

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

I N D E X

IN

PUBLIC INTEREST LIGATION NO. _____ OF 2020
(Under Article 226 Constitution of India, 1950)

(DISTRICT – PRAYAGRAJ)

Shashank Shri Tripathi, Advocate _____ Petitioner
(In Person)
Versus
State of Uttar Pradesh. and others _____ Respondents

Sl.	Particulars	Dates	Annex.	Pages
1.	Dates and Events			01
2.	Stay Application Under Chapter XXII Rule1 of High Court, Rules 1952	16.03.2020		02-04
3.	WRIT petition Under Article 226 of the Constitution of India.	16.03.2020		05-16
4.	A true as well as photocopy of the U.P. Ordinance No.2 of 2020	15.03.2020	1	17-27
5.	The copies of Judgment and Order passed in PIL No. 532 of 2020 by this Hon'ble Court	09.03.2020	2	28-42
6.	The copy of the order passed in Petition for Special Leave to Appeal (C) No.6286/2020	12.03.2020	3	43-48
7.	Affidavit along with I.D. Proof.	16.03.2020		49-52

Dated: 16 .03.2020

(Shashank Shri Tripathi)

Advocate

(In person)

Chamber No. 203,

High Court, Allahabad.

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Dates and Events

IN

PUBLIC INTEREST LIGATION NO. _____ OF 2020
(Under Article 226 Constitution of India, 1950)

(DISTRICT – PRAYAGRAJ)

Shashank Shri Tripathi, Advocate _____Petitioner
(In Person)

Versus

State of Uttar Pradesh. and others _____Respondents

Sl.	Dates	Events.
1	15.03.2020	His Excellency the Governor of Uttar Pradesh has promulgated U.P. Ordinance No.2 of 2020, namely, Uttar Pradesh Recovery of Damages to Public & Private Properties Ordinance, 2020 (Uttar Pradesh Ordinance No. 02 of 2020).
2		The aforesaid ordinance being ultra-vires of the Constitution of India, 1950 effects interest of public at large,
3	16.03.2020	Hence, the instant petition for declaration of the ordinance, aforesaid, to be ultra-vires to the Constitution of India, 1950.

Dated: 16.03.2020

(Shashank Shri Tripathi)

Advocate

(In person)

Chamber No. 203,

High Court, Allahabad.

Mobile No. 7030993798

8052320298

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL MISC. APPLICATION NO..... 2020

(Under Chapter XXII Rule 1 of the High Court Rules R/w
Section 151 of C.P.C., 1908)

On behalf of

Shashank Shri Tripathi, AdvocateApplicant/Petitioner
(In Person)

IN

PUBLIC INTEREST LIGATION NO. _____ OF 2020

(Under Article 226, Constitution of India, 1950)

(DISTRICT – PRAYAGRAJ)

Shashank Shri Tripathi, Advocate

Son of Mrs. Shimla Shri Tripathi,

And Mr. Arvind Kumar Tripathi,

Chamber No. 203, High Court, Allahabad.

R/o 69, Bandhawa Tahirpur, Jhunsi,

Prayagraj, Uttar Pradesh.

____Petitioner

(In Person)

Versus

1. State of Uttar Pradesh, through the
Chief Secretary,
Government of Uttar Pradesh, Lucknow.
2. Principal Secretary, Department of Law,
Vidhai Anubhag-1,
Government of Uttar Pradesh, Lucknow.
3. Addl. Chief Secretary/ Principal Secretary,
Home (Police) Anubhag-9,
Government of Uttar Pradesh, Lucknow

..... Respondents.

To,

The Hon'ble the Chief Justice and his other companion Judges of the aforesaid Court.

The humble application of the above-named applicant Most Respectfully prays as Under:

1. **That**, the full facts and circumstances have been given in the accompanying writ petition, which also forms a part of this application.
2. **That**, a prima facie case of non-existence of the circumstances necessary for the promulgation of the ordinance in question and the invalidity at Constitution in its various provisions is made out.
3. **That**, in view of the facts and circumstances stated above, it is expedient in the interest of justice that the impact and implication of the U.P. ordinance No.2 of 2020 may be stayed/suspended during pendency of the present petition.

P R A Y E R

It is, therefore, Most Respectfully prayed that this Hon'ble Court may graciously be pleased to issue

ad-interim mandamus staying/suspending the impact and implication of the U.P. Ordinance No.2 of 2020 during pendency of the present petition.

