

Court No. - 8

Case :- WRIT - C No. - 11383 of 2023

Petitioner :- Syed Hamidul Bari

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Housing And Urban Planning Deptt. Lko. And 4 Others

Counsel for Petitioner :- Kazim Ibrahim, Amrit Khare

Counsel for Respondent :- C.S.C., Ratnesh Chandra

AND

Case :- WRIT - C No. - 11360 of 2023

Petitioner :- Mohd. Naushad

Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Housing And Urban Planning Deptt. And 4 Others

Counsel for Petitioner :- Kazim Ibrahim, Amrit Khare

Counsel for Respondent :- C.S.C., Ratnesh Chandra

AND

Case :- WRIT - C No. - 11362 of 2023

Petitioner :- Mohammad Abrar

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Housing Urban Planning Deptt. Lko. And 4 Others

Counsel for Petitioner :- Kazim Ibrahim, Amrit Khare

Counsel for Respondent :- C.S.C., Ratnesh Chandra

AND

Case :- WRIT - C No. - 11368 of 2023

Petitioner :- Mohammad Saif Khan

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Housing Urban Planning Deptt. Lko. And 4 Others

Counsel for Petitioner :- Kazim Ibrahim, Amrit Khare

Counsel for Respondent :- C.S.C., Ratnesh Chandra

AND

Case :- WRIT - C No. - 11372 of 2023

Petitioner :- Nameera Khan

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Housing Urban Planning Deptt. Lko. And 4 Others

Counsel for Petitioner :- Kazim Ibrahim, Amrit Khare

Counsel for Respondent :- C.S.C., Ratnesh Chandra

AND

Case :- WRIT - C No. - 11375 of 2023

Petitioner :- Vishnu Swaroop Chaurasya

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Housing And Urban Planning Deptt. U.P. And 4 Others

Counsel for Petitioner :- Kazim Ibrahim, Amrit Khare

Counsel for Respondent :- C.S.C., Ratnesh Chandra

AND

Case :- WRIT - C No. - 11379 of 2023

Petitioner :- Mohd. Shafi

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Housing Urban Planning Deptt. Lko. And 4 Others

Counsel for Petitioner :- Kazim Ibrahim, Amrit Khare

Counsel for Respondent :- C.S.C., Ratnesh Chandra

AND

Case :- WRIT - C No. - 11380 of 2023

Petitioner :- Deepak Chaurasia

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Housing/Urban Planning Deptt. U.P. Lucknow And 4 Others

Counsel for Petitioner :- Kazim Ibrahim, Amrit Khare

Counsel for Respondent :- C.S.C., Ratnesh Chandra

AND

Case :- WRIT - C No. - 11382 of 2023

Petitioner :- Shoeb Ahmad

Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Housing And Urban Planning Deptt. And 4 Others

Counsel for Petitioner :- Kazim Ibrahim, Amrit Khare

Counsel for Respondent :- C.S.C., Ratnesh Chandra

AND

Case :- WRIT - C No. - 11383 of 2023

Petitioner :- Syed Hamidul Bari

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Housing And Urban Planning Deptt. Lko. And 4 Others

Counsel for Petitioner :- Kazim Ibrahim, Amrit Khare

Counsel for Respondent :- C.S.C., Ratnesh Chandra

AND

Case :- WRIT - C No. - 11391 of 2023

Petitioner :- Anwar Ali

Respondent :- State Of U.P. Thru. Its Addl. Chief/Prin. Secy. Housing And Urban Planning Deptt. Lko. And Others

Counsel for Petitioner :- Kazim Ibrahim, Amrit Khare

Counsel for Respondent :- C.S.C., Ratnesh Chandra

AND

Case :- WRIT - C No. - 11468 of 2023

Petitioner :- Muhammad Shoaib Ali

Respondent :- State Of U.P. Thru. Addl. Chief Secy./ Prin. Secy. Lko And 3 Others

Counsel for Petitioner :- Kazim Ibrahim, Akshay Kumar Singh

Counsel for Respondent :- C.S.C., Ratnesh Chandra

AND

Case :- WRIT - C No. - 11500 of 2023

Petitioner :- Naseeruddin

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Housing And Urban Plan. Deptt., Lucknow And Others

