

Court No. - 47

Case :- WRIT - C No. - 38991 of 2023

Petitioner :- Heshamuddin

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Rohit Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar Nigam,J.

1. Heard learned Counsel for the parties and perused the record.

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

"I. Issue a writ, order or direction in the nature of mandamus directing the respondent no.1 to 4 to take appropriate action in accordance to order dated 28.7.2012 passed by the Sub Divisional Magistrate, Soraon, Prayagraj in proceeding under Section 4(1) of P.P. Act and order dated 10.10.2023 passed by Tehsildar, Soraon, Prayagraj in proceeding under Section 67 of U.P. Revenue Code, 2006 as the respondent no.5 had encroached the Gata No.105 of the Public Utility Land "Rasta".

II. Issue a writ, order or direction in the nature of mandamus directing the respondents not to harass the petitioner on the basis of false and fabricated complaints."

3.Learned Counsel for the petitioner contended that previously on several occasions proceedings were undertaken against the petitioner under Section 4(1) of the Public Premises Act as well as under Section 67 of the U.P. Revenue Code, 2006 which were decided in favour of the petitioner. The applications filed by the petitioner against the illegal encroachment made by the respondent no. 5, no action has been taken by the respondent. It has been further contended that despite the proceedings terminated in favour of the petitioner one after the other proceedings of similar nature are being taken against the petitioner on applications filed by the respondent no. 5 and other persons.

4. Learned Standing Counsel raised a preliminary objection that a presumptive writ cannot be issued restraining the authorities not to initiate proceedings against the petitioner in case any complaint is made. It has been further contended by learned Standing Counsel that in case the petitioner has any grievance as to the encroachment made by the private respondent no. 5 or any other person, the petitioner can move an application under Section 67 of U.P. Revenue Code, 2006. The writ petition as framed is wholly misconceived and not maintainable.

5. Considering the prayer made in the writ petition as well as averments made in

the writ petition, the writ petition is wholly misconceived and accordingly,
dismissed.

Order Date :- 8.11.2023

S. Singh