

Court No. - 40

Case :- WRIT - C No. - 39769 of 2023

Petitioner :- Noor Jahan

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Sanjay Kumar Dwivedi, Ramesh Kumar Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard learned counsel for the petitioner; Shri Ambrish Shukla, learned Addl. Chief Standing Counsel for State-respondents and perused the record.

2. In view of the order proposed to be passed, notices need not go to private respondents.

3. By means of the instant writ petition, petitioner has prayed for following principal reliefs:-

"(i) Issue a writ, order or direction in the nature of writ of mandamus the respondent no.3 to decide the representation of the petitioner dated 17.10.2023 pending before them within specific period as may be directed this Hon'ble Court.

(ii) Issue a writ, order or direction in the nature of writ of mandamus commanding and directing the respondents authorities to restrain the interference of any person in peaceful possession of the petitioner over Arazi No.6Kha ad-measuring 0.0148 hectare, Arazi No.9 ad-measuring 0.228 hectare situated at Village Chakmda, Tehsil Handia, District Prayagraj."

4. In pith and substance, the petitioner is aggrieved by the encroachment made by the private respondents over her property.

5. At the very outset, learned Standing Counsel raised a preliminary objection regarding the maintainability of the instant petition by submitting that highly disputed facts are being pressed in the writ petition and in case petitioner is aggrieved with the intervention in her property, either by private party or even the State, she has got the efficacious remedy to approach to the competent civil or revenue Court. The said disputed facts cannot be adjudicated under Article 226 of the Constitution of India.

6. Once an objection is raised, we find that the core issue is as to whether in such facts, the writ petition is maintainable for enforcement of such disputed rights, which are claimed against the private individuals or even against the State.

7. Normally, the settlement of dispute relating to property rights

between the private persons or even against the State, the same cannot ordinarily be adjudicated or pressed under Article 226 of the Constitution of India. It is repeatedly held by the Hon'ble Apex Court as well as this Court that regular suit is the appropriate remedy for settlement of disputes relating to the property rights.

8. The High Court cannot allow the constitutional jurisdiction to be used for deciding disputes for which remedies, under general law, civil or criminal, are available. The jurisdiction under Article 226 of Constitution of India is special and extraordinary and should not be exercised casually or lightly.

9. Considering the facts and circumstances of the case, we are not inclined to adjudicate the matter. Needless to say, it is open to the petitioner to approach the competent civil/ revenue court.

10. With the aforesaid direction/observation, the writ petition stands ***disposed of***.

Order Date :- 1.12.2023
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