

Court No. - 80

Case :- CRIMINAL MISC. WRIT PETITION No. - 18609 of 2023

Petitioner :- Badruddin

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

Counsel for Petitioner :- Vijay Kumar Dubey

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 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 directing the respondent No. 2/ Commissioner Basti Mandal Basti to decide the Appeal No. 818 of 2023 (Computer Case No. C202317000000818 under Section 6 of Prevention of the U.P. Control of Goondas Act, 1970 pending before Commissioner Basti Mandal Basti pending since 07.11.2023 within stipulated period of time fixed by this Hon'ble Court and till the disposal of appeal the effect and operation of the order dated 27.10.2023 passed by respondent No. 3 may kindly be kept in abeyance.

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

It is submitted by learned counsel for the petitioner that an order for externment under Section 3/4 of U.P. Control of Goondas Act, 1970 was passed by the Additional District Magistrate, Sant Kabir Nagar in Case No. 768 of 2021 vide order dated 27.10.2023 on the basis of report dated 28.08.2021 against which an appeal was filed before the Commissioner Basti Mandal Basti which was admitted and is still pending but no stay order of externment was passed. 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 27.10.2023 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, Sant Kabir Nagar 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 the petitioner as well as learned A.G.A. for the State, 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 dated 27.10.2023 passed by the Additional District Magistrate, Sant Kabir Nagar for externment and under challenge in appeal shall remain in abeyance during the pendency of appeal.

It is also directed that Commissioner Basti Mandal Basti shall made his endeavour to decide the appeal of the petitioner as expeditiously as possible preferably within a period of 90 days from the date of production of certified copy of this order.

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

Order Date :- 13.12.2023

Suraj Srivastav