Court No. - 39

Case :- WRIT - C No. - 6011 of 2021

Petitioner :- Smt. Noorjahan And Another
Respondent :- Union Of India And 6 Others
Counsel for Petitioner :- Gulrez Khan,Mir Sayed,Pervez Husain Khan,Sr. Advocate
Counsel for Respondent :- A.S.G.I.,C.S.C.

Hon'ble Naheed Ara Moonis,J.
Hon'ble Dinesh Pathak,J.

This Division Bench has been constituted and assigned to hear the instant writ petition treating it as an urgent matter vide order dated 14.02.2021 passed by the Hon'ble Chief Justice on the urgent application dated 14.02.2021 moved on behalf of petitioners herein through their counsel, although today there is no sitting of Courts in the High Court of Judicature at Allahabad and its Bench at Lucknow.

Seeing the peculiar facts and circumstances of the present case, this petition is being disposed of finally without calling for the counter and rejoinder affidavits of the concerned parties, with the consent of learned counsel for the respondents, with a liberty to the contesting respondents to move a recall application, in case it is found that any facts or details given by the petitioner are incorrect.

Supplementary affidavit filed today is taken on record.

Learned counsel for the petitioners is permitted to make necessary correction in the description of the respondent no.7.

Heard learned counsel for the petitioners, Mr. Manoj

Kumar Singh, learned counsel representing the respondent nos.1, 6 & 7 and the learned Standing Counsel Mr. Alok Kumar Singh for the respondent nos.2 to 5.

The instant petition has been filed with the following relief:

"I. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 12.2.2021 passed by the respondent no.3 (Annexure-1 to the writ petition);

II. Issue a writ, order or direction in the nature of mandamus commanding the respondents not to demolish the residential house of the petitioners."

Learned counsel for the petitioners submits that the impugned order passed by the respondent no.3 for the demolition of the construction raised by the petitioners, treating it to be illegal in violation of Ancient Monuments and Archaeological Sites and Remains Act, 1958 as amended in 2010 (hereinafter referred to as "AMASR Act") has been passed without giving any opportunity of hearing and also without considering the reply/objection of the petitioners dated 12.2.2021 (Annexure No-9 to this petition) pursuant to the notice dated 30.1.2021. He further submits that the map of the construction was passed by the competent authority on 16.6.2010 for which no objection was ever raised by the respondents that the map has been obtained against the provisions of law. In fact the petitioners' houses/buildings are more than 200 mts. away from the prohibited area of the ancient monuments which are situated at Tehsil Padrauna, district Kushi Nagar

legendary place where Lord Budha attained Nirvana. He further submits that the alleged notice dated 30.1.2021 has been issued without referring any order passed by the Central Government.

Learned counsel for the petitioners further pointed out that the petitioners are residing since more than ten years and the notice dated 08.01.2021 has been issued under Section 10 of the U. P. (Regulation of Building Operations) Act, 1958 (hereinafter referred to as "R.B.O. Act") (Annexure No.5 to the writ petition) which indicates that buildings have been constructed without any prior permission of the authority concerned. The area where buildings of the petitioners exist has never been declared as prohibited area. It is further submitted that on the basis of notice dated 08.01.2021 issued under the R.B.O. Act, petitioner had moved an impleadment application in Public Interest Litigation (PIL) No.1660 of 2020, but his impleadment application has been rejected vide order dated 04.02.2021 (Annexure No-8 to this petition) passed by this Hon'ble Court on the ground that PIL has been filed with respect to the monuments which are situated in Usmannagar, District-Kushinagar whereas notice under Section 10 of R.B.O. Act, has been issued in respect of regulated area Padrauna, District-Kushinagar, which is said to be found in the prohibited area and vested with the Central Government under Section 19 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as "AMASR Act") as amended in 2010 but the impugned order with regard to the demolition of the buildings has been passed by the Sub-Divisional

Magistrate addressed to the Tehsildar. The impugned order does not indicate that prior to issuing notice, any enquiry or survey was conducted to find out the exact location of buildings lying in the prohibited area. The petitioners have already given reply/objection to the notice dated 30.1.2021 on 12.2.2021 but on the same day, the impugned order has been passed without considering the reply/objection of the petitioners and without giving any opportunity of hearing to the petitioners. Hence the impugned order dated 12.2.2021 is per se illegal and liable to be quashed.

Per contra, learned counsel representing the respondent nos.1, 6 & 7 has vehemently controverted the arguments advanced by the learned counsel for the petitioners. On the basis of the instruction, he contends that the notice has already been given to the petitioners in 2010 as well as in 2012. The notice was issued by the Archaeology, Archaeological Department on 10.5.2012 which has been annexed as Annexure-6 to the writ petition, yet the petitioners have constructed their buildings/houses in the prohibited area. Hence by way of notice dated 30.1.2021 an opportunity of hearing was given to the petitioners to file reply/objection within 15 days but they failed to reply the same. Therefore, the impugned order passed by the respondent no.3 does not suffer from any error or illegality.

He has further contended that the power exercised by the Sub-Divisional Magistrate directing the Tehsildar for the demolition of the construction has been delegated by the Archaeological Survey of India.

Learned Standing Counsel for the respondent nos.2 to 5 contended that the impugned order passed by the respondent no.3 is only a communication to the Tehsildar. However, he does not dispute the fact that in reply to the notice dated 30.1.2021, the petitioners had given reply/objection which was duly received by the office of the District Magistrate on 12.2.2021, despite that the impugned order has been passed on the same day for the removal of the buildings/houses of the petitioners.

Having considered the submissions advanced by the learned counsel for the parties and have gone through the records, we are of the considered opinion that there is no description for the reason that the buildings/houses of the persons shown in the impugned order have been constructed within the prohibited area of the old monuments precincts at Padrauna Kushi Nagar which is famous for stupas of Lord Budha and even the residence of all the persons in the notice have not been shown. In a casual manner, the impugned order dated 12.2.2021 has been passed in haste directing the Tehsildar to get remove the construction of the buildings/houses without giving any opportunity of hearing to the petitioners which is against the principles of natural justice.

Learned counsel for the respondents urged that due to paucity of time, as they had received notice yesterday evening, they could not collect detailed and proper information pertaining to present matter and submitted that in case some reasonable time is granted by this Court, petitioner's representation/objection shall be considered and decided in accordance with law.

Under such circumstances, the writ petition is disposed of with the direction to the petitioners to approach the competent authority within two weeks from today by making a fresh representation/objection, which shall be considered and decided by the authority concerned in accordance with law within a month, thereafter, after giving due opportunity of hearing to the petitioners and after conducting survey of the concerned area.

For a period of six weeks or till the date of decision taken by the authority concerned, no coercive action shall be taken against the petitioners by the respondents authorities.

Order Date :- 15.2.2021
M. Tariq