

Court No. - 32

Case :- WRIT - C No. - 37489 of 2023

Petitioner :- Loknath And 2 Others

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Satish Kumar Mishra

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

Hon'ble Salil Kumar Rai, J.

Hon'ble Surendra Singh-I, J.

1. The present petition has been filed praying for following reliefs :-

"(a) issue a writ in the nature of mandamus commanding respondent no. 2 to decide the application dated 30.9.2023 and ensure the enforcement of the provisions of the Scheduled Tribes and others Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 within stipulated time.

(b) issue a writ of interim mandamus commanding respondent no. 2 not to evict from land and house and not to demolish the house of Petitioner until the record of forest right is being provided, otherwise the Petitioner/Applicants would continue to suffer pecuniary loss and mental agony."

2. Similar issue was raised by persons similarly placed as the petitioners who had previously filed WRIT- C No. 23976 of 2023 (Ramdev and 29 others Vs. Union of India and 3 others) which was disposed of by a Division Bench of this Court vide its order dated 12.09.2023. The said order is being reproduced hereinbelow :-

"1. The advocates are abstaining from judicial work today.

2. Present writ petition has been preferred for a direction to respondents to regularise the possession of the petitioners over land in dispute and not to evict/demolish the houses of the petitioners situated at Village- Bhardua, Gram Sabha- Visheshpur, Post-Office -Shamsherpur, Tehsil- Naugarh, District- Chandauli, U.P. under the provisions of "The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006" (in short "the Act of 2006") and also in the light of the judgment dated 11.10.2018 passed in Public Interest Litigation No.56003 of 2017 within stipulated period and for a further direction to respondents not to dispossess the petitioners from the land in question.

3. It transpires from the records that the petitioners belong to Scheduled Caste community and has been in cultivatory possession of the land in question for more than two decades. Therefore, the rights of the petitioners is

to be considered in the light of the Act of 2006 but till date the claim of the petitioners has not been addressed by the respondent authorities. It is also claimed that similar controversy has earlier been raised before this Court.

4. We have considered the pleadings as has been set up before this Court by the petitioners. The similar controversy has also been raised before Division Bench by way of Public Interest Litigation (PIL) No. 56003 of 2017 (Adivasi Vanvasi Maha Sabha, Chandauli v. Union of India & Ors.), which was disposed of on 11.10.2018 leaving it open to the petitioners' association to make individual application under Section 6 of the Act of 2006 for seeking recognition of their forest rights. It was also provided that in case, any such application is made, the Gram Sabha/Authority shall consider the same and take decision in the matter expeditiously and preferably within 12 weeks. Reliance has also been placed on the order dated 29.8.2013 in Writ-C No. 44551 of 2013 (Rameshwar Chaudhary v. State of U.P. & Ors.), wherein similar controversy has been decided with following observations:-

"Heard learned counsel for the parties.

In view of the submission advanced from both sides and in the light of the facts so stated this court is not to go into the details for disposing this petition, as keeping the matter pending will be futile exercise and that will just delay the finality of the things.

Petitioner claims protection as provided in The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of various Rights) Act, 2006.

Accordingly, we need not to go into the merits of the matter so as to record a finding either way but at the same time we propose to dispose of this petition by giving following directions-

i) Petitioner is to file certified copy of this order within a period of one month from today before the competent authority.

ii) On receipt of the move it will be the concern of the concerned competent authority to proceed as provided under the Act and to pass appropriate orders in accordance with law within shortest possible time preferably within a period of three months from the date of receipt of the move.

iii) It is observed that except in accordance with law there will be no interference in the rights of the petitioner.

It is made clear that this Court has not expressed any opinion on merits as we have not gone into the merits of the petitioner's claim and thus decision of the concerned competent authority will be his independent exercise as may be permissible in law.

With the aforesaid directions, this petition stands disposed of."

5. We have considered the judgements passed in Adivasi Vanvasi Maha Sabha, Chandauli v. Union of India & Ors. (supra) and Rameshwar Chaudhary v. State of U.P. & Ors. (supra).

6. Accordingly, the writ petition is disposed of."

3. The petition is also disposed of in terms of the order dated 29.08.2013 passed in WRIT- C No. 44551 of 2013 (Rameshwar Chaudhary Vs. State of U.P. & 4 Ors.).

4. The order has been passed in the presence of learned A.G.S.I. representing respondent no. 1 and Sri Bhupendra Kumar Tripathi representing respondent no. 4 as well as the Standing Counsel representing the other State-respondents.

Order Date :- 9.11.2023

Akbar