

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 7922 of 2023

Petitioner :- Mohd. Juber Ahmad @ Raju

Respondent :- State Of U.P. Thru. Secy. Home Lko. And Others

Counsel for Petitioner :- Rizwanul Haque Ansari

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Karunesh Singh Pawar,J.

1. Heard the learned counsel for the petitioner and the learned A.G.A. who appears for the State-respondents.

2. This petition has been filed with the following main prayer:-

"To issue a writ, order or direction in the nature of Certiorari, quashing the impugned show cause notice dated 18.7.2023 U/s 3(1) of Uttar Pradesh Contro of Gundas Act-1970 issued by the District Magistrate/opposite party No.2, Contained as Annexure No.1 to this petition."

3. It has been submitted by learned counsel for the petitioner that the petitioner used to have a licence for running a shop dealing with fire crackers. He had such shop licence for four years continuously. He shifted his residence as a result whereof he wanted licence to be issued to him for another neighborhood. He has applied for the same. He has not been given any licence and the

impugned notice has been issued saying that he is an accused in Case Crime No.1245 of 2022 under Section 5/9B of the THE EXPLOSIVES ACT, 1884 and also a beat information report no.27 lodged on 18.6.2023 at 13:42 hours has been received.

4. Learned Counsel for the petitioner, on the basis of judgement rendered by Division Bench of this Court in Criminal Misc. Writ Petition No.12619 of 2023, Govardhan vs. State of U.P. decided on 10.8.2023, submits that the impugned notice suffers from non application of mind as the definition of 'Goonda' as given under Section 2(b) of the U.P. Control of Goondas' Act, 1970 has not been considered at all. The general nature of material allegations as alleged against him has not been considered. His image among the masses, his nuisance value and whether he is a potential threat to the peace and public order of the society at large has not been considered.

5. This Court having gone through the judgement rendered by the Division Bench (supra) is of the considered opinion that the notice has been issued to the petitioner is only under Section 3(1) of the U.P. Control of Goondas' Act, 1970 whereby the Additional District Magistrate has asked the petitioner to submit his reply to the said notice which the petitioner has not done so far and has approached this Court for quashing of the impugned notice.

6. The Constitution Bench of Hon'ble Supreme Court of India in the case of N.P. PONNUSWAMI Vs.

RETURNING OFFICER, NAMAKKALCONSTITUENCY and OTHERS reported in AIR 1952 SC 64 has held that where a right or liability is created by a statute and statutory remedy is provided therein, extraordinary remedy of writ jurisdiction under Article 226 of the Constitution of India should not be availed of in such matters.

7. The writ petition is dismissed with liberty to the petitioner to approach the District Magistrate concerned by filing reply to the show cause notice.

Order Date :- 12.10.2023

Madhu