

Court No. - 80

Case :- CRIMINAL MISC. WRIT PETITION No. - 5933 of 2021

Petitioner :- Brijbala Agrawal

Respondent :- State of U.P.

Counsel for Petitioner :- Ashish Agrawal, Pooja Agarwal

Counsel for Respondent :- Satish Chandra Mishra, Arvind Srivastava, Satya Prakash Singh

with

Case :- CRIMINAL MISC. WRIT PETITION No. - 2993 of 2021

Petitioner :- Premlata Agrawal And 2 Others

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Satish Chandra Mishra, Arvind Srivastava, Deepak Kumar Jaiswal, Sanjay Kumar Gupta, Satya Prakash Singh, Siddharth Shankar

Counsel for Respondent :- G.A., Ashish Agrawal, Ashok Pandey

Hon'ble Subhash Chandra Sharma, J.

Since both the petitions are related to the same order passed by learned City Magistrate on 18.02.2021 in case No. 03695 of 2020 under Section 145 Cr.P.C. Petition No. 5933 of 2021 is against the subsequent order passed by learned City Magistrate dated 25.02.2021 by which learned City Magistrate has directed the police to comply with the order dated 18.02.2021 by which proceedings under Section 145 Cr.P.C. were dropped as being not maintainable.

In writ petition No. 2993 of 2021 request has been made to issue writ in the nature of mandamus to get the order dated 18.02.2021 complied with.

Counter and rejoinder affidavits have been exchanged.

Heard learned counsel for the petitioners, learned counsel for the opposite party as well as learned A.G.A. for the State and perused the material on record.

The writ petition No. 5933 of 2021 has been filed with the following prayers:-

(i) A writ, order or direction in the nature of certiorari quashing the impugned order dated 25.02.2021 passed by the City Magistrate, Prayagraj in Case No. D-202002030003695 (Brijbala Agrawal/ Ayush Singhal and others Vs. City Magistrate), being without jurisdiction and as he had become Functous Officio after passing the final order on 18.02.2021 u/s 145 Cr.P.C. by which the proceedings were dropped; and

(ii) A writ, order or direction in the nature of mandamus restraining the respondents from delivering the possession to the respondents in pursuance of the impugned order dated 25.02.2021 and also during the pendency of the Civil Suit No. 165 of 2020 filed by the respondents (Rohan Singhal V/s Brijbala Agrawal).

and

The writ petition No. 2993 of 2021 has been filed with the following prayers:-

(i) A writ, order or direction in the nature of mandamus commanding the respondent Nos. 2, 3, 5 and 6 to handover the possession of the Ajanta Talkies (land/building in dispute) situated at 95/88 K.P. Kakkad Road, Prayagraj, Police Station Kotwali, District Prayagraj in pursuance to final order order dated 25.02.2021 passed by City Magistrate, Prayagraj in the proceeding of 145 Cr.P.C. in favour of the petitioners.

(ii) A writ, order or direction in the nature of mandamus commanding the respondent No. 7 and 8 not to interfere in peaceful possession of the petitioners over the Ajanta Talkies (land/building in dispute) situated at 95/88 K.P. Kakkad Road, Prayagraj, Police Station Kotwali, District Prayagraj.

It is submitted by learned counsel for the petitioner that when the order dated 18.02.2021 was passed on an application under Section 145 Cr.P.C. and proceedings were dropped as being not maintainable before the court concerned became defunct and no further order could be passed by the court concerned even though on 25.02.2021 learned court passed the order without giving an opportunity of hearing to the petitioner which caused prejudice to him, therefore, request to set it aside.

Learned counsel for the respondent opposed the prayer as aforesaid and contended that in this case civil suit was pending relating to the property in dispute prior to the initiation of proceedings u/s 145 Cr.P.C. therefore the proceedings u/s 145 Cr.P.C. were dropped due to pendency of civil suit. Learned S.D.M. passed the order to keep him in possession. Even in the

civil suit no prima facie was found to be made out in favour of the petitioner, as a result an application 6(c) for interim injunction was also dismissed. In this way, the order passed by the learned S.D.M. cannot be said to be unlawful and illegal and it was passed after giving an opportunity of hearing to him. It does not cause any prejudice to him even if hearing was not given. It is also contended that the writ jurisdiction is extraordinary jurisdiction which cannot be exercised to cure the illegality in the order, therefore there is no merit in the petition and is likely to be dismissed.

On considering the facts and circumstances of the case, submissions made by learned counsel for both the parties as well as learned A.G.A. for the State, perusal of record, it appears that, order dated 25.02.2021 was passed by learned S.D.M. subsequently, after passing the order dated 18.02.2021 without giving an opportunity of hearing to the petitioner which cannot be said to be in accordance with principles of natural justice. In such a situation it would be expedient to give an opportunity of hearing to the petitioner before passing any order against him otherwise it may cause prejudice to him. As a result it is set aside with direction to learned City Magistrate to pass an order afresh after giving an opportunity of hearing to both the parties within a period of 30 days from the date of production of certified copy of this order in accordance with law without giving any unnecessary adjournment to either of the parties.

Accordingly, this writ petition No. 5933 of 2021 is hereby **allowed** and order dated 25.02.2021 is set aside.

Since writ petition No. 2993 of 2021 is also related to the compliance of order in question in the aforesaid writ petition which cannot be given effect to unless fresh order is passed by the learned Magistrate after giving an opportunity of hearing to both the parties.

Accordingly, writ petition No. 2993 of 2021 is also **dismissed** as becoming **infructuous**.

Order Date :- 21.11.2023
Suraj Srivastav