

(1998) 09 AHC CK 0111
In the Allahabad High Court
Case No : C.M.W.P. No. 11216 of 1990

Santosh Kumar Tiwari

APPELLANT

Vs

District Magistrate, Deoria and others

RESPONDENT

Date of Decision : 16-09-1998

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (1999) 1 AWC 661

Hon'ble Judges : N.S. Gupta, J;B.K. Roy, J

Bench : Division Bench

Advocate : Santosh Kumar Tiwari, In person, for the Appellant; S.C. and V.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

Binod Kumar Roy and N. S. Gupta, JJ.—The only question which calls for our answer is as to whether the respondents have got any authority to construct Sulabh Sauchalaya on the Sahan land of the petitioner?

2. The petitioner asserts, inter alia, that he is resident of village Mahen, district Deoria, where he has his own house and some agricultural land ; that on 29.12.1989 his younger brother informed him that respondent No. 8, Gaon Sabha of village Mahen, district Deoria, in collusion with respondent Nos. 1 to 7 is trying to build Sulabh Sauchalaya on his Sahan lands : that on receiving the aforementioned information he left Allahabad, went to his village and learnt that a construction has been raised on his Sahan land : that he contacted respondent No. 8 and requested him to remove the construction already made on his lands, but respondent No. 8 refused ; thereafter he approached all concerned who gave evasive answers though respondent No. 2 directed respondent No. 3 to make Inspection on the spot and report back to him, but even that was not done and hence this writ petition.

3. No counter-affidavit has been filed denying the allegations made by the

petitioner.

4. Sri Anurag Pathak, learned counsel appearing on behalf of the petitioner, contended that in the facts and circumstances mentioned as above, the petitioner is entitled to the reliefs claimed for namely for issuance of mandamus to remove the illegal constructions from the Sahan land of the petitioner and to stay raising of any further construction thereon.

5. Sri H. R. Misra, learned standing counsel appearing on behalf of respondent Nos. 1 to 7 and 9, contended that since the Gaon Sabha has not come up with any defence denying the averments made by the petitioner, this Court may grant any such relief, which may be considered appropriate.

6. The facts speak for themselves. Respondent Nos. 1 to 7 against whom serious allegations of collusion have been made by filing this writ petition have not filed counter, we are, thus, left with no option but to accede to the request.

7. True, it is right to property is not a fundamental right but nonetheless the Constitution of India under Article 300A guarantees its citizens that this legal right can be taken away only under some enactment. It is surprising that the respondent authority like the Pradhan of the Gaon Sabha has behaved in a most irresponsible manner by trying to dispossess the petitioner from his Sahan land by erecting Sulabh Sauchalaya either in part or in its entirety. The act of Gaon Sabha is apparently unconstitutional being violative of Article 300A of the Constitution of India.

8. We, accordingly allow this writ petition and direct respondent Nos. 1 to 7 to forthwith remove the Sulabh Sauchalaya, constructed either in part or as a whole, if it has been constructed on the Sahan lands of the petitioner or if the State of Uttar Pradesh intends to continue its existence on the Sahan Land of the petitioner, then they must acquire necessary area on which it has been constructed including the land appertaining under the provisions of the Land Acquisition Act by paying suitable compensation to the petitioner within three months from today according to law.

9. This writ application is allowed with cost to the tune of Rs. 2,000 which respondent No. 8, the Gaon Sabha of village Mahen, district Deoria must pay to the petitioner.

10. The office is directed to hand over a copy of this order within a week to Sri H. R. Misra, learned standing counsel, for its communication to and follow up action by the authority concerned.