

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 547 of 2020

Petitioner :- Shashank Shri Tripathi

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

Counsel for Petitioner :- In Person

Counsel for Respondent :- C.S.C.

Hon'ble Govind Mathur, Chief Justice

Hon'ble Samit Gopal, J.

To assail constitutional validity of "The Uttar Pradesh Recovery of Damages to Public and Private Property Ordinance, 2020", this petition for writ is preferred.

Learned counsels appearing on behalf of the petitioner state that the Ordinance impugned deserves to be declared void being inconsistent with the provisions of Part-III of the Constitution of India. It is stated that in light of the law laid down by the Supreme Court in **Re: Destruction of Public & Private Properties v. State of A.P. and Others, (2009) (5) SCC 212**, a person is having a fundamental right to privacy. Such valuable right shall be seriously infringed by operation of the Ordinance of 2020. It is further submitted that the field wherein the Ordinance of 2020 is sought to be operated is already occupied and exhausted by the Central enactments i.e. Code of Criminal Procedure, 1973 and Prevention of Damage to Public Property Act, 1984. The Ordinance as such is nothing but an encroachment to the field occupied.

The Ordinance is arbitrary in its very nature. According to learned counsels, provisions of the Ordinance shall allow the persons to be viral for public at large as criminal without their adjudication for any criminal charge. The Ordinance as per learned counsels is also in contravention to the law laid down by the Apex Court in **Roger Mathew vs. South Indian Bank**

In the case aforesaid, the Supreme Court examined the entire scope of adjudication on legal issues by establishing tribunals without adequately equipped with judicial members. The Apex Court noticed that the exclusion of Judiciary from the control and influence of the Executive is not limited to traditional Courts alone, but also to the Tribunals being formed as an alternative to Court and being performing judicial functions. It is also emphasized that the intention of the Ordinance is only to frustrate and overrule the law laid down by a Division Bench of this Court **In-Re Banners Placed on Road Side In The City of Lucknow Vs. State of Uttar Pradesh (PIL No. 532 of 2020)**, decided on 9th March, 2020.

Having considered the arguments advanced and also of the facts and grounds referred in the petition for writ, we consider it appropriate to have a counter affidavit to have adequate response by the State of Uttar Pradesh. The State of Uttar Pradesh thus is directed to file a counter to the petition on or before 25th March, 2020. A copy of the counter affidavit shall also be supplied to counsel for the petitioner while submitting the same in Court.

Let this petition for writ be listed as a fresh case on 27th March, 2020.

Order Date :- 18.3.2020
VMA

(Samit Gopal, J.) (Govind Mathur, C.J.)