

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 7519 of 2023

Petitioner :- Kailash Chandra Gupta

Respondent :- Rajendra Kaur

Counsel for Petitioner :- Subodh Kumar

Counsel for Respondent :- Alok Tiwari

Hon'ble Prakash Padia,J.

1. Heard Shri Udit Chandra, learned counsel for the petitioner and Shri Alok Tiwari, learned counsel for the contesting-respondent.

2. The present petition under Article 227 of the Constitution of India has been filed by the petitioner, challenging the order dated 27.4.2023 passed by the Additional District Judge, Court No. 3, Pilibhit in Civil Revision No. 19 of 2022 as well as order dated 22.3.2022 passed by the Prescribed Authority/Civil Judge (Senior Division), Pilibhit in P.A. Execution Case No. 1 of 2019, with a further prayer for a direction to the respondent for implementation of the order dated 15.3.2019 as already ordered by the Execution Court on 1.4.2021 & 5.8.2021 in Execution Case No. 1 of 2019.

3. The facts as stated in the petition are that the petitioner filed P.A. Case No. 11 of 1987 for release of tenanted accommodation. The details of the tenanted accommodation has been mentioned in the plaint of P.A. Case.

4. It is further stated that a written statement was filed by Subhash Chandra. After filing of the written statement, Subhash Chandra did not contest the matter and had lead no evidence.

5. The Prescribed Authority by order dated 27.7.2012 has partly allowed the application filed under section 21(1)(a) of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13

of 1972). The Prescribed Authority, by the aforesaid order, partly allowed the application and ordered for release of accommodation marked with letter B-1, E,F,G,H,B-4, but rejected the application so far as it relates to servant quarter and appurtenant land.

6. Against the said order, two appeals were filed, one being Appeal No. 64 of 2012 by tenant and another being Appeal No. 66 of 2012 by the present petitioner. Both the appeals were decided by a common judgment and order dated 15.3.2019. The appeal filed by the tenant being Appeal No. 64 of 2012 was dismissed in toto, however, the appeal filed by the present petitioner/landlord being Appeal No. 66 of 2012 was allowed in part with a specific direction that the land shown with letter B-1, E,F,G,H,B-4, servant quarter and adjacent land was released in favour of the landlord. The operative part of the judgment and order dated 15.3.2019 is as under:

"अपीलार्थी की ओर से प्रस्तुत पी.ए. अपील सं०-66/12 आंशिक रूप से न्यायहित में स्वीकार की जाती है तथा विद्वान अवर न्यायालय द्वारा पी.ए.वाद सं०-11/1987 कैलाशचन्द्र गुप्ता बनाम सरदार बुलाका सिंह आदि में पारिण निर्णय दिनांकित 27.07.12 में आंशिक रूप से संशोधन करते हुए प्रार्थी का प्रार्थना पत्र अंतर्गत धारा 21 (1)(ए) यू.पी. एक्ट सं० 13/1972 आंशिक रूप से प्रार्थी के प्रार्थना पत्र के साथ संलग्न नक्शे में अक्षर बी. 1.ई.एफ.,जी.एच.बी4. बिल्डिंग स्थित मोहल्ला सुनगढ़ी नखासा पीलीभीत के साथ सर्वेण्ट क्वार्टर और अनुलग्नक भूमि को भी अपीलांत/प्रार्थी (मकान मालिक) के पक्ष में रिलीज किया जाता है।

विपक्षी किरायेदार को आदेशित किया जाता है कि इस आदेश के 30 दिन के अंदर उक्त वादपत्र के साथ संलग्न नक्शे में वर्णित बी .1.ई.एफ.,जी.एच.बी4. बिल्डिंग स्थित मोहल्ला सुनगढ़ी नखासा पीलीभीत जिसके पश्चिम प्रार्थी की भूमि, पूरब प्रार्थी के भाई सुभाष चन्द्र का हिस्सा, उत्तर इसी कोठी की अनुलग्नक भूमि, दक्षिण अन्य अनुलग्नक भूमि के साथ सर्वेण्ट क्वार्टर और अनुलग्नक भूमि को भी खाली कर इसका कब्जा व दखल अपीलांत प्रार्थी को सौंप दें।"

7. The landlord based on judgment dated 15.3.2019 passed in Appeal No. 66 of 2012, filed Execution Case No. 1 of 2019.

8. The Prescribed Authority/Additional Chief Judicial Magistrate, Court No. 1, Pilibhit, passed an order dated 1.4.2021 directing that the possession of

accommodation in pursuance of the order dated 15.3.2019 passed in Appeal No. 66 of 2012 be handed over to the petitioner. The order dated 1.4.2021 reads as under:

