

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 3562 of 2023

Applicant :- Narendra Pal Singh

Opposite Party :- Dharmendra Kumar, Tahsildar, Tahsil Payagpur, Bahraich And Others

Counsel for Applicant :- Ajey Singh

Hon'ble Rajesh Singh Chauhan,J.

1. Heard.

2. This Court has passed the order dated 13.10.2023, which reads as under:-

"1. Heard learned counsel for the applicant/ petitioner.

2. Attention has been drawn towards the order of the writ court dated 06.04.2023 passed in Public Interest Litigation (PIL) No.267 of 2023, which reads as under:-

"Heard Sri Ajay Singh, learned counsel for the petitioner and Sri Yogesh Kumar Awasthi, learned Standing Counsel for the State.

Notice for opposite party no. 3 i.e. Village Panchayat has been accepted by Sri Pankaj Gupta.

In view of the proposed order notice to opposite party no. 4 is dispensed with.

By means of this petition the petitioner has prayed following relief :

"Issue a writ, order or direction in the nature of Mandamus thereby commanding and directing to the opposite party no. 2 to take necessary action against the opposite party no. 4 who has illegally encroached the public utility land i.e. gata no. 1763-Min/0.008 situated in village panchayat -Trikolia, Tahsil Payagpur, District Bahraich, in pursuance of order dated 02.01.2023, as contained in Annexure No. 1 to this writ petition."

Learned Standing Counsel has produced the copy of letter dated 5.4.2023 preferred by the Tehsildar, Payagpur, District Bahraich addressed to the Chief Standing Counsel enclosing therewith the copy of the order dated 2.1.2023 passed by the Assistant Collector, First Class, Payagpur, District Bahraich directing the illegal encroacher to vacate the illegal encroachment forthwith and a fine of Rs. 45,000/- has been imposed upon the illegal encroacher. A fifteen days notice has been issued against the illegal encroacher.

Learned Standing Counsel on the basis of instructions stated that if the

illegal encroachment is not removed within time given in the notice, the illegal encroachment shall be removed by adopting coercive measures as permissible under the law.

Having heard learned counsel for the parties and perusing the instruction letter dated 5.4.2023 since the appropriate order of eviction has been passed on 2.1.2023 and fifteen days notice to vacate the illegal encroachment has been issued on 3.4.2023, therefore, it is expected that the competent authority shall ensure to vacate the illegal encroachment strictly in accordance with law and if need be, coercive measures be adopted but in any case that illegal encroachment shall be removed.

Writ petition is disposed of in above terms."

3. Learned counsel for the petitioner has stated that the aforesaid order has been passed on the basis of instructions being received by the learned Standing Counsel from the Tehsildar concerned. Despite the service of the aforesaid order upon the authority concerned, compliance of the aforesaid order has not been done till date. Attention has been drawn towards Annexure No.4 of the contempt petition, which is an order dated 16.09.2023 of the Tehsildar concerned wherein the Tehsildar has assured that the illegal encroachment shall be removed with expedition. Therefore, learned counsel has stated that before the writ court, the Tehsildar has informed that the illegal encroachment shall be removed within fifteen days w.e.f. the notice dated 03.04.2023 issued by him to the illegal encroacher for removal of encroachment but more than six months' period has passed, the encroachment has not been removed and the same is still existing.

4. Matter requires consideration.

5. Issue notice to all the opposite parties no.1, 2 & 3 returnable at an early date, for which, necessary steps be taken within a week.

6. Office to proceed accordingly.

7. List this case on 29.11.2023.

8. On that date, opposite party no.1 i.e. Dharmendra Kumar, Tehsildar, Tehsil- Payagpur, District- Bahraich shall appear in person to explain as to why he has not complied with the order of the writ court despite the fact that the writ petition was disposed of on his instructions to the effect that the illegal encroachment would be removed within fifteen days from 03.04.2023 when the notice for eviction has been given to the illegal encroacher. If the proper explanation is not filed on the next date, any appropriate order may be passed against him under the Contempt of Courts Act."

3. Sri Dharmendra Kumar, Tehsildar, Tehsil-Payagpur, District-Bahraich and Sri Narendra Pal Singh, the petitioner, are present in person before the Court.

4. Sri Shailendra Kumar Singh, learned Chief Standing Counsel has submitted that as per direction of the Writ Court, the illegal encroachment over the public utility land i.e. Gata No.1763-

Min/0.008 situated in Village Panchayat-Trikolia, Tehsil-Payagpur, District-Bahraich has been removed. The aforesaid fact has not been disputed by the petitioner, who is present in person before the Court.

5. However, the petitioner has stated that after removal of the aforesaid illegal encroachment, he is apprehensive that the private opposite parties may again illegally encroach the said area.

6. Be that as it may, since illegal encroachment in question has been removed from the land in question in terms of order of the Writ Court, therefore, there is no purpose to keep this contempt petition pending any longer.

7. Accordingly, the instant contempt petition is ***dismissed***.

8. Notices, if any, stand discharged.

9. However, it would not be out of place to indicate here that the officer who is present in person today and the other Competent Revenue Authorities shall ensure that illegal encroachment which has been removed be not illegally encroached again.

[Rajesh Singh Chauhan,J.]

Order Date :- 29.11.2023

Suresh/