

Court No. - 39

Case :- WRIT - C No. - 9635 of 2024

Petitioner :- Hemant Gupta And 2 Others

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Tarun Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Surendra Singh-I,J.

1. Heard Sri A.M. Singhvi, learned Senior Advocate (through V.C.) assisted by Sri Tarun Agarwal, learned counsel for the petitioners and Sri Kunal Ravi Singh, learned Chief Standing Counsel for the State-respondents.

2. Challenge has been raised to Ordinance No. 5 of 2024. Mainly, five points have been pressed this stage. First, it has been submitted, no urgency existed or is made out for promulgation of the impugned Ordinance. The satisfaction as to urgency is non-existent. Plain reading of the Ordinance indicates, the same has been promulgated barely a few days from the end of last session of the Legislative Assembly. There is no indication of any urgency that may have existed with the Executive to take the urgent legislative step of introducing the Ordinance. Second, relying on Clause 3(1) and 3(3) of the impugned Ordinance, it has been strenuously urged, the very purpose of the promulgation of the Ordinance is to nullify the effect of judicial pronouncements, already made. In that, decrees and orders providing for free-hold rights as also all pending applications claiming such rights under the pre-existing Government Policy, have been wiped out. Since, the Ordinance does not intend or attempt to cure any defect noticed, but to override the law declared by the Court, the action taken is wholly impermissible. Third, it has been submitted, no segregation has been made to identify different status of applicants/lessees before nullifying the rights claimed by all applicants. The action thus taken is described as plainly and wholly arbitrary. Fourth, it has been submitted, in not less than two Co-ordinate bench decisions of this Court in ***Dr. Ashok Tahiliani Vs. State of U.P. and others 2019 (9) ADJ 176*** and ***Amarnath Bhargava Vs. State of U.P. and others 2019 (8) ADJ 442***, positive Mandamus has been issued to the State-respondents to

decide all pending applications. Instead of giving effect to those directions and in absence of any stay order operating against those decisions, the pending applications have now been declared abated. Fifth, it has been submitted (though briefly at this stage), that repeal of the Government Grants Act, 1895 would not wash away the rights under the Transfer of Property Act. Sixth, hostile discrimination is stated to have been practiced as has led to arbitrary results, inasmuch as exactly similarly situated persons residing in the same locality have been treated differently. Relying on the contents of the paragraph 94 of the writ petition, it has been asserted, nearby plots have been converted to free-hold in the year 2019-2020, whereas the petitioner's application has been kept pending since 1999.

3. Further, submissions have been advanced for the purposes of grant of interim relief. While, we may have been required to consider the same, at the same time, Sri Kunal Ravi Singh has made a statement on the basis of the written instructions received by him that at present, the State Government does not intend to take any coercive measures either to evict the petitioners or to demolish any construction that may have been constructed on the 'Nazul Land' in question. As to the communication dated 5.3.2024 issued by the District Magistrate, Prayagraj, it has been clarified, the said communication has been issued only to carry out routine exercise to update the record pertaining to 'Nazul Property'. However, the survey proposed is not intended to result in eviction or demolition of the present petitioners.

4. The letter issued by the Additional District Magistrate (Nazul), Prayagraj dated 21.3.2024 reads as below:

"महोदय,

कृपया उपर्युक्त विषयक अपने कार्यालय के पत्र दिनांक 19.03.2024 का सन्दर्भ ग्रहण करने का कष्ट करें। उक्त के सम्बन्ध में अवगत कराना है कि उ०प्र० नजूल सम्पत्ति (लोक प्रयोजनार्थ प्रबन्ध एवं उपयोग) अध्यादेश 2024 के क्रम में जिला प्रशासन प्रयागराज द्वारा अद्यतन प्रश्नगत नजूल भूखण्ड के सम्बन्ध में कोई ध्वस्तीकरण अथवा *coercive action* हेतु कोई निर्देश जारी नहीं किया गया है। अध्यादेश के प्राविधानों एवं शासन से प्राप्त निर्देशों के अनुसार ही अग्रेतर कार्यवाही की जाएगी।"

5. Matter requires consideration.

6. Since, the validity of the Ordinance is in issue, let notice be issued to the learned Advocate General.

7. All respondents are represented. They pray for and are granted four weeks' time to file counter affidavit. The petitioner shall have two weeks thereafter to file rejoinder affidavit.

8. List thereafter.

9. In view of the stand taken by the State, it is provided, no coercive measures may be adopted against the petitioners, except with leave of the Court.

Order Date :- 21.3.2024

CS/-

(Surendra Singh-I, J.) (S. D. Singh, J.)