Counsel for Petitioner :- Kazim Ibrahim, Aishvarya Mathur, Amrit Khare

Counsel for Respondent :- C.S.C., Ratnesh Chandra

AND

Case :- WRIT - C No. - 11503 of 2023

Petitioner :- Mohd. Haneef

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Housing And Urban Planning Deptt. Lko And 4 Others

Counsel for Petitioner :- Kazim Ibrahim, Aishvarya Mathur

Counsel for Respondent :- C.S.C., Ratnesh Chandra

AND

Case :- WRIT - C No. - 11505 of 2023

Petitioner :- Mohd. Faheem

Respondent :- State Of U.P. Thru. Addl. Chief/ Prin. Secy., Housing And Urban Planning Deptt. Lucknow And Others

Counsel for Petitioner :- Kazim Ibrahim, Akshay Kumar Singh, Amrit

Khare

Counsel for Respondent :- C.S.C.,Ratnesh Chandra

AND

Case :- WRIT - C No. - 11465 of 2023

Petitioner :- Atiq Ur Rahman

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Housing And Urban Planning, U.P. Lucknow And 4 Others

Counsel for Petitioner :- Kazim Ibrahim,Akshay Kumar Singh

Counsel for Respondent :- C.S.C.,Ratnesh Chandra

AND

Case :- WRIT - C No. - 11470 of 2023

Petitioner :- Hameed Khan

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Housing And Urban Planning Deptt. Lko And 4 Others

Counsel for Petitioner :- Kazim Ibrahim,Akshay Kumar Singh

Counsel for Respondent :- G.A.,Ratnesh Chandra

AND

Case :- WRIT - C No. - 11472 of 2023

Petitioner :- Islamuddin Qureshi

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Housing And Urban Planning Deptt. Lko And 4 Others

Counsel for Petitioner :- Kazim Ibrahim,Aishvarya Mathur

Counsel for Respondent :- C.S.C.,Ratnesh Chandra

AND

Case :- WRIT - C No. - 11477 of 2023

Petitioner :- Arshad Warsi

Respondent :- State Of U.P. Thru. Addl. Chief/ Prin. Secy. Housing And Urban Planning Lko. And Others

Counsel for Petitioner :- Kazim Ibrahim,Akshay Kumar Singh,Amrit Khare

Counsel for Respondent :- C.S.C.,Ratnesh Chandra

AND

Case :- WRIT - C No. - 11479 of 2023

Petitioner :- Syed Salma Bano

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Housing And Urban Planning Deptt. U.P. Lko. And 4 Others

Counsel for Petitioner :- Kazim Ibrahim,Akshay Kumar Singh,Amrit Khare

Counsel for Respondent :- C.S.C.,Ratnesh Chandra

AND

Case :- WRIT - C No. - 11480 of 2023

Petitioner :- Mohd. Irshad Ali

Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Housing Urban Planning Deptt. Lko And Others

Counsel for Petitioner :- Kazim Ibrahim,Akshay Kumar Singh

Counsel for Respondent :- C.S.C.,Ratnesh Chandra

AND

Case :- WRIT - C No. - 11481 of 2023

Petitioner :- Mohd. Abubakar

Respondent :- State Of U.P. Thru. Addl. Chief/Prin.Secy. Housing And Urban Planning Deptt. Lko And 4 Others

Counsel for Petitioner :- Kazim Ibrahim,Akshay Kumar Singh,Amrit Khare

Counsel for Respondent :- C.S.C.,Ratnesh Chandra

AND

Case :- WRIT - C No. - 11482 of 2023

Petitioner :- Adil Ishtiaq

Respondent :- State Of U.P. Thru. Addl. Chief/ Prin. Secy., Housing And Urban Planning Deptt. Lucknow And Others

Counsel for Petitioner :- Kazim Ibrahim,Aishvarya Mathur,Amrit Khare

Counsel for Respondent :- C.S.C.,Ratnesh Chandra

AND

Case :- WRIT - C No. - 11548 of 2023

Petitioner :- Javed Ahmad Siddiqui And 20 Others

Respondent :- State Of U.P. Thru. Prin./Addl. Chief Secy. Housing And Urban Planning Deptt. Lko. And 3 Others

