

(2012) 01 AHC CK 0224

In the Allahabad High Court

Case No : Civil Misc. Writ (PIL) Petition No. 3211 of 2012

Ravi Shanker Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Constitution of India, 1950 — Article 21

Uttar Pradesh Land Revenue Act, 1901 — Section 122B

Citation : (2012) 3 ADJ 192

Hon'ble Judges : Ramesh Sinha, J; Amar Saran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties and perused the record.

The present writ petition has been filed by the petitioners, who are resident of Subedar Nagar, Post Derwa, District Gorakhpur. They claim to be actively engaged in social work in the interest of public at large.

The prayers made by the petitioners in this petition are: (i) Issue a writ, order or direction in the nature of Mandamus commanding the responsible respondent authorities to conduct a thorough enquiry through high level officers regarding illegal encroachment of public property meant for utility of public at large by respondent Nos. 6 to 10 and remove all such encroachment forthwith within stipulated period of time and restore the same to its original shape.

(ii) Issue a writ, order or direction in the nature of Mandamus directing the State Authorities to ensure that the land in question remains free from encroachment for using the same by public at large.

(iii) Issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances existing in the present case.

(iv) Award the cost of this writ petition in favour of the petitioner throughout.

It is alleged that respondent No. 10, Ram Nayan is an elected Pradhan of the Village in question. He alongwith his brothers (respondent Nos. 6 to 9) have illegally made an encroachment and occupied plot No. 56 having an 1.340 Hectare which is recorded as Garahi (Tank) for being used by public at large and further the respondents have constructed their residential accommodation on their own choice over the land in question which is recorded as Garahi.

2. It has been held by this Court in the case of Ravindra Nath Pandey v. State of U.P. and others, 2010 (1) ADJ 470, that where land is being encroached upon or not, is a matter of investigation, in fact, by competent authority, which may require appropriate proceedings of demarcation, or location of boundary of disputed area. To investigate and find out any such encroachment, a procedure has been provided for under the U.P. Land Revenue Act, 1901. Once law provides for a particular procedure and which a complete code in itself, then taking recourse to PIL for the same, may not be desirable. Such investigation has to proceed by making an enquiry in accordance with the procedure prescribed, in law by appropriate revenue authority etc. who under statute to investigate such matters and adjudicate the same.

3. Similar view has also been taken by this Court in the case of Adrian Ahmad v. Sanaullah and others, 2010(1) ADJ 448, wherein it has been held that if it found that any one has some claim, question as to whether property had vested in Gaon Sabha and whether a person is in unauthorized occupation, or not, can be squarely determined in proceedings u/s 122-B of the U.P Z.A. & L.R. Act. There is no right of representation, which is sought to be made by any one. It is not out of place to mention here that Hon''ble Apex Court in the case of Hinch Lal Tiwari v. Kamala Devi and others, 2001(6) SGC 496, has held that the material resources of the community like forest, tanks, ponds, hillocks and mountains etc are nature's bounty. They maintain delicate ecological balance and they need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the right guaranteed under Article 21 of the Constitution of India. Hence the Government including Revenue Authorities are duty-bound to clean and develop them so that ecological disaster may be prevented and a better environment provided to people at large, hence no part of it can be allotted to any one as Abadi side for the purpose of building houses etc.

In view of the law laid down by the Hon''ble Apex Court as well as by this Court, the present PIL petition for the above relief cannot be entertained. The petitioners can approach the Gaon Sabha or apply to the competent authority u/s 122B of the U.P.Z.A. & L.R. Act or appropriate forum for taking action in accordance with law for redressal of their grievance. Hence the present PIL petition is liable to dismissed and is accordingly dismissed.