

**Court No. - 2**

**Case :-** WRIT - C No. - 5204 of 2023

**Petitioner :-** Rizwan

**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Home  
U.P. Govt. Civil Sectt. Lko. And Others

**Counsel for Petitioner :-** Himanshu Kumar Bachhil, Anjani  
Nath Khare

**Counsel for Respondent :-** C.S.C., Dwijendra Mishra

**Hon'ble Rajan Roy, J.**

**Hon'ble Syed Qamar Hasan Rizvi, J.**

Heard.

The petitioner claims that he has an ancestral house and the opposite party no. 4 who is his brother is encroaching his *Sahan*. The petitioner had submitted objections at the time of presentation of application by the opposite party no. 4 seeking permission for sanction of map for construction of a house adjacent to the petitioner's house.

This petition has been filed seeking a writ of Mandamus to the opposite party no. 3 i.e. the Development Authority to consider the objection of the petitioner contained as Annexure No's. - 4, 5 & 7 regarding the sanction of map. Annexure No's - 4, 5 & 7 are dated 06.03.2023, 05.06.2023 and 17.06.2023 respectively.

Learned Counsel for the Development Authority has informed the Court that in fact, the objection of the petitioner dated 06.03.2023 was confined to the issue that he had some rights in the property in respect of which the permission has been sought for construction. He says that the said land / house of the opposite party no. 4 is not an ancestral property but has been recently acquired and the petitioner claims some right in the same. He further informs the Court that objections were taken into consideration and thereafter the map for construction was sanctioned on 17.04.2023, a fact which has not been disclosed in the petition. If the petitioner is aggrieved by the said order and has locus, he can challenge the said decision as per law but he has not done so. There is no provision for considering fresh objections once the map has already been sanctioned.

After hearing the learned Counsel for the parties, we are of the opinion that the petition involves disputed questions of fact. We are not in a position under Article 226 of the Constitution of

India to ascertain as to how far the *Sahan* of the petitioner, if it is so, extends and how far it is being encroached or affected? Other issues also pertain to right in respect of property. The petitioner has already filed a suit for injunction and partition which is pending, therefore, the petitioner should pursue the matter in the said suit proceedings or if permissible and required, he may initiate fresh proceedings if there is a separate cause in this regard but we see no reason to entertain this petition in the facts and circumstances already noticed hereinabove. As far as, contention of the petitioner's Counsel that during vacation, the said suit would not be taken up, we have taken into consideration the Rule 13 of Chapter I of General Rules Civil, pertaining to work on holidays. We may in this context refer to a Division Bench judgment of this Court dated 11.06.2019 rendered in writ petition bearing no. **17032 (M/B) of 2019** wherein the aforesaid provision along with other provisions of law have been taken into consideration.

In view of the above discussion, if any application is filed, the District Judge shall consider the same on administrative side within three days of its filing and consequences shall follow accordingly.

With these observations / directions, the writ petition is **disposed of.**

**Order Date :- 23.6.2023**

Lokesh Kumar