

Court No. - 3

Case :- WRIT - A No. - 25602 of 2017

Petitioner :- Suresh Chandra

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

Counsel for Petitioner :- Siddharth Khare, Ashok Khare

Counsel for Respondent :- C.S.C.

Hon'ble Krishna Murari, J.

Hon'ble Ravindra Nath Kakkar, J.

Heard learned counsel for the petitioner.

Challenge in this petition has been made to the order dated 19th May, 2017 passed by Consolidation Commissioner, U.P. placing the petitioner under suspension in contemplation of a disciplinary inquiry.

A perusal of the impugned order goes to show that a disciplinary inquiry is contemplated against the petitioner for exercising judicial power illegally by passing the order dated 25.09.2013 to favour one of the parties without considering the fact that the issue involves illegal transfer of the land.

Learned counsel for the petitioner vehemently contends that petitioner is entitled to protection granted under Section 49A of the U.P. Consolidation of Holdings Act. The said Section reads as under.

"49A. Protection of action taken under this Act and rules made thereunder.- No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or rules made thereunder."

A bare perusal of the aforesaid provision goes to show that protection is available to the officer only in respect of suit, prosecution or other legal proceedings done in good faith under the Act or Rules made thereunder. Further, the benefit would be available only when it is shown that the impugned act has been done in good faith, which could be a defence available to the incumbent and has to be established by evidence.

Merely because protection has been provided for any action done in good faith or intended to be done so under the Act or Rules, the same does not automatically act as a seal, placing a bar on the initiation of any disciplinary proceedings. Whether the act done by the petitioner is in good faith or not, can be decided only on the basis of evidence, as such, at the initial stage where only a disciplinary proceeding is contemplated and the petitioner has been placed under suspension, the provisions of Section 49A of the Act cannot be invoked for challenging

the suspension order.

In view of the above facts and discussions, we do not find any infirmity in the impugned order, which may require any interference by this Court while exercising powers conferred by Article 226 of the Constitution of India.

Writ petition is devoid of merit and, accordingly, stands dismissed.

However, in the facts and circumstances, we do not make any order as to costs.

Order Date :- 30.5.2017

VKS