

**Court No. - 3**

**Case :-** WRIT - C No. - 5337 of 2023

**Petitioner :-** Shambhu Nath

**Respondent :-** State Of U.P. Thru. Secy. Revenue Deptt. U.P.  
Lucknow And 7 Others

**Counsel for Petitioner :-** Sanjeev Kumar Shukla

**Counsel for Respondent :-** C.S.C.,Mohan Singh

**Hon'ble Subhash Chandra Sharma,J.**

Heard Sri Sanjeev Kumar Shukla, learned counsel for the petitioner and Sri Mohan Singh, learned counsel for the opposite party no.6 as well as learned A.C.S.C. on behalf of the State and perused the material placed on record.

This writ petition has been moved with following prayers :

I- Issue a writ, order or direction in the nature of Mandamus commanding the opposite party nos.2 to 6 to remove the boundary wall lying over the public way as well as to also remove the obstruction and encroachment from the Nali in question, which have been illegally made by the opposite party nos.7 & 8, in compliance of the order dated 01.08.2018 passed by opposite party no.3.

II- Issue a writ order or direction in the nature of Mandamus commanding the opposite party nos.2 to 6 decide the representation moved and served the petitioner on dated 28.09.2022 according to Section 26 of U.P. Revenue Code - 2006.

It is submitted by learned counsel for the petitioner that opposite party nos.7 & 8 have blocked the drain regarding which he filed an application before the Tehsildar on which he called for a report from the Revenue Inspector who submitted his report on the same date i.e. 31.07.2018. On the basis of the said report Tehsildar passed an order on 01.08.2018 that Revenue Inspector, Kulauna will get the drain opened with the help of local police but even today the drain in question has not been got cleared by the revenue authorities. It is also submitted that a civil suit was filed by other persons in which there was compromise but the petitioner was not party in it. Therefore, requested for issuing a writ in the nature of Mandamus to the authorities to get the obstruction removed from drain in question.

Learned A.C.S.C. opposed the prayer as aforesaid and urged that under Section 26 of the U.P. Revenue Code-2006 there is remedy available to the petitioner wherein the Tehsildar is empowered to take necessary action for removal of encroachment on public road, path and common land of the village. In this way, the petitioner has option to appear before the Tehsildar who may take necessary action. He also urged that u/s 133 Cr.P.C. Sub-Divisional Magistrate has also power to remove the obstruction in the public way and alternative remedy being available to the petitioner, the prayer made in this writ petition cannot be entertained.

Considering the facts and circumstances of the case, the submission made by learned counsel for the petitioner as well as learned A.C.S.C., it appears that the encroachment of drain is said to be made by opposite party nos.7 & 8 regarding which remedy is available to the petitioner u/s 26 of U.P. Revenue Code-2006, therefore, the petitioner is, hereby, directed to approach the Tehsildar concerned with his prayer who will take necessary action in accordance with law, for removal of encroachment if any, within a period of **30 days** from the date of filing of such application.

With the above direction, this writ petition is ***disposed of*** finally.

**Order Date :- 28.6.2023**

Ashok Gupta