

**Court No. - 9**

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**Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 1720 of 2020**

**Petitioner :- Mohammad Shahid And 2 Others**

**Respondent :- State Of U P And 7 Others**

**Counsel for Petitioner :- Ayub Khan**

**Counsel for Respondent :- C.S.C.**

**Hon'ble Sanjay Yadav,J.**

**Hon'ble Jayant Banerji,J.**

The petitioners who claim to be public spirited persons and permanently residing at Village Boonda, Pargana & Tehsil Chayal, District Kaushambi have filed this public interest litigation seeking a mandamus directing the respondent nos. 1, 2 and 3, that is to say-

1. State of Uttar Pradesh Through Principal Secretary, Ministry of Revenue Affairs, Government of U.P., Lucknow,
2. District Magistrate, Kaushambi,
3. Sub Divisional Magistrate, Chayal, Kaushambi,

to take necessary action against illegal encroachment/damage made by the respondent nos. 4 to 8 and associated persons on the Kabristan (Muslim graveyard) existing over Arazi No. 193 area 0.3880 hectare situated at Village Boonda, Pargana & Tehsil Chayal, District Kaushambi. A further prayer has been made seeking a mandamus directing the respondents not to interfere in the peaceful construction of the boundary wall of the aforesaid Kabristan.

It is stated that the private respondents, that is, the respondent nos. 4 to 8 have opened the doors of their houses on the Kabristan side and are using middle of the Kabristan as a road and now they are raising a constructed road in the middle of the aforesaid Arazi No. 193 and 206. It is stated that the petitioner

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along with other members of the Muslim community filed an application before the District Minority Welfare Officer/Assistant Survey Commissioner Waqf, Kaushambi and on that application the concerned authority sent a request to the Sub-Divisional Magistrate, Chayal to enquire into the matter of the Kabristan on Arazi No. 193 are 0.3880 hectare and take necessary action. It is stated that another application was also filed on 22.6.2020 before the District Magistrate, Kaushambi regarding the encroachments made by the private respondents on the aforesaid Kabristan by making a road. Another application was made to the Sub-Divisional Magistrate on 22.6.2020 itself bringing on record the situation of encroachment existing over the Kabristan on Arazi No. 193. It is alleged that the private respondents are trying to take illegal possession over Gata No. 193 and 206. Along with the affidavit filed in support of this petition, the petitioners have enclosed an uncertified copy of the Khata Vivaran (revenue record) which reflects the entry of Kabristan under Category 6-3 in respect of several Khasra numbers which includes Khasra No. 193 and 206 pertaining to Village Boonda, Pargana & Tehsil Chayal, District Kaushambi. This revenue record pertains to Fasli Year 1422-1427.

When the matter was listed on 7.1.2021, this Court had directed the Standing Counsel to avail necessary instructions.

Learned Standing Counsel has submitted the instructions sent by the District Magistrate, Kaushambi along with a letter dated 11.1.2021 for perusal of the Court. These instructions are made a part of the record of this petition.

Page No. 2 of the instructions, which also bears the signatures of the respondent nos. 2 and 3, reads as follows:

“मा० उच्च न्यायालय इलाहाबाद में विचाराधीन पी०आई०एल० संख्या 1720/2020 मो० शाहिद एवं अन्य बनाम स्टेट ऑफ यू०पी० एवं अन्य में इन्सट्रक्शन दाखिल करने विषयक।

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महोदय,

माननीय उच्च न्यायालय इलाहाबाद में विचाराधीन पी0आई0एल0 संख्या 1720/2020 मो0 शाहिद एवं अन्य बनाम स्टेट ऑफ यू0पी0 एवं अन्य में पारित आदेश दिनांक 07.01.2021 “**Let this petition for writ be listed on 12<sup>th</sup> January, 2021. In the meanwhile, learned Standing Counsel may avail necessary instructions.**”