And/ or pass such other and further order as may deem fit and proper in the facts and circumstances of the case; otherwise, the interest of law shall suffer loss and injury.

Dated: 16 .3.2020

(Shashank Shri Tripathi)

Advocate

In person

Chamber No. 203,

High Court, Allahabad.

Mobile No. 7030993798

8052320298

E-mail- shri.lawchambers@gmail.com

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

PUBLIC INTEREST LIGATION NO. _____ OF 2020
(Under Article 226, Constitution of India, 1950)

(DISTRICT – PRAYAGRAJ)

Shashank Shri Tripathi, Advocate

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____Petitioner

(In Person)

Versus

1. State of Uttar Pradesh, through the

Chief Secretary,

Government of Uttar Pradesh, Lucknow.

2. Principal Secretary, Department of Law,

Vidhai Anubhag-1,

Government of Uttar Pradesh, Lucknow.

3. Addl. Chief Secretary/ Principal Secretary,

Home (Police) Anubhag-9,

Government of Uttar Pradesh, Lucknow

..... Respondents.

To,

The Hon'ble the Chief Justice and his other
companion Judges of the aforesaid Court.

The humble petition on behalf of the petitioner above named Most Respectfully Showeth:

- 1. That** the instant petition is the first petition filed by the petitioner under Article 226 of the Constitution of India, 1950 for the relief to Public at large regarding present cause of action. The petitioner has no direct grudge in the present case.
- 2. That** no notice of Caveat Application under Chapter XXII Rule 5 of the Allahabad High Court Rules, 1952 read with section 148-A of the Code of Civil procedure, 1908 has been served upon the petitioners in the subject matter of the present petition.
- 3. That** before, filing the present Public interest Litigation, the petitioner is making due disclosure as required by sub Rule (3) (i) of Rule 1 of Chapter XXII of Allahabad High Court Rules, 1952 which is amended in view of judgment of Hon'ble Supreme Court in the matter of ***State of Uttranchal Versus Balwant Singh Chaufal and others (AIR 2010 SCW 1029)***.
- 4. That,** in pursuance of aforesaid amendment the petitioner is giving his credential to the Hon'ble Court

that the Public cause, he is seeking to expance, that he has no personal or private interest in the matter. Further, there is no authoritative pronouncement by the Hon'ble Supreme Court or High Court on the question raised in the present petition and that the result of litigation will not lead off to any undue gain to himself or any undue loss to any person, body of persons or the State.

5. **That,** the petitioner is practicing advocate and sincere citizen of the country and under advice of his duty against nation, the present PIL (Writ Petition) is being preferred.
6. **That,** instant petition is directed against Uttar Pradesh Recovery of Damages To Public & Private Property Ordinance 2020(U.P. Ordinance No.2 Of 2020) for the reason of its being ultra-vires to the constitution of India, 1950.

A true as well as photocopy of the U.P. Ordinance No.2 of 2020 is appended herewith and marked as **Annexure No.1** on page ___ to this petition.

7. **That,** the Constitution confers power to Governor/ State Executive to issue ordinance and thus,

promulgate laws for a short duration. The technique of issuing an ordinance has been devised with a view to enabling the executive to meet any unforeseen or urgent situation arising in the State when Assembly or the Council is not in session and which it cannot deal with under the ordinary law.

- 8. That,** it is well settled that the Ordinance is promulgated in the name of the Governor and in a constitutional sense on his satisfaction: it is in truth promulgated on the advice of his Council of Ministers and on their satisfaction.
- 9. That,** the backdrop of this whole scenario relates with the installation of Name & Shame Banners across the roads of Lucknow. The banners came up at a major road side with personal details of more than 50 persons those accused of vandalism during protest in the month of December, 2019. The poster is seeking compensation from the accused persons and further to confiscate their property, if they failed to pay compensation.
- 10. That,** this Hon'ble court took suo-motu cognizance of this gross violation of human rights and ordered for removal of these banners. The State Government filed Special Leave Petition and prayed for stay order

upon the order passed by this court, to which Apex court transferred the matter to larger bench without giving and stay order.

