

Court No. - 1

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 909 of 2024

Petitioner :- Association For Protection Of Civil Rights (Apcr) Thru. Its Vice President (Up East Chapter)

Respondent :- State Of U.P. Thur. Its Chief Secy. Lko. And 5 Others

Counsel for Petitioner :- Saurabh Shankar Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Subhash Vidyarthi,J.

1. Leaving the question of maintainability of the present writ petition open, for which the learned Chief Standing Counsel is granted time to file written objections, if any, within a period of three days from today, we proceed to pass the following order.
2. The Apex Court insofar as the demolition of constructions is concerned has already taken cognizance of a larger issue and the following order has already been passed by the Apex Court in Writ Petition (Civil) No.295 of 2022 on 17.09.2024:-

"1. As requested by Mr. Tushar Mehta, learned Solicitor General appearing for respondent (s), list these matters on 01.10.2025 as first item.

2. Till the next date of hearing, we direct that there shall be no demolition anywhere across the country without seeking leave of this Court.

3. We further clarify that our order would not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a court of law."

3. We have no reason to believe that the order passed by the apex court shall not be carried out by the State of Uttar Pradesh in letter and spirit. Evidently, unauthorized structures in any public place such as roads, streets, footpath, abutting railway line or any river body or water bodies and also cases where there is an order for demolition made by a court of law are the exceptions to the general rule. In the present case, we find that on kilometer-38, of Kundasar-Mahasi-Nanpara-Maharajganj, District Road some notices have come to be issued to some persons for raising unauthorized constructions. The notices are issued to the persons concerned for participation in the proceedings through a reply to be submitted by them within three days. It is unclear in the pleadings as to whether the persons aggrieved have filed any reply or have approached any forum or not. In any case, notices issued against a limited number of persons who are to participate in the proceedings cannot be viewed to be a matter of general public importance, which may be taken cognizance of in a public interest litigation unless the vulnerability of an aggrieved person is such that he is established to be the one who is unable to approach the court for availing the remedy available under law.

4. Leaving all these aspects of the matter open, what pricks to the conscious of this court is the issuance of notices to submit the reply within a short span of three days. As to what number of houses situated on kilometer-38, of Kundasar-Mahasi-Nanpara-Maharajganj, District Road have been duly authorized for construction is also not much evident from the notice which may require clarity.

5. Without observing anything on the merits at this stage, as already observed, we grant three days' time to the Chief Standing Counsel to obtain complete instructions. The position as to the category of road and norms applicable may be clarified on the next date fixed.

6. We expect the persons faced with the notices to participate with the proceedings in the meantime. We further provide that in case they file their reply to the notice within a period of 15 days from today, the competent authority shall consider and decide the same by passing a speaking and reasoned order which shall be communicated to the parties aggrieved.

7. List/put up this case on 23.10.2024 in the list of fresh cases.

[Subhash Vidyarthi, J.] [A.R. Masoodi, J.]

Order Date :- 20.10.2024

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