

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 6788 of 2023

Petitioner :- Ram Swaroop Sahu And 4 Others

Respondent :- Nagar Nigam Jhansi And Another

Counsel for Petitioner :- Arvind Srivastava

Counsel for Respondent :- Gopal Krishna Pandey

Hon'ble Jayant Banerji,J.

1. Heard Shri Arvind Srivastava, learned counsel for the petitioners and Shri Gopal Krishna Pandey, learned counsel appearing for respondents.

2. The petition has been filed seeking the following reliefs;

(i) to issue an order or direction setting aside the impugned order dated 20.05.2023 (Annexure No.30 to this Petition) passed by the Civil Judge (Sr.Division), Jhansi.

(ii) to issue an order or direction setting aside the impugned order dated 01.09.2022 (Annexure No.22 to this petition) passed by Civil Judge (Sr.Div.), Jhansi.

(iii) to issue an order or directing directing the court below to decide the Injunction Application (Paper No.6-C-2) (Annexure No.21 to this Petition) filed by the applicants in the Suit No.366 of 2022 (Ram Swaroop Sahu and others Vs. Nagar Nigam Jhansi & another) pending before Civil Judge (Sr.Div.), District Jhansi.

(iv) any other order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case; and

(v) award any cost of this petition in favour of the applicants."

3. It appears that Original Suit No.366 of 2022 was filed by the

petitioners against the respondents seeking decree of permanent injunction for restraining the respondents for interfering and demolishing the suit property. Along with the aforesaid suit an Injunction Application (Paper No.6-C-2) was filed seeking temporary injunction. The suit was presented on 1.09.2022 and on the same day, the trial court observed that permanent injunction has been sought against Nagar Nigam, Jhansi and there is, prima facie, no sufficient ground for granting an ex-parte interim injunction without affording opportunity of hearing to the respondents. It was also observed that no apparent loss would be caused to the plaintiff if notice is issued to the respondents. Accordingly, notice was directed to be issued. Though another order has been passed on 1.09.2022 on Paper No.8-C-2 filed by the plaintiff seeking a spot inspection of the site by the court bailiff, which was allowed by the trial court, learned counsel has stated that he is not challenging this part of the order.

4. Learned counsel has referred to the extract of the Khatauni for 1425 F (Non-ZA) which, it is stated, pertains to the property in dispute, in order to establish the right of the petitioners thereon. It is contended that property in dispute was purchased by the petitioners by means of a registered sale-deed and possession was duly recorded in the sale-deed itself.

5. It is contended that thereafter several maps were sanctioned by the Jhansi Development Authority for constructions over the plot in dispute. It is stated that under the circumstances, the order impugned of 1.09.2022 was wrongly made inasmuch as an ad-interim injunction ought to have granted by the Court under the circumstances. It is further stated that an application 42-C-2 was filed on 20.05.2023 for granting an ad-interim injunction,

regarding the suit property. It is stated by the learned counsel that however, thereafter on the same day, the trial court directed that the application No.42-C-2 be put up on the date fixed and refused to pass any order thereon. It is submitted that plans were sanctioned by the Jhansi Development Authority, Jhansi on 17.03.2020 22.4.2020 and 26.12.2020, which all have been annexed as **Annexure Nos. 5, 7 and 10** to this petition. It is accordingly submitted that the petition ought to have allowed. Learned counsel for the petitioners in support of his contention has relied upon two judgments of the Supreme Court (i) ***Anand Prasad Agarwalla Vs. Tarkeshwar Prasad and others, (2001) 5 SCC 568*** (ii) ***Birwati Chaudhary and others Vs. State of Haryana and others, (2018) 9 SCC 458.***

6 Shri Pandey, learned counsel for Nagar Nigam, Jhansi has strongly opposed the petition and has stated that given the provision of sub-section (2) of section 80 CPC, the trial court was well within its right to direct issuance of notice after noticing that the respondent was the Nagar Nigam. It has further been stated that despite an application filed by the Nagar Nigam, before the trial court bearing Paper No.37-C-2, the original sanctioned map was never produced by the petitioners before the trial court. It is further stated that the sanctioned map of 17.03.2020 and 20.04.2020 reflects that they are sanctioned for the amended compounding plans submitted by the petitioners. It is further stated that none of the maps that have been produced before this Court in this petition have been filed before the trial court.

7. A perusal of the record reveals that the suit for permanent injunction was filed and one of the allegation made therein was that the land was duly purchased and building maps were

sanctioned by the Jhansi Development Authority. The trial court has noticed, as it is evinced from the order dated 3.10.2023, that those sanctioned maps have not been filed.

8. Given the facts and circumstances of the case and the material on record as well as the provision of Section 80 C.P.C, the order of the trial court dated 1.09.2022 directing issuance of notice, cannot be faulted. The application 42-C-2 was directed to be put up on the date fixed, which date fixed was 5.07.2023. Therefore there is no cause for interference in the order dated 20.05.2023.

9. As far as the prayer No.3 is concerned regarding a decision on the injunction application filed by the petitioners, the counsel for the parties are in agreement that the same can be decided by the trial court.

10. Accordingly, without entering into the merits of the matter, this petition is **disposed of** with a direction to the trial court to proceed with the consideration of the application for injunction Paper No.6-C-2 without granting any unnecessarily adjournment to either of the parties. It is made clear that no observation made herein shall be taken as an observation on merits of the case of either of the parties. Needless to add the trial court would consider the application on the basis of the material available on its record.

Order Date :- 16.10.2023

SFH

(Jayant Banerji, J.)