

Court No. - 43

Case :- CRIMINAL MISC. WRIT PETITION No. - 1927 of 2020

Petitioner :- Mohd. Faizan

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Maha Prasad

Counsel for Respondent :- G.A.

Hon'ble Pankaj Naqvi,J.

Hon'ble Saurabh Shyam Shamshery,J.

Heard Sri Ali Zaidi holding brief of Sri Maha Prasad for the petitioner and Ms. Manju Thakur, the learned A.G.A.

This writ petition challenges a show-cause notice dated 4.1.2020, issued by respondent no.2/A.D.M. (City), Kanpur Nagar, in Case No. 28/2020, calling upon the petitioner to deposit the stipulated amount towards damages to public property.

Learned counsel for the petitioner submits that the impugned notice is in teeth of the judgment of the Apex Court in **Re: Destruction of Public and Private Properties vs. State of A.P, (2009) 5 SCC 212 and Kodungallur Film Society vs. Union of India (2018) 10 SCC 713** as it has been issued by the A.D.M., in purported exercise of the Rules framed by the State Government. He submits that the Apex Court in **Re: Destruction of Public and Private Properties** (Supra) unequivocally provided that power to compute damages and investigate liability for destruction of public property is to be exercised either by the serving/retired High Court Judge or retired District Judge as a Claims Commissioner. The relevant guidelines issued by the Apex Court in **Re: Destruction of Public and Private Properties** (Supra) are as under:-

"15. In the absence of legislation the following guidelines are to be adopted to assess damages:

(I) Wherever a mass destruction to property takes place due to protests or thereof, the High Court may issue suo motu action and set up a machinery to investigate the damage caused and to award compensation related thereto.

(II) Where there is more than one State involved, such action may be taken by the Supreme Court.

(III) In each case, the High Court or the Supreme Court, as the case may be, appoint a sitting or retired High Court Judge or a sitting or retired District Judge as a Claims Commissioner to estimate the damages and investigate liability.

(IV) An assessor may be appointed to assist the Claims Commissioner.

(V) The Claims Commissioner and the assessor may seek instructions from the High Court or the Supreme Court as the case

may be, to summon the existing video or other recordings from private and public sources to pinpoint the damage and establish nexus with the perpetrators of the damage.

(VI) The principles of absolute liability shall apply once the nexus with the event that precipitated the damage is established.

(VII) The liability will be borne by the actual perpetrators of the crime as well as the organisers of the event giving rise to the liability -- to be shared, as finally determined by the High Court or the Supreme Court as the case may be.

(VIII) Exemplary damages may be awarded to an extent not greater than twice the amount of the damages liable to be paid.

(IX) Damages shall be assessed for:

(a) damages to public property;

(b) damages to private property;

(c) damages causing injury or death to a person or persons; and

(d) cost of the actions by the authorities and police to take preventive and other actions.

(X) The Claims Commissioner will make a report to the High Court or the Supreme Court which will determine the liability after hearing the parties.

The Apex Court in Writ Petition (Civil) No.55 of 2020 (**Parwaiz Arif Titu Vs. State of U.P.**) on 31.01.2020 passed the following order:-

"The submission which has been urged on behalf of the petitioner is that the procedure which is being followed by the State of U.P. does not conform to the guidelines which are enunciated in the decisions of this Court in Re: Destruction of Public and Private Properties vs. Govt. of A.P. and Kodungallur Film Society vs. Union of India. It has been urged that though the State is purporting to follow a decision of the learned Single Judge of the Allahabad High Court in Mohammad Shujauddin vs. State of U.P. in Writ -A No 40831 of 2009 decided on 9 July 2012, the above judgment specifically directs that steps should be taken for compliance with the judgment of this Court in Re: Destruction of Public and Private Properties (supra).

Issue notice, returnable in four weeks.

Liberty to serve the learned Standing Counsel appearing on behalf of the State of U.P. in addition.

Counter affidavit be filed in the meantime."

Based on above order, Ms. Manju Thakur, the learned A.G.A. submits that once the Apex Court did not grant any ad interim protection to the writ petitioner therein, same parity is liable to be maintained by this

Court.

We do not subscribe to the contention of the learned A.G.A., for the reason that the issue pending before the Apex Court is in a P.I.L., while petitioner has been confronted with the impugned notice. The challenge to the notice is on a premise that the Executive Officer/A.D.M., has no power/authority to issue such a notice in view of the decision of the Apex Court in **Re: Destruction of Public and Private Properties** (Supra) and the rules framed by the State Government are in teeth of the decision of the Apex Court. To relegate the petitioner to raise his objections as to the jurisdiction/competency of the notice issuing authority would be an exercise in sheer futility as the Apex Court is in seisin with the issue.

We are of the view that the Rules under which impugned notice has been issued is under challenge before the Apex Court, therefore the ends of justice demand that the effect and operation of the impugned notice is put in abeyance till the issue is determined by the Apex Court.

Learned A.G.A. has accepted notices on behalf of respondent no.1 to 3.

Counter affidavit may be filed within a month. Rejoinder, if any, within two weeks thereafter.

List in the week commencing **20.04.2020** before the appropriate Bench.

Till the next date of listing the effect/operation of the notice dated 04.01.2020 shall remain stayed. This ad interim protection is subject to final out come of the order of the Hon'ble Apex Court in Writ Petition (Civil) No. 55/2020.

Learned counsel for the petitioner on instructions states that the petitioner undertakes to abide the final outcome of the Apex Court.

Order Date :- 11.2.2020

Ashok Gupta