

Court No. - 47

Case :- WRIT - C No. - 41870 of 2023

Petitioner :- Anup Kumar Dubey

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

Counsel for Petitioner :- Chandan Kumar Chaturvedi, Uma Shankar Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar Nigam, J.

1. Heard learned Counsel for the parties and perused the record.

2. The present petition has been filed for the following relief:

"(i) Issue a writ, order or direction in the nature of Mandamus directing the Respondent no.2 i.e. Sub Divisional Magistrate, Tehsil-Khajani, District-Gorakhpur to restrain the Respondent no.4 not to interfere in peaceful possession of the petitioner over the Arazi No.334 Area 0.684 hectare, which is situated in Village-Ratanpura, Tappa-Belghat, Pargana-Dhuriyapar, Tehsil-Khajani, District-Gorakhpur.

(ii) Issue a writ, order or direction in the nature of Mandamus directing the Respondent no.2 i.e. Sub Divisional Magistrate, Tehsil-Khajani, District-Gorakhpur to consider and decide the Representation of the petitioner dated 01.09.2023 (Annexure -5 to this writ petition), expeditiously within stipulated period as may be fixed by this Hon'ble Court."

3. The contention of learned Counsel for the petitioner is that the will was executed in favour of the petitioner by his grand-father and now his uncle who has filed a suit for cancellation of the aforesaid will is trying to dispossess the petitioner.

4. A preliminary objection has been raised by the learned Standing Counsel that admittedly there is a dispute of the petitioner with his uncle, which cannot be decided in a petition under Section 226 of the Constitution of India.

5. In view of the above, I am not inclined to interfere in the matter.

6. Accordingly, the writ petition is **dismissed** with liberty to the petitioner to pursue the remedy available to him under the law.

Order Date :- 5.12.2023

S. Singh