The copies of judgment & order dated 09.03.2020 passed by Hon'ble Court in Public Interest Litigation (PIL) No. 532 of 2020 and the order dated 12.03.2020 passed by the Hon'ble Apex Court in Petition for Special Leave to Appeal (C) No.6286/2020 are being annexed herewith & marked as **Annexure 2** on page and **Annexure 3** on page to this Petition.

11. That, left with no other option, the State came up with this Ordinance in question. To evade from justifying itself from court of law, by passing such ordinance, the State has played mischief upon the Constitution.

12. That, the State has formed a Tribunal in the Ordinance under question, which is beyond Ordinance making power conferred under Article 213(1) of our Constitution.

The Article 213(1) reads as under:

213. Power of Governor to promulgate Ordinances during recess of Legislature

(1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require: Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if

(a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or

(b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or

(c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President

13. That, Articles 323B of The Constitution of India, 1950 also don't follow the formation of such Tribunal.

The provision reads as under:

323B. Tribunals for other matters

(1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws

(2) The matters referred to in clause (1) are the following, namely:

(a) levy, assessment, collection and enforcement of any tax;

(b) foreign exchange, import and export across customs frontiers;

(c) industrial and labour disputes;

(d) land reforms by way of acquisition by the State of any estate as defined in Article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;

(e) ceiling on urban property;

(f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in Article 329 and Article 329A;

(g) production, procurement, supply and distribution of foodstuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods;

(h) offences against laws with respect to any of the matters specified in sub clause (a) to (g) and fees in respect of any of those matters;

(i) any matter incidental to any of the matters specified in sub clause (a) to (h)

14. That, the ordinance does not provide for the commencement clause and/or do not speaks about its moment of commencement. This again shows the fishy business and the mischief of the State.

15. That, being a quasi-judicial nature of the Tribunals provided in the constitution, the ordinance talks about judicial activity in Chapter 2 Sec.3 and about adjudication in Chapter 3 Sec.7(1) but without procedural and functional safeguard required at law.

16. That, under Sec. 5 of the ordinance, there is an ambiguity in respect of the chairs of the Head of Department and the Office superintendent.

- 17. That,** under Chapter 3 Sec. 7(2/3), the appointment of Chairman and member is given. It lays down the rule when there would be two or more persons appointed but leaves the ambiguity about the condition when just one person is to be appointed.
- 18. That,** the Ordinance provides the provision in relation to. the eligibility of in-service, Grade-A State employee to hold the chair irrespective of his background in case of single person appointment, which is unconstitutional.
- 19. That,** under Sec 7(4), the powers given to State government for distribution of work between multiple Tribunals, is undue interference of Executive in a judicial and/ or quasi-judicial aspect.
- 20. That,** Sec 8(7) of the ordinance terms the nature of the Tribunal to be a Civil Court whereas Subject matter of the Ordinance in questions covers criminal nature.

21. That, the ordinance is passed in hastiness manner which could be assessed by reading Chapter 1 Sec 2(g) which may be assumed to be a typographical error.

22. That, in view of the facts and circumstances stated above it is expedient in the interest of justice that impact and implication of the U.P. Ordinance No.2 of 2020 may be stayed/suspended or the status-quo as on date may be maintain during pendency of the present petition.

23. That, the petitioner has no other alternative efficacious, and remedy except to approach this Hon'ble Court under Article 226 of the Constitution of India, 1950 inter alia on the following and amongst several other grounds.

G R O U N D S

a. Because, the U.P. Ordinance No.2 of 2020 is ultra-vires to the Constitution of India, 1950.

b. Because, the ordinance under question is not consistent and further is in contradiction and departure from the ordinance making power of the State provided under Article 213 of Indian Constitution.

c. Because, the ordinance under question has not been promulgated on an urgent matter as such the same has got no force and effect as an act of legislature as such is a redundant.

d. Because, the ordinance in question being in excess of competence, is unconstitutional.

e. Because, the proviso regarding establishment of Claim Tribunal being not sanctioned by the Constitution of India, 1950, is ultra-vires to it.

f. Because, the various clauses of the ordinance in question, separately and also collectively, are unconstitutional.

g. Because, the ordinance in question appears to be evade from Constitutional mandate.

h. Because, in any view of matter the present petition deserves to be allowed with cost.

