

Court No. - 53

Case :- CRIMINAL MISC. WRIT PETITION No. - 18536 of 2023

Petitioner :- Ali Murtaza

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

Counsel for Petitioner :- Ajay Kumar Mishra

Counsel for Respondent :- G.A.

Hon'ble Syed Aftab Husain Rizvi,J.

Heard 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 and directing the respondent no.2 to decide the appeal bearing Case No.1570 of 2023 (Ali Murtaza vs. State of U.P.) under Section 6 of U.P. Control of Goondas Act, 1970 within stipulated period.

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

It is submitted by learned counsel for the petitioner that an order for externment under Section 3/4 U.P. Control of Goondas Act, 1970 was passed by the District Magistrate, Amroha in Case No.775 of 2023 vide order dated 04.08.2023 on the basis of report dated 19.04.2023 against which an appeal was filed before the Commissioner, Moradabad Division, Moradabad which was admitted and is still pending but no order has been passed on the stay application filed by the petitioner-appellant.

Learned A.G.A. urged that in this case order was passed by District Magistrate on the basis of material on record. Appeal filed against it is pending. The petitioner may press stay application before the appellate court.

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 no order for staying the implementation of externment was passed which cannot be said to be lawful.

In view of submissions made by rival parties and the facts and circumstances of this case, this petition is finally disposed off with direction to respondent no.2 to decide the appeal in accordance with law by a reasoned and speaking order, after affording proper opportunity of hearing to the parties within a period of two months from the date of receipt of a certified copy of this order.

For a period of two months or till disposal of appeal, whichever is earlier, the externment order dated 04.08.2023 passed by District Magistrate, Amroha shall remain in abeyance.

Order Date :- 5.12.2023

MN/-