

Court No. - 3

Case :- WRIT - C No. - 5369 of 2023

Petitioner :- Shiv Darshan

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Rural Development Civil Secrett. Lko. And 13 Others

Counsel for Petitioner :- Gyanoday Shukla

Counsel for Respondent :- C.S.C., Dilip Kumar Pandey

Hon'ble Subhash Chandra Sharma, J.

Heard Sri Gyanoday Shukla, learned counsel for the petitioner and Sri Dilip Kumar Pandey, learned counsel for the Gram Sabha 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.1 to 4 to remove the encroachment/illegal Construction over the Chakroad in the interest of justice.

II- Issue a writ order or direction in the nature of Mandamus commanding the opposite party nos.2 to 3 to consider the application dated 08.02.2023 and decide the same in accordance with law in the interest of justice.

It is submitted by learned counsel for the petitioner that opposite party nos.5 to 14 have made encroachment over the Chakmarg as a result petitioner and other villagers are facing tremendous difficulty in going to their field for work regarding which the petitioner approached the concerned authorities and given applications on 03.06.2022 & 03.02.2023 but no action has been taken till date. Therefore, requested for issuing a writ in the nature of Mandamus to the concerned authorities/Tehsildar to get the encroachment removed from the Chakmark 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 encroachment on the Chakmarg 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 on the Chakmarg is said to be made by opposite party nos.5 to 14 regarding which remedy is available to the petitioner u/s 26 of U.P. Revenue Code-2006, therefore, the Tehisildar concerned is directed to consider and decide the application dated 08.02.2023 moved by the petitioner, for removal of encroachment on the Chakmarg if any, within a period of **15 days** in accordance with law.

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

Order Date :- 30.6.2023

Ashok Gupta