Counsel for Petitioner :- Amrendra Nath Tripathi,Shakeel Ahmad Jamal

Counsel for Respondent :- C.S.C.,Ratnesh Chandra

AND

Case :- WRIT - C No. - 11484 of 2023

Petitioner :- Sabiha Kausar

Respondent :- State Of U.P. Thru. Addl. Chief Secy. /Prin. Secy. Housing And Urban Planning And Others

Counsel for Petitioner :- Kazim Ibrahim, Akshay Kumar Singh

Counsel for Respondent :- C.S.C., Ratnesh Chandra

AND

Case :- WRIT - C No. - 11492 of 2023

Petitioner :- Mohammad Adil

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Housing/Urban Planning Deptt. Lko. And 4 Others

Counsel for Petitioner :- Kazim Ibrahim, Akshay Kumar Singh

Counsel for Respondent :- C.S.C., Ratnesh Chandra

Hon'ble Pankaj Bhatia, J.

1. Since all the writ petitions arise out of common cause of action, as such, present common order is being passed.
2. Heard Sri J. N. Mathur, Senior Advocate assisted by Sri Kazim Ibrahim, Sri Amit Khare, Sri Amrendra Nath Tripathi, Sri Akshay Kumar Singh, Sri Aishvarya Mathur the counsel for the petitioners and Sri Ratnesh Chandra with Sri Sankalp Mishra the counsel for the Lucknow Development Authority as well as Sri Shailendra Kumar Singh, Chief Standing Counsel assisted by Sri Pankaj Srivastava, learned Additional Chief Standing Counsel for the State.
3. The present petition has been filed aggrieved by an order dated 15.12.2023 whereby the appeals preferred by the petitioners under section 27 (2) of the U.P. Urban Planning and Development Act, 1973 (herein referred to '1973 Act') have been dismissed.
4. It is essential to note that the appeal was preferred against an order of demolition dated 13.10.2023 passed in exercise of the powers under sections 27(1) of the '1973 Act'.
5. The facts, in brief, are that the petitioners claims to be in possession of property known as Akbar Nagar - I & II and is situate on different

Khasra numbers. The petitioners claims that they are peacefully enjoying the property since more than forty to fifty years without any interference whatsoever. In one of the petition being Petition No.11383 of 2023, it is claimed by the petitioner that he has set-up a furniture shop and also build a house on the property in question. The petitioners were served with a show cause notice, in the present case on 26.08.2023 (Annexure no.8) whereby in exercise of the power under section 27(1) of the 'Act' the petitioner was called upon to show cause as to how he has constructed the construction situated at Plot No.749 Akbar Nagar-I, Faizabad Road, Lucknow over an area spanning 2000 sq.ft. The constructions were shown on the ground floor as well on the first floor. It was alleged that the commercial activity was being carried out over the property in question and the property was described as lying in 'Doob Kshetra'. The petitioner claims to have filed a reply which ultimately led to passing of an order dated 13.10.2023 whereby the demolition order was passed. While passing the said order, which is on record as Annexure no.2, the letter given by the Zonal Officer on 29.09.2023 was also mentioned, which is in the following effect :

गुगल लोकेशन प्लान में चिन्हित स्थल के अनुसार कथित स्थल फैजाबाद रोड एवं कुकरैल फ्लाई ओवर से फैजाबाद रोड एवं कुकरैल बन्धे तक की बीच की दूरी 282.00 मी० तथा फैजाबाद रोड एवं पुलिस मुख्यालय को जाने वाले मार्ग/बन्धा रोड के जंक्शन से उत्तर दिशा की ओर 232.00 मी० की दूरी तक तथा कुकरैल नदी के पूर्वी छोर पर स्थित कुकरैल फ्लाई ओवर एवं फैजाबाद रोड के जंक्शन से उत्तर दिशा की ओर 567.00 मी० की दूरी के पश्चात कुकरैल फ्लाई ओवर से जी०डी० गोयंका स्कूल की ओर बन्धे तक की दूरी 97.00 मी० है। उपरोक्तानुसार फैजाबाद रोड के उत्तर में स्थित कुकरैल नदी के दोनो छोर स्थित बन्धे के मध्य उपरोक्त मापों के अनुसार भूमि का भू-उपयोग प्रभावी लखनऊ महायोजना 2031 के अन्तर्गत नदी नाला जलाशय एवं हरित पट्टी अंकित है।"

