

**Court No. - 10**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 1114 of 2022

**Petitioner :-** Rakesh Kumar Alias Rakesh Rawat

**Respondent :-** State Of U.P. Thru. Prin. Secy. Department Of Home And Others

**Counsel for Petitioner :-** Pal Singh Yadav, Prathama Singh

**Counsel for Respondent :-** G.A.

With

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 1126 of 2022

**Petitioner :-** Chhotu

**Respondent :-** State Of U.P Thru. Prin. Secy. Department Of Home Affairs Civil Sectr. Lko. And Ors

**Counsel for Petitioner :-** Prathama Singh, Pal Singh Yadav

**Counsel for Respondent :-** G.A.

**Hon'ble Mrs. Sangeeta Chandra, J.**

**Hon'ble Narendra Kumar Johari, J.**

1. Heard learned counsel for the petitioners and learned A.G.A. for the State Respondents at length.
2. We have gone through the impugned notices dated 11.02.2022 and 14.02.2022, respectively, issued under Section 03 of the U.P. Control of Goondas Act, 1970.
3. It is the case of the petitioners that there is only one case on the basis of which the impugned Notices have been issued and, therefore, the notices are bad and without jurisdiction as held by this Court in ***Ram Ji Pandey Vs. State of U.P. & Others 1981 (7) ALR 401*** and which judgement has been followed in ***Bhim Singh Tyagi Vs. State of U.P. and Others UP Criminal Law Reporter 1999 (417)***.
4. Learned A.G.A. for the State Respondents has read out the contents of the notices, in fact there are several cases against the petitioners and not just one. On 27.04.2021, the petitioners alongwith others had attacked the polling station and also the Police party which had gone to protect the officials conducting the polling and Case Crime No. 63 of 2021 under Sections 147, 149, 307, 323, 336, 353, 269, 270, 271 of the I.P.C., 2/3 of the

Prevention of Damages of Public Property Act, 1984, Section 188 of the Epidemics Act alongwith Section 7 of the Criminal Law Amendment Act was registered in which Charge Sheet No. 108 of 2021 dated 14.08.2021 was filed in Court. Also, on 19.01.2022, the S.H.O. had initiated proceedings under Section 110 of the Cr.P.C. by filing a Challani Report, which is pending before the Magistrate concerned. On 10.12.2021 proceedings under Section 107 and 116 of the Cr.P.C. were initiated and Challani Report was filed before the Magistrate concerned.

5. This Court finds that the notices dated 11.02.2022 and 14.02.2022, respectively, had directed the petitioners no. 1 and 2 to appear and file their representations before the District Magistrate, Barabanki on or before 24.02.2022 and in case of failure to do so, it would be presumed that the petitioners had nothing to say in the matter. The petitioners have not stated in their pleadings anywhere that they had filed their representations as directed by the District Magistrate. Instead of filing representations, they had filed the writ petitions challenging the notices only.

6. When the cases was taken up as fresh on 10.03.2022, the Court noted that Sri Pal Singh Yadav, learned counsel for the petitioners had prayed that the matters be put up on 14.03.2022.

7. On 14.03.2022, learned counsel for the petitioners again prayed that the writ petitions be listed in the next week. Thereafter, the matters were listed thrice, but they were not taken up due to paucity of time and no orders were passed, infact there is no interim orders staying the operation of the notices on the order sheet.

8. Learned counsel for the petitioners was put a specific query by this Court as to whether final orders have been passed by the District Magistrate. He says that he has been informed by his clients that on the date fixed by the Magistrate, they had stated that the writ petitions are pending against the notices thereafter no proceedings have been taken.

9. This Court finds that the writ petitions only challenging the show cause notices cannot be entertained as statutory remedy is available to the petitioners in view of the law settled by the Hon'ble Supreme Court in case of *N. P. Ponnuswami Vs. Returning Officer, AIR 1952 SC 64*

10. The writ petitions stand ***dismissed***.

**Order Date :- 14.12.2023**  
Darpan Sharma