

**Court No. - 16**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 5099 of 2024

**Petitioner :-** Madhav Raj And Another

**Respondent :-** State Of U.P. Thru. Prin. Secy. Home Deptt. Lko And 6 Others

**Counsel for Petitioner :-** Amitesh Pratap Singh, Abhijeet P. Singh Chauhan, Naveen Kumar Singh, Shesh Ram Yadav

**Counsel for Respondent :-** G.A., Purnima Mayank

**Hon'ble Shamim Ahmed, J.**

1. Heard Shri Amitesh Pratap Singh, learned Counsel for the petitioners, Ms. Punima Mayank, learned Counsel for respondent Nos.4 to 8, Shri Rajeev Kumar Verma, learned A.G.A. for the State-respondent Nos.1 to 3 and perused the material placed on record.

2. The present petition has been filed on behalf of the petitioners seeking quashing of the order dated 10.05.2024 passed by respondent No.2 i.e. the Additional Sessions Judge, Court No.4/Special Judge (E.C. Act), District-Gonda in Criminal Revision No.430/2022 as well as order dated 03.10.2022, which was passed by the respondent No.3 i.e. the Sub Divisional Magistrate, Tehsil-Colonelganj, District-Gonda in a proceeding under Section 133 Cr.P.C.

3. Learned Counsel for the petitioners submits that the respondent Nos.4 to 8 filed an application under Section 133 Cr.P.C. before the Sub Divisional Magistrate, Colonelganj, District-Gonda i.e. respondent No.3 to remove the alleged illegal encroachment done by the petitioners. Thereafter, the respondent No.3 called police report from Police Station-Kotwali Dehat, District-Gonda and the concerned police station submitted its report on 03.12.2021 before the respondent No.3 stating therein that the petitioners have encroached a public way and the pathway of the respondent Nos.4 to 8 but in naksha najri of the report it is clearly shown that the unpaved road is provided from the other side, which is clearly visibly in the naksha najri. He further submits that the respondent Nos.4 to 8 committed forgery and produced a reply on behalf of the petitioners by some other person and the respondent Nos.4 to 8 are trying to use this road by adopting illegal methods.

4. Learned Counsel for the petitioners further submits that the respondent No.3 passed the impugned order dated 03.10.2022 and directed the concerned police station to remove the illegal encroachment done by the petitioners without considering the material available on record and also without considering the legal and factual aspects of the case. He further submits that being aggrieved by the order dated 03.10.2022 passed by respondent No.3, the petitioners preferred a criminal revision bearing Criminal Revision No.430 of 2022 before the Additional Sessions Judge, Court No.4/Special Judge (E.C. Act), District-Gonda i.e. the respondent No.2. He further submits that the respondent No.2 also erred in law and dismissed the criminal revision filed by the petitioners without considering the legal and factual aspects of the case, thus, he submits that the present petition may be allowed and both the impugned orders may be quashed by this Court.

5. On the other hand, learned Counsel for respondent Nos.4 to 8 and learned A.G.A for the State-respondent Nos.1 to 3 vehemently opposed the submissions advanced by learned Counsel for the petitioners and submits that the proceedings under Section 133 Cr.P.C. have been initiated by the respondent No.3 on the police report submitted by the concerned police station and the respondent No.3 after considering the police report dated 03.12.2021 and after going through the entire evidence available on record passed the impugned order dated 03.10.2022 and directed the concerned police station to remove the illegal encroachment done by the petitioners on the public road. They further submit that instead of removing the illegal encroachment, the petitioners approached the respondent No.2 by way of filing a criminal revision and the respondent No.2 also dismissed the criminal revision filed by the petitioners vide order dated 10.05.2024 after considering the factual and legal aspects of the case. They further submit that the petitioners have illegally encroached the public road and are regularly creating obstruction over the said road, which is creating problem to the respondent Nos.4 to 8 as well as to the general public, thus, they submits that the order dated 03.10.2022 and 10.05.2024 passed by respondent No.3 and respondent No.2 respectively were rightly passed, there is no illegality and infirmity in the impugned orders. They further submits that if the petitioners are claiming that they have not encroached a public road and have done construction on their own land, then they have an alternate remedy to approach the competent court by filing a civil suit alongwith an application claiming injunction in their favour, in accordance with law, thus, they finally submit that the present petition lacks merit and is liable to be dismissed.

6. After considering the arguments as advanced by learned

counsel for the respective parties as well as after perusal of records, this Court is of the view that the order passed by the learned Sub Divisional Magistrate, Colonelganj, Gonda dated 03.10.2022 is just and proper as the same has been passed after considering the police report and the entire evidence available on record. The learned Sub Divisional Magistrate, Colonelganj, Gonda gave a finding that the petitioners have encroached the land and a positive direction has been given to remove the encroachment, which has not yet been done and even the Criminal Revision filed by the petitioners against the order dated 03.10.2022 has also been dismissed by a detailed order dated 10.05.2024 passed by learned Additional Sessions Judge, Court No.4/Special Judge (E.C. Act), District-Gonda. Thus, this Court does not find any justification to quash the impugned orders under challenge in this writ petition.

7. With the aforesaid observations, the instant writ petition stands *dismissed*.

**Order Date :- 19.7.2024**

Piyush/-