6. In the light of the said letter and after recording its evaluation, an order was passed holding that the occupation was illegal and on a green belt area, which was liable to be demolished.
7. Aggrieved against the said order, the petitioner preferred an appeal in terms of the mandate of the Section 27(2) of the '1973 Act'. As, the

respondents were threatening to pass an order of evicting during the pendency of the appeal, some of the petitioners approached this Court by filling petitions being Writ-C No.1021 of 2023 wherein this Court disposed off all the writ petitions vide order dated 08.12.2023 by issuing a mandamus to the appellate authority to hear and decide the stay and delay condonation applications and further directions were issued for providing a copy of the said order dated 15.12.2023. It was also provided that no coercive action shall be taken against the petitioners till 20.12.2023 mainly on the ground that the petitioners therein would get reasonable opportunity to avail their remedies against any order that may be passed against such petitioners.

8. It is argued that a copy of the order was actually served on the petitioners on 16.12.2023 and instead of deciding the stay application, the appellate authority proceeded to dismiss the appeal itself. The said order is under challenge in the present writ petition.
9. As the demolition exercise is being carried out, a mention was made by Senior Advocate Sri J. N. Mathur and upon his mention, the petitions with regard to the demolitions were summoned and the present order is being passed in the presence of the counsel for the LDA and after hearing as well as the learned Chief Standing Counsel.
10. The submission of the counsel for the petitioners mainly is that the appellate authority has passed the order based upon the materials which were neither supplied nor were ever provided to the petitioners and the petitioners were never permitted to confront the said documents, as such, the order on the face of it, is in violation of the principles of natural justice. It is next argued that it was specifically, the case of the petitioners that they were in occupation of the premises prior to 1973, the date on which the 'Act' was enacted, as such, the proceedings could not have been initiated under the said Act. In the alternative, it is argued that in any case, the proceedings could not have been initiated under section 27, as even in terms of the allegations levelled in the show cause notice, the remedy could have

been availed by the respondents by taking recourse to Section 26-A of the '1973 Act'.

11. In short, apart from the submission that the occupation was prior to enactment of the Act and the recourse could not be taken under section of the Act, the stress is on the authorities not following the procedural aspects and passing the order, based upon the documents, which were never supplied. It is lastly argued that on account of large scale demolition being carried out in the city of Lucknow, it would affect the livelihood of the persons who are residing and carrying out their petty occupations and professions for the last more than forty to fifty years, which action of the State is basically in violation of the rights enshrined under Article 21 of the Constitution of India.
12. The reliance is placed upon the judgment of the Supreme Court in the Case of *Olga Tellis and others vs. Bombay Municipal Corporation and others; (1985) 3 SCC 545* and *Centre for Environment and Food Security vs. Union of India (2011) 5 SCC 676* wherein the scope of Article 21 of the Constitution of India was explained and it was held that right to livelihood is an integral part of 'right to life'. In the light of the said, it is argued that an interim order be passed staying the demolition which are being carried out while the matter is being heard by this Court.
13. The counsel for the respondents Sri Ratnesh Chandra as well as the learned Chief Standing Counsel argues that even as per the pleadings, the occupation of the petitioners is over a span of forty to fifty years and thus, the occupation of the petitioner is prima-facie after the enactment of 1973 Act, as such, the authorities rightly took recourse to proceedings under Section 27 of the Act. It is further argued that the petitioners have not demonstrated any title over the property in question and irrespective of the nature of the land, once the petitioners have not established any title over the property in question, they could not have resisted to demolition. He further argues that in discharge of the constitutional obligations falling from the mandate of the

directives of principle of State policy, the LDA has issued a plan for re-establishment of the residents of the colony known as Akbar Nagar - I & II and a civil camp is being organized since 19.12.2023 in which 70 to 70 people have also registered.