P R A Y E R

It is, therefore, Most Respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (a) Issue a writ, order or direction in the nature of mandamus, declaring the Uttar Pradesh recovery of damage to public properties ordinance No.2 of 2020 ultra-vires to the constitution of India, 1950 (U.P. Ordinance No.2 of 2020(Annexure No.1)

- (b) Issue any suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case.

Dated: 16.03.2020

(Shashank Shri Tripathi)

Advocate

(In person)

Chamber No. 203,

High Court, Allahabad.

Mobile No. 7030993798

8052320298

E-mail: shri.lawchambers.com

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

AFFIDAVIT

IN

PUBLIC INTEREST LIGATION NO. _____ OF 2020

(Under Article 226 Constitution of India, 1950)

(DISTRICT – PRAYAGRAJ)

Shashank Shri Tripathi, Advocate _____Petitioner
(In person)

Versus

State of Uttar Pradesh. and others _____Respondents

Affidavit of Shashank Shri Tripathi, **Advocate**, aged About 25 years, Son of Mrs. Shimla Shri and Mr. Arvind Kumar Tripathi, Chamber No.203, High Court of Judicature at Allahabad R/o 69, Bandhawa Tahirpur, Jhunsi, Prayagraj, PIN-211019, U.P. Religion: Hindu. Occupation- Advocacy
(Deponent)

I, the deponent named above do hereby state on oath as under: -

1. That the deponent is the sole petitioner in the above-mentioned writ petition and doing pairavi himself and as such, he is well acquainted with the facts and circumstances of the case deposed to below. A photostat copy of the Identification Proof of the deponent, i.e. Aadhar Card No. 404329545689 is being enclosed herewith.

I, the deponent above named, do hereby swear and verify and declare that the contents of paragraph No.1 of this affidavit and those of para nos. 1, 2, 3, 4, 5 & 7 of the accompanying WRIT petition are true to my personal knowledge and those of para nos6, 9, 10, 14, 15, 16, 17, 18, 19, 20 & 21 of the accompanying WRIT petition are based on perusal of records, and those of paragraph nos.11 of the accompanying writ petition are based on information's receive those of para nos. 8, 12, 13, 22 & 23 of the accompanying WRIT petition are based on legal advice which all I believe to be true nothing material has been concealed and no part of it is false.

So, help me God.

Shashank Shri Tripathi
(Deponent)

I, **Devendra Kumar Dwivedi**, Advocate, High Court, and Allahabad do hereby declare that the person making this affidavit and alleging himself to be the deponent, namely, Mr. Shashank Shri Tripathi, Advocate is known to me personally.

Devendra Kumar Dwivedi
(Advocate)
Adv. Roll No. A/D-0128/12

Solemnly affirmed before me on this_____ th day of March, 2020 at about _____ a.m./p.m. by the deponent who has been identified by the aforesaid Advocate.

I have satisfied myself by examining the deponent that he has understood the contents of this affidavit which has been read over and explained to him by me.

OATH COMMISSIONER.

.....
IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
.....

ANNEXURE NO. (1)

IN
PUBLIC INTEREST LIGATION NO. _____ OF 2020
(Under Article 226 Constitution of India, 1950)

(DISTRICT – PRAYAGRAJ)

Shashank Shri Tripathi, Advocate _____Petitioner
(In person)

Versus

State of Uttar Pradesh. and others _____Respondents

The Copy of the UP Ordinance No 2 of 2020

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
.....

ANNEXURE NO. (2)

IN
PUBLIC INTEREST LIGATION NO. _____ OF 2020
(Under Article 226 Constitution of India, 1950)

(DISTRICT – PRAYAGRAJ)

Shashank Shri Tripathi, Advocate _____Petitioner
(In person)

Versus

State of Uttar Pradesh. and others _____Respondents

**The Copy of the Judicial and Order dated
09.03.2020 passed by the Hon'ble Court in
Public Interest Litigation
(PIL) No.532/2020**

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
.....

ANNEXURE NO. (3)

IN
PUBLIC INTEREST LIGATION NO. _____ OF 2020
(Under Article 226 Constitution of India, 1950)

(DISTRICT – PRAYAGRAJ)

Shashank Shri Tripathi, Advocate _____Petitioner
(In person)

Versus

State of Uttar Pradesh. and others _____Respondents

**The Copy of the order dated 12.03.2020 in
Petition for Special Leave to Appeal (C)
No.6286/2020**