

Court No. - 80

Case :- CRIMINAL MISC. WRIT PETITION No. - 17207 of 2023

Petitioner :- Mohammad Javed

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

Counsel for Petitioner :- Raja Ram Kushwaha

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma,J.

Heard learned counsel for the petitioner as well as learned A.G.A. for the State and perused the record.

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

I- Issue a writ, order or direction in the nature of Certiorari quashing the order dated 10.05.2023 passed by respondent no.2 and notices dated 18.08.2023 & 01.03.2023 issued by respondent no.3.

II- Issue a writ, order or direction in the nature of Mandamus restraining the respondent no.3 from taking any action in pursuant to the said notices against the petitioner.

III- Issue any other writ, order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

It is submitted by learned counsel for the petitioner that in this case notice u/s 3 of U.P. Control of Gunda Act was issued by District Magistrate to the petitioner against which he filed an appeal before the court of learned Commissioner which was allowed by order dated 10.05.2023 and matter was remanded back to the court of District Magistrate to decide the case after considering the circumstances of the case against which this petition has been preferred before this Court. It is also submitted that there is no any material before the District Magistrate for proceeding under the provisions of Gunda Act against the petitioner. The cases on the basis of which notice was issued against the petitioner are related to family dispute as a result he cannot be said to be Gunda and also the activities of the petitioner do not come under Chapter 15, 16 &

22 of the Indian Penal Code. It is also submitted that the petitioner is not a habitual offender, therefore, notice issued against him is illegal. Considering the illegality the learned appellate court without quashing the notice remanded the matter back in appeal to the learned court of District Magistrate to decide the matter finally which cannot be said to be lawful. Lastly, it is submitted that learned District Magistrate be directed to decide the matter as expeditiously as possible within stipulated time after considering the facts and material available on record, in accordance with law.

Learned A.G.A. has opposed the prayer.

Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, it appears that notice u/s 3 of U.P. Control of Gunda Act was issued by the District Magistrate against which appeal was filed before the learned court of Commissioner who remanded back the matter after allowing the appeal and that order is under challenge in this petition. In the aforesaid circumstances of the case, it is expedient to direct the District Magistrate to make his endeavour to decide the matter as expeditiously as possible preferably within a period of **60 days** in accordance with law.

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

Order Date :- 2.11.2023

Ashok Gupta