 is in operation till date. However, the Bareilly Development Authority issued a notice under Section 27(1) of U.P. Urban Planning and Development Act, 1973. The aforesaid notice was never served upon the petitioner and by means of an ex-parte order dated 08.04.2019, the petitioner was directed to remove the establishment within a period of 20 days.

(iv) When the petitioner came to know about the aforesaid order dated 08.04.2019, the same was challenged by means of filing an appeal before the Divisional Commissioner, Bareilly, which was dismissed on 25.02.2021 without following the due process of law and without acknowledging the rights and other claims raised by the petitioner's society over the land in question. Subsequently, the petitioner's society preferred a revision before the State Government challenging both the orders dated 25.02.2021 and 08.04.2019. The aforesaid revision was decided on 09.05.2023 by a non-speaking and unreasonable order. Hence, the present writ petition has been filed.

4. Learned counsel for the petitioner submits that the impugned orders have been passed only noticing the fact that the shops in question have been constructed in absence of sanctioned map. Considering that the 20 shops in question, which are old, exist without a sanctioned map, the right of the petitioners to file an application for compounding under the relevant Act cannot be taken away, therefore, the impugned orders are bad in the eyes of law. He further submits that the impugned orders have been passed behind the back of the petitioners, ignoring the interim injunction granted in favor of the petitioners and that too, without providing any opportunity to the petitioners to place their case.

5. On the other hand, learned counsel for the respondent-Development authority as well as learned Standing Counsel could not dispute the fact that the 20 shops in question are old as is clear from the notice dated 26.02.2019 issued by the Development Authority. They also could not dispute the fact that the impugned orders have been passed without providing opportunity of hearing to the petitioner.

6. At this stage, learned counsel for the petitioner submits that the petitioner may be permitted to move an application for compounding before the competent authority, which may be decided within stipulated period.

7. Learned counsel for the respondent-Development Authority as well as learned Standing Counsel has no objection to the aforesaid prayer as made by the counsel for the petitioner.

8. With the consent of learned counsel for the parties, this writ petition is being finally disposed of at this stage without calling for a counter affidavit.

9. In view of the above, considering the facts and circumstances of the case, this writ petition is finally **disposed of** with a direction that in case the petitioner moves an application for compounding before the respondent no.2; Bareilly Development Authority through its Vice-Chairman, Vikash Jyoti, Priyadarshni Nagar, Bareilly alongwith certified copy of this order within a period of four weeks from today, the respondent no.2 shall make all endeavours to consider and decide the same, after giving opportunity of hearing to all the parties, in accordance with law, by a reasoned and speaking order, preferably within a period of three months from the date of receipt of such application.

10. For a period of four months or till the date final order is passed on the said application moved by the petitioner, the impugned orders dated 09.05.2023, 25.02.2021 and 08.04.2019 passed by the respondents shall be kept in abeyance.

11. Needless to say that in case, no such application is moved within stipulated period, it is open to the authorities concerned to proceed in accordance with law.

Order Date :- 8.11.2023

Jitendra/-