उक्त आदेश के अनुपालन में सादर अवगत कराना है कि प्रश्नगत गाटा सं0 193 रकबा 0.3880हे0 कब्रिस्तान के खाते में दर्ज अभिलेख है। जिसकी दिनांक 09.01.2021 को याचीगण की उपस्थिति में जांच की गयी। जांच के दौरान उपस्थित याचीगण के अभिमत को जाना गया, उन्होने जांच के दौरान बताया कि हमारी कब्रिस्तान की भूमि पर जो रास्ता परम परागत रूप से चला आ रहा था। उसी को जिला पंचायत अपने मद से आर0सी0सी0 रोड जनहित के लिये बनवाया है। जिसका उपयोग हम याचीगण ताजिया वगैरा ले जाने में व अन्य दैनिक क्रिया कलाप के लिए उपयोग करते हैं। साथ ही इसी रास्ते का उपयोग अन्य ग्राम वासी भी अपने दिन प्रतिदिन के कार्य कलाप हेतु परम परामगत रूप से करते आ रहे हैं। जिस पर याचीगण को कोई आपत्ति नहीं है। उनकी मांग है कि हमारी कब्रिस्तान की भूमि को शासकीय खर्च से बाउन्ड्री वाल बनाकर सुरक्षित किया जाय। जिससे भविष्य में कब्जा सम्बंधी विवाद न रहे।

उक्त के सम्बन्ध में जिला अल्पसंख्यक कल्याण अधिकारी कौशाम्बी को उपजिलाधिकारी चायल के कार्यालय पत्रांक संख्या 4/वाद लिपिक चायल दिनांक 09.01.2021 के माध्यम से उक्त भूमि पर बाउन्ड्री वाल कराये जाने के सम्बन्ध में आपेक्षा की गयी है। जिसके क्रम में जिला अल्पसंख्यक कल्याण अधिकारी कौशाम्बी ने अपने कार्यालय के पत्रांक संख्या 507/अ0स0क0कौ0/वाद लि0/2020-21 दिनांक 11.01.2021 के द्वारा अवगत कराया है कि वर्तमान में शासन के द्वारा कब्रिस्तान की बाउन्ड्री वाल के सम्बन्ध में कोई बजट आवंटित नहीं है।

उक्त तथ्यों के आलोक में स्पष्ट करना है कि प्रश्नगत भूखण्ड खाली है तथा कब्रिस्तान की भूमि पर बाउन्ड्री वाल बनाकर सुरक्षित व संरक्षित करने के सम्बन्ध में सम्बन्धित विभाग द्वारा अवगत कराया गया है कि प्रश्नगत मद में शासन द्वारा कोई धन आवंटित नहीं है। तदनुसार मा0 न्यायालय के समक्ष इन्स्ट्रक्शन आख्या सेवा में सादर प्रेषित।

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However, the statement of the petitioners and the villagers recorded by the revenue authorities appears on page no. 5 of the aforesaid instructions, which reads as follows:

“आज दिनांक 09.01.2021 को मा० उच्च न्यायालय में विचाराधीन पी०आई०एल० रिट सं० 1720/2020 में मा० न्यायालय के पारित आदेश दिनांक के समादर में ग्राम सभा बूँदा पर० व तह० चायल जनपद कौशाम्बी की गाटा सं० 193/0.388हे० जो राजस्व अभिलेख में कब्रिस्तान के खाते में दर्ज अभिलेख है कि मौके पर याचीगण की उपस्थिति में मौका मुआयना किया गया और याचीगण के शिकायत/ मॉग के बारे में जानकारी प्राप्त की गई। याचीगण ने बताया कि हमारी कब्रिस्तान की भूमि पर जो रास्ता परम्परागत रूप से चला आ रहा था उसी को जिला पंचायत के मद से आर०सी०सी० रोड जनहित के लिए बनवाया गया है जिसका उपभोग हम याचीगण ताज़िया वगैरह ले जाने में व अन्य दैनिक जीवन संबंधी कार्य करने में करते हैं। साथ ही इसी रास्ते का उपयोग अन्य ग्रामवासी भी अपने दैनिक कार्य हेतु परम्परागत रूप से करते चले आ रहे हैं। जिस पर हम याचीगण को कोई आपत्ति नहीं है। हमारी मांग सिर्फ इतनी है कि ग्रामवासी हमारी कब्रिस्तान की भूमि से आना जाना बंद करें तथा बाउण्ड्री वाल शासकीय मद से निर्माण कराकर कब्रिस्तान की भूमि को सुरक्षित किया जाय जिससे भविष्य में कब्जा संबंधी विवाद न रहे। वर्तमान में कब्रिस्तान की भूमि पूर्णतः खाली है।”

