

Court No. - 51

Case :- WRIT - C No. - 42783 of 2023

Petitioner :- Sabiran Nisha

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Khurshed Alam

Counsel for Respondent :- C.S.C., Sudhir Bharti

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. Khurshed Alam, learned counsel for the petitioner, Mr. Sudhir Bharti, learned counsel for respondent no. 8, Gaon Sabha.

2. The instant petition has been filed seeking following reliefs:

"a) Issue order or direction in the nature of mandamus commanding the respondent no. 2 to remove the unauthorized encroachment by the respondent no. 3 to 7 over the Gata No. 1011 Area 0.030 Hectare which is recorded as "Chakroad" in the revenue records, situated in Village-Bhathawa Tiwari, Tappa- Haweli, Tehsil- Bhatpar Rani, District- Deoria.

b) Issue writ, order or direction in the nature of mandamus commanding the respondent no. 2 to decide the Application under Section 26 of the U.P. Revenue Code, 2006 dated 09.10.2023."

3. Learned counsel for the petitioner submitted that application dated 09.10.2023 filed on behalf of the petitioner in view of the provisions contained under Section 26 of the U.P. Revenue Code, 2006 has not been taken into consideration, as such, respondent no. 2/Sub-Divisional Magistrate is directed to remove the unauthorized encroachment of the private respondent in respect to the plot which is recorded as 'Chakroad'.

4. Mr. Sudhir Bharti, learned counsel for the Gaon Sabha submitted that application dated 09.10.2023 has been filed before the Sub-Divisional Officer who is not proper authority as provided under Section 26 of the U.P. Revenue Code, 2006, as such, the application filed by the petitioner cannot be entertained.

5. I have considered the arguments advanced by learned counsel for the parties and perused the record.

6. In order to appreciate the controversy, perusal of Section 26 of the U.P. Revenue Code, 2006 will be necessary which is quoted as under:

"Section 26 of U.P. Revenue Code, 2006":-

"If the Tehsildar finds that any obstacle impedes the free use of a public road, path or common land of a village or obstructs the road or water course or source of water, he may direct the removal of such obstacle and may, for that purpose, use or cause to be used such force as may be necessary and may recover the cost of such removal from the person concerned in the manner prescribed."

7. In view of the provisions contained under Section 26 of the U.P. Revenue Code, 2006, application dated 09.10.2023 filed by petitioner before the Sub-Divisional Officer cannot be entertained.

8. The instant petition is ***finally disposed of*** directing the petitioner to initiate appropriate proceeding before Tehsildar, in view of the provisions contained under Section 26 of the U.P. Revenue Code, 2006 within a period of three weeks alongwith certified copy of the order which shall be entertained and disposed of by Tehsildar concern on merits after giving an opportunity of hearing to the parties in accordance with law expeditiously preferably within a period of **four months** from the date of production of certified copy of this order before him.

Order Date :- 12.12.2023

Anjali