

Ram Naresh Shukla (In Adhar Card Ram ... vs State Of U.P. Thru. Prin. Secy. P.W.D. ... on 31 January, 2025

Author: Rajan Roy

Bench: Rajan Roy

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:6843-DB

Court No. - 2

Case :- WRIT - C No. - 965 of 2025

Petitioner :- Ram Naresh Shukla (In Adhar Card Ram Naresh) And 2 Others

Respondent :- State Of U.P. Thru. Prin. Secy. P.W.D. Lko. And 5 Others

Counsel for Petitioner :- Aman Kumar Shrivastav

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy,J.

Hon'ble Brij Raj Singh,J.

1. Heard counsel for the petitioners and Standing Counsel for the State.
2. Counsel for petitioners argued the matter for about ten minutes. When we started putting queries to the other side, Shri Vijay Bahadur Verma, Advocate appeared and stated that his client has filed a Public Interest Litigation for renewal of encroachment on land of the State, which is pending. He informed that earlier the petitioner had challenged the similar notice as has been challenged herein and the said petition was dismissed.
3. Counsel for the petitioners says that the notice was not under challenge in the said writ petition. He invites our attention to Para 27 where he claims to have quoted the relief clause of the first writ

petition bearing Writ C No. 5945 of 2024 (Awadhesh Kumar Batham and others vs. District Magistrate, Kheri and others). The said relief clause is as under:

"issue a writ, order or direction in the nature of mandamus thereby commanding the opposite parties not to demolish the shop of the petitioner situated at Dhakherwa Girijapuri Marg, Dhakherwa Chauraha, Lakhimpur Kheri and not to disturb the peaceful possession of the petitioner in the interest of justice."

4. A writ of mandamus was sought in the said petition not to demolish the shop of the petitioner. The notice which is impugned herein is in respect of the same shop and the notice is to the effect that if the encroachment is not removed from the Government land which is recorded in the name of Public Works Department then appropriate proceedings shall be initiated in a court of competent jurisdiction regarding the illegal encroachment. The notice refers to Section 441 IPC. This notice is dated 06.04.2024 and it is contained as Annexure No.1. The other notice dated 09.01.2025 is annexed as Annexure 2. The earlier writ petition, the relief clause of which has been quoted hereinabove was decided on 09.07.2024 that is after the issuance of the first notice dated 06.04.2024, which is under challenge herein. It is in respect of the same shops.

5. The petitioners though have cleverly quoted the order in para 27 though this should have been done in the first paragraph of the writ petition and have not annexed the order dated 09.07.2024. The said order dated 09.07.2024 rejecting the earlier writ petition and the relief claimed as quoted hereinabove reads as under :

"Heard learned counsel for the petitioners, learned standing counsel who appears on behalf of the opposite parties.

This petition has been filed by the petitioners with the following main prayer:-

"Issue a writ, order or direction in the nature of MANDAMUS thereby commanding the opp. Parties not to demolish the shop of the petitioner situated at Dhakherwa Girijapuri Marg, Dhakherwa Chauraha, Lakhimpur Kheri and not to disturb the peaceful possession of the petitioner in the interest of justice."

It is the case of the petitioners that one Anil Kumar son of Sri Lalbihari had got patta of shop situated at Dhakerwa Girjapuri Marg in the year 1988-89 and Sri Anil kumar surrendered his shop and then the said shop was allotted to the petitioners and they are running the shop continuously since 1989 and has also deposited fees. The land belongs to Zila Parishad, Lakhimpur Kheri and the Public Works Department had issued notice to the petitioners to remove their construction saying that it is an encroachment upon Public Road/District Road Dhakherwa Girja-puri Marg.

We have gone through the annexure no. 3 to the petition which is a notice dated 6.4.2024 issued by the Assistant Engineer (Construction Division-1 Lok Nirman Vibhag, Lakhimpur Kheri), wherein, it is evident that Gata No. 795 recorded as District Road has been encroached by the petitioners by constructing shop thereon.

We have also gone through page 21 of the writ petition which is a notice issued much earlier in year 2012.

This Court is of the opinion that the petitioners have not stated anywhere in their pleadings as to which Zila Panchayat has issued patta to the predecessor in interest of the petitioners for their shop allegedly situated in Zila Panchayat land, the petitioners have not even impleaded Zila Panchayat, Lakhimpur Kheri as respondent in this petition.

The writ petition is disposed of leaving it open for the petitioners to approach the appropriate forum in case, the shop in question is situated on Zila Panchayat land."

6. Apparently, in view of dismissal of the earlier writ petition, for the reasons given in the order dated 09.07.2024 which has been quoted hereinabove, as the shop in question is the same, the issue is also the same, the second writ petition is not maintainable merely because another notice dated 09.01.2025 has been issued which is no different from the earlier notice dated 06.04.2024.

7. The subject matter of the earlier writ petition was the proposed demolition of the shop and the same was preceded by notice dated 06.04.2024 which is challenged herein. How can the petitioners in the second writ petition challenge a notice issued prior to 09.07.2024 when the earlier writ petition was dismissed in respect of the same subject matter, is unfathomable. It is nothing but an abuse of the process of the court.

8. The writ petition is dismissed.

Order Date :- 31.1.2025 Pks [Brij Raj Singh,J.] [Rajan Roy, J.]