14. As regards the submission of learned counsel for the petitioners that the order suffers from vice of non-following the procedural due process and not providing the documents, it is submitted that in view of reference of an order passed by the NGT, the same is not a document and is a judgment in realm. It is further argued that there were no pleading or evidence before the authority which passed the demolition order or even before the appellate authority at the instance of the petitioners with regard to their possession prior to enactment of the 1973 Act, thus, the same cannot be pleaded at this stage. It is further argued that occupation of the petitioners over the premises is actually an occupation over a river belt and thus, they cannot claim any right of adverse possession over a land which is declared a river belt by the Central Government.
15. In the light of the averments as recorded above, this Court is required to pass an order with regard to steps being taken for demolition.
16. In view of the rival contentions raised and recorded hereinabove, what emerges is that the various persons including the petitioners are in occupation of the land without having any title in their favour; with the passage of time, the said persons have continued in possession and in fact, government roads were carved out and other municipal services are being provided; in some cases, even the municipal taxes are being paid. It also appears that a school is being run in the vicinity i.e. the entire area known as Akbar Nagar – I & II. This fact has not been denied by either of the parties and also emerges from the orders impugned.
17. The issue with regard to the occupation being prior to the 1973 Act or thereafter is an issue which although arises but can be decided subsequently. It also emerges that the order has been passed

dismissing the appeals on 16.12.2023 and the execution are being carried out within five days of the passing of the orders on appeal filed by the petitioners. It is also an admitted fact that the Lucknow Development Authority has initiated the process of relocating the various persons in terms of their scheme as recorded hereinabove and in fact, a camp has been set up wherein around 70 to 80 people have enrolled and registered themselves for being relocated at other places, in terms of the scheme.

18. At this stage, it is no doubt true that the petitioners have not been able to demonstrate any *prima-facie* title in their favour, but have successfully established their possession, even if the said possession is an illegal possession.
19. At this stage, it is not clear as to what is the tearing hurry in which huge occupations by the relatively poor class of persons are being proposed to be demolished forthwith without even waiting for the scheme of relocating the adversely affected persons being implemented in letter and spirit and also exposing the poorest of the poor to the ensuing harsh winters.
20. As *prima-facie*, the rights flowing from Article 21 of the Constitution of India, which includes the right to earn livelihood, is *prima-facie* affected and it is the bounden duty of the State and its instrumentalities to ensure that Article 21 of the Constitution of India is not violated to give effect to the other obligations of the State which includes the obligation to resettle and which is also being discharged by the Lucknow Development Authority, I deem it appropriate to issue the following directions:
 - (i). The demolitions being carried out in Akbar Nagar-I & II pursuant to the orders of the demolition and after the dismissal of appeals are stayed forthwith, till the next date of listing. No demolition shall be carried out in the entire area.
 - (ii). The Lucknow Development Authority shall give

reasonable time of four weeks to the inhabitants to apply in terms of the scheme and the inhabitants would be at liberty to apply in terms of the scheme within the reasonable time.

(iii). The Lucknow Development Authority shall thereafter take steps for resettlement of the persons who have applied in terms of the scheme forthwith and obtain vacant physical possession of the present premises in their occupation.

21. List this matter now on 22.01.2024 for further directions and decision on the issues as raised.
22. In the meanwhile, learned Standing Counsel and learned counsel for the Lucknow Development Authority may file their response to the pleadings.
23. In view of the urgency and the fact that large scale demolitions are being carried out, which *prima-facie* also disclose the potential of disturbance of law and order and public order, it is directed that learned Standing Counsel and Shri Ratnesh Chandra, learned counsel for Lucknow Development Authority shall communicate this order to the Vice Chairman and the Chairman of the Lucknow Development Authority and Secretary, Housing and Urban Planning Department, U.P. for it being complied.
24. Office is directed to provide a copy of this order to the parties today itself on payment of usual charges.

Order Date :- 21.12.2023
VNP/-

[Pankaj Bhatia, J]