

Court No. - 51

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 2514 of 2023

Petitioner :- Jaiprakash

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Awashesh Kumar, Kalp Dev Mishra

Counsel for Respondent :- C.S.C., Bhupendra Kumar Tripathi

Hon'ble Chandra Kumar Rai, J.

1. Heard learned counsel for the petitioner, Sri Bhupendra Kumar Tripathi, learned counsel for respondent no.5-gaon sabha and Sri Chandra Prakash Yadav, learned standing counsel for the state-respondents.

2. The instant petition has been filed for the following reliefs:-

- "i. To issue a writ, order or direction in the nature of mandamus directing the respondent no. 2 to 4 to remove the encroachment of the Gaon Sabha Land of Araj No. 203, 205, 523/348, 256, 194 and 230 recorded as pond and Araj No. 01 recorded as drainage and Araj No. 232 and 321 recorded as Banjar situated at Maharajganj, Pargana, Tehsil and District Ghazipur from the illegal encroacher as the earliest.
- ii. To issue a writ, order or direction in the nature of mandamus directing the respondents to decide the application dated 13.09.2023 within stipulated period as directed by this Hon'ble Court.
- iii. To issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.
- iv. To award the cost of petition in favour of petitioner."

3. The earlier P.I.L. No.1948/2023 filed on behalf of the petitioner, was dismissed by this Court vide order dated 24.8.2023 which runs as follows:-

"Heard Sri Awashesh Kumar, learned counsel for the petitioner, Sri S.N. Srivastava, learned Additional Chief Standing Counsel representing the State-respondent nos.1, 2 and 3, Sri Bhupendra Kumar Tripathi, learned counsel appearing on behalf of Gaon Sabha (respondent no.4) and perused the material available on record.

2.The present petition has been filed, inter alia, for the following relief :-

"i. To issue a writ, order or direction in the nature of mandamus directing the respondent nos.2 and 3 to remove the encroachment of the Gaon Sabha Land of Araj No.203, 205, 523/348, 265, 194 and 230 recorded as pond and Araj No.01 recorded as drainage and Araj No.232 and 321 recorded as Banjar situated at Maharajganj, Pargana, Tehsil and District Ghazipur from the illegal encroacher as the earliest.

ii. To issue a writ, order or direction in the nature of mandamus directing the respondent nos.2 to decide the application dated 21.6.2023 within

stipulated period as directed by this Hon'ble Court."

3. Learned Additional Chief Standing Counsel submits that there is nothing on record to show that the petitioner has moved any application or has taken any legal measures regarding removal of the encroachment from the land belonging to the Gaon Sabha. He further submits that the petitioner has also not filed any document to substantiate his allegations as made in the petition.

4. Learned counsel for the petitioner submits that he may be permitted to withdraw the petition with liberty to the petitioner to take appropriate steps in accordance with the provisions as contained in the U.P. Revenue Code 2006.

5. The petition is dismissed as withdrawn with the liberty to the petitioner to take appropriate legal measures regarding the removal of encroachments from the public utility land, in accordance with the provisions of the U.P. Revenue Code 2006."

4. The earlier P.I.L. filed by the petitioner was dismissed with liberty to the petitioner to take appropriate legal remedy for removal of encroachment as provided under the U.P. Revenue Code, 2006.

5. Counsel for the petitioner submitted that in pursuance of the order of this Court dated 24.8.2023, petitioner filed an application before the District Magistrate for removal of the encroachment but no steps have been taken by the authorities.

6. Mr. C.P. Yadav, learned standing counsel for the state-respondents and Mr. Bhupendra Kumar Tripathi, learned counsel for the respondent-gaon sabha submitted that 2nd P.I.L. for the same cause of action, cannot be entertained. They further submitted that earlier P.I.L. has been dismissed with liberty to the petitioner to initiate appropriate proceeding in accordance with law.

7. I have considered the arguments advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that earlier P.I.L. filed by the petitioner has been dismissed with liberty to the petitioner to initiate appropriate proceeding in accordance with law.

9. In view of the dismissal of the earlier P.I.L. the 2nd P.I.L. cannot be entertained in exercise of power under Article 226 of the Constitution of India.

10. The P.I.L. is, accordingly, dismissed.

Order Date :- 28.11.2023/C.Prakash