Therefore, it is admitted by the instructing respondents, that on 9.1.2021 the site was inspected by the revenue authorities and the complaints /demands of the petitioners were enquired into. It is also admitted that plot no. 193 area 0.3880 hectares situated at Village Boonda, Pargana & Tehsil Chayal, District Kaushambi is recorded as Kabristan land in the revenue records. During the enquiry, the petitioners and other signatories to the statement have stated that on the land of the Kabristan, the road which was being customarily used was being reinforced with cement concrete from the funds of the District Panchayat which road is being used by the petitioners for taking 'Tazias', etc. and for daily passage. Additionally, that road is being customarily used by the villagers on a daily basis regarding which the petitioners have no objection. The petitioners' demand is only that the villagers stop their movement over the Kabristan land and a boundary wall be made from the funds of the Government for protecting the same so that

in future no dispute arises regarding any encroachment.

Categorical assertions have been made in the writ petition regarding encroachments being made by the private respondents and their associates and attempts to communalize the issue. The instructions sent by the instructing respondents to the standing counsel are deafeningly silent on this issue. The learned standing counsel has sought to urge that the petitioners have an alternative remedy under Section 133 of the Code of Criminal Procedure and so this Court may not interfere. This Court cannot close its eyes to the ground realities. Every citizen has an equal and inalienable right as any other citizen for living peacefully, without fear of anti-social elements and for enjoying religious freedom. Wherever, the High Court has reason to believe that fundamental and Constitutional rights of citizens are threatened, Article 226 of the Constitution of India vests sufficient powers to intervene and issue necessary directions. This Court is of the opinion that the customary and religious rights of the Muslim community of village Boonda are being threatened and infringed by the acts of certain persons encroaching on the aforesaid kabristan. Though the private respondents have not been noticed, however, no positive directions effecting their legal rights are proposed to be issued against them.

Under the circumstances, this petition is being **disposed of** with the following directions:

1. Steps shall be taken forthwith by the respondent no.2, the District Magistrate, to stop any encroachment over the aforesaid Kabristan by the private respondents or their associates. Any vandalism or attempts to vitiate the communal harmony by the private respondents or their associates shall be dealt with promptly by the Inspector Incharge of the police station concerned. We direct the Senior Superintendent of Police to ensure compliance.

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2. A boundary wall with proper gates for the aforesaid kabristan on plot no.193 aforesaid shall be allowed to be constructed by the petitioners, after demarcation being done by the revenue authorities forthwith, and no one should be permitted to create any hindrance in its construction. Care-takers of the kabristan belonging to the Muslim community shall be entitled to lock its gates. The District Magistrate shall ensure compliance.
3. No part of the plot no.193, over which the kabristan exists, would be used as a road by the general public for passage through the kabristan.

Compliance of this order shall be reported to this Court by affidavit/s within a period of three months from today failing which the District Magistrate and the Senior Superintendent of Police shall be personally present in Court to report compliance when the matter is listed. List on 17.4.2021.

**Order Date :-** 12.1.2021

A. V. Singh

**(Jayant Banerji, J.)**

**(Sanjay Yadav, J.)**

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