

**Court No. - 8**

**Case :-** WRIT - C No. - 14479 of 2018

**Petitioner :-** Smt. Monika Anand

**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Revenue And Ors.

**Counsel for Petitioner :-** Rajiv Raman Srivastava

**Counsel for Respondent :-** C.S.C.,Yogendra Nath Yadav

**Hon'ble Pankaj Bhatia,J.**

1. Present petition has been filed by the petitioner challenging the order dated 12.03.2018 whereby an order has been passed declaring that the petitioner is evicted from land situated at 0.052 hectare out of total area of Gata No.154, and further directions were given to the respondents to pay an amount of Rs.3,00,292/- and an execution fees of Rs.5/- for illegal encroachment.

The appeal filed against the order dated 12.03.2018 has also been dismissed vide order dated 28.04.2018.

2. Learned counsel for the petitioner argues that while recording the finding leading to the passing of the order dated 12.03.2018, the petitioner had taken a ground that the school of the petitioner is not in occupation of any part of plot comprised of Gata No.154. It was also stated that the said land is recorded as *Banjar*, and as school children and other villagers used to pass through the said land, a temporary *Kharanja* in the form of a brick road was got done only for the convenience of the children of the school, and the school is never in possession of the said property.

3. A report has been filed alongwith counter affidavit and is contained in Annexure - CA 1. In the entire report, there is no mention that any part of the property bearing Gata No.154 is in illegal occupation of the petitioner; the only report is that the said land is being used for ingress and egress. In the light of the said, it is proposed to be argued that solely based upon the said reasoning, an order came to be passed. The appeal preferred against the said order also came to be dismissed on 28.04.2018 without even considering these aspects.

4. Considering the arguments raised at the Bar and the materials submitted alongwith the counter affidavit as well as the sole foundation for passing the order being the report dated 07.07.2017, the impugned orders are unsustainable as the said report nowhere states that the petitioner is in occupation of any

part of the land situated at Gata No.154; the only averments are that the said land is being used by the children of the school for ingress and egress. Merely because the *Banjar* land is being used by the children alongwith other villagers, the same cannot be termed as illegal occupation. Once the foundation itself does not establish the illegal occupation by the petitioner, there was no occasion to pass the eviction order and levy penalty as has been done by means of the impugned orders.

5. Thus, finding the orders dated 12.03.2018 & 28.04.2018 based upon no material and perverse are hereby quashed.

6. The writ petition is accordingly ***allowed***.

**Order Date :-** 12.10.2023  
nishant