

Court No. - 80

Case :- CRIMINAL MISC. WRIT PETITION No. - 17008 of 2023

Petitioner :- Sharfuddin @ Muchan

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Janardan Yadav

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma,J.

Heard Sri Brijesh Kumar Yadav, Advocate holding brief of Sri Janardan Yadav, learned counsel for the petitioner as well as learned A.G.A. for the State and perused the material on record.

The present writ petition under Article 226 of the Constitution of India has been moved with following prayers :-

I- To issue a writ, order or direction in the nature of mandamus commanding the Respondent No. 2 Commissioner, Azamgarh, Mandal, Azamgarh to decide the appeal No. C202315000001428, under Section 6 (1)U.P. Control of Goondas Act, 1970.

II- To issue a writ, order or direction in the nature of Mandamus directing the concerned respondent not to implement the order dated 10.10.2023 passed by respondent no. 3 in Case No. 3585 of 2022, under Section 3(1) U.P. Control of Goondas Act, 1970 till the disposal of appeal under Section 6 U.P. Control of Goondas Act, 1970 pending before respondent no.2, Commissioner, Azamgarh Mandal, Azamgarh and expedite the appeal as early as possible.

It is submitted by learned counsel for the petitioner that an order for externment for a period of 6 months was passed by the Additional District Magistrate (Land Revenue), Azamgarh under Section 3(1) U.P. Control of Goondas Act, 1970 on the basis of beat report no. 49 dated 22.8.2022 based on Case Crime No. 21 of 2018, under Sections 147, 148, 149, 332, 353, IPC and 7 Criminal Law Amendment Act. Further submitted that in the meantime no such activity was done by the petitioner to create any kind of apprehension in the members of the society even though the order for externment was passed by Additional District Magistrate against which he filed appeal before the Commissioner, Azamgarh

which was admitted and is still pending but the operation of order for externment was not stayed. In this way, during the pendency of appeal, if the affect of order in question is not stayed the purpose of appeal would be defeated, therefore, requested to direct the court concerned not to take any coercive action against the petitioner in pursuance of externment order dated 10.10.2023 during the pendency of appeal and to decide the appeal as expeditiously as possible.

Learned A.G.A. urged that in this case order was passed by the Additional District Magistrate on the basis of material on record and against which appeal was filed but he has nothing to object about the stay of operation of order for externment during the pendency of appeal.

Considering the facts and circumstances of the case, submissions made by learned counsel for both the parties, perusal of record and the order passed by the Commissioner at the time of admission of appeal, it appears that though the appeal has been filed and is still pending before the court of Commissioner for final hearing but the application filed by the petitioner for staying the implementation of the order in question was rejected which cannot be said to be lawful.

As a result, it is directed that the order passed by the Additional District Magistrate for externment and under challenge in appeal shall remain in abeyance during the pendency of appeal.

It is also directed that Commissioner, Azamgarh shall made his endeavour to decide the appeal of the petitioner as expeditiously as possible preferably within a period of three months from the date of production of certified copy of this order.

Accordingly, this writ petition is ***disposed of*** finally.

Order Date :- 31.10.2023

A. Singh