"प्रार्थी / भू-स्वामी द्वारा प्रस्तुत पी०ए० इजराय प्रार्थना-पत्र कागज सं. 4 ग स्वीकार किया जाता है तथा प्रभारी निरीक्षक, पुलिस थाना सुनगढ़ी, जनपद पीलीभीत को आदेशित किया जाता है कि वह पी० ए० अपील सं 66/2012 में माननीय तृतीय अपर जिला एवं सत्र न्यायाधीश पीलीभीत द्वारा पारित निर्णय व आदेश दिनांकित 15.03.2019 के अनुपालन में प्रार्थी / भू-स्वामी को इजराय प्रार्थना-पत्र के साथ संलग्न नक्शा नजरी में प्रदर्शित स्थान बी.1 ई एफ, जी एच.बी.4., एवं शेष अनुलग्नक भूमि को विपक्षीगण से अवमुक्त कराकर उसका कब्जा प्रार्थी / भू-स्वामी को नियमानुसार दिलवाकर, अपनी आख्या न्यायालय में दिनांक 08.04.2021 तक प्रस्तुत करना सुनिश्चित करें। तदनुसार परवाना दखल जारी हो। प्रार्थी/ भू-स्वामी नियमानुसार आवश्यक पैरवी अविलम्ब करें।"

9. It is further stated that as the order dated 1.4.2021 was not complied with, as such, a further order dated 5.8.2021 was passed on the application No. 27Ga of the petitioner, directing the In-charge Inspector, Police Station Sungarhi, District Pilibhit to handover the possession to the landlord. It is further stated that the brother of the petitioner filed an application No. 35Ga & 49Ga in Execution Case No. 1 of 2019, which were rejected by the Prescribed Authority by the order dated 3.1.2022.

10. It is further stated that now Execution Court has passed the order dated 22.3.2022, which is entirely different and the object of the said order is prolonging the execution proceedings. The petitioner being aggrieved with the order dated 22.3.2022 has preferred Civil Revision No. 19 of 2022, which has been dismissed by the Additional District Judge, Court No. 3, Pilibhit by order dated 27.4.2023. Both the aforesaid orders dated 22.3.2022 & 27.4.2023 have been challenged in the present petition.

11. Heard learned counsel for the parties.

12. Learned counsel for the petitioner has argued that once the Appeal No. 66 of 2012 was allowed by the Appellate Court by order dated 15.3.2019, the petitioner is entitled for possession of entire accommodation mentioned in the map annexed

along with the execution application.

13. On the other hand, learned counsel for the respondent has submitted that the map annexed along with the execution application is entirely different from the map annexed with the amended plaint. It is further argued by the learned counsel for the respondent that while passing the order dated 3.1.2022, the Prescribed Authority though has rejected the application No. 34Ga & 59Ga filed by Subhash Chandra Gupta, but directed the decree-holder to file map of P.A. Case No. 11 of 1987. In pursuance of the order dated 3.1.2022 passed by the Prescribed Authority, the map was submitted and the trial Court by an order dated 22.3.2022, clearly stating therein that the possession of the land, as mentioned in the plaint map and the decree of Appeal No. 66 of 2022 be enclosed and after delivery of possession to the landlord the report be submitted before the Prescribed Authority/Execution Court by the Court Amin. The Prescribed Authority has further ordered that along with the possession citation, the copy of the map annexed with P.A. Case No. 11 of 1987 and appeal be also annexed. Thus, it is clear that the Execution Court has passed just and lawful order, directing for delivery of possession of the land as mentioned in the plaint map and ordered to be given possession to the landlord/petitioner by the Appellate Court. The said order has been affirmed by the Revisional Court with the finding that the Revisional Court, while passing the order dated 22.3.2022 has neither explained the judgment dated 15.3.2019 rendered by the Appellate Court nor any amendment in the said order has been made or interpreted by the Execution Court. A perusal of the order dated 22.3.2022 passed by the Execution Court, also established that the Executing Court has passed the order for delivery of possession of tenanted accommodation as described in the plaint and for which release was ordered by the Appellate Court by order dated 15.3.2019. The Execution Court, while passing the order dated 22.3.2022 has also ordered that with parwana dakhil, the map of plaint be also annexed so that the possession is to be delivered to the decree-holder as per the order of the Appellate Court dated 15.3.2019. The operative part of the order dated 22.3.2022 is as under:

"प्रभारी निरीक्षक, पुलिस थाना सुनगढ़ी, जनपद पीलीभीत को आदेशित किया जाता है कि वह पी० ए० अपील सं. 66/2012 में पारित निर्णय व आदेश दिनांकित 15.03.2019 के अनुपालन में डिकीधारक / भू-स्वामी को नक्शा वादपत्र में प्रदर्शित स्थान B1.E.F.G.H.B4 (कोठी), A4.A5.A6.A2 (सर्वेन्ट क्वार्टर) और इसके साथ अनुलग्नक भूमि D1, D2, D3, A6, A7, D.B.C.D.E.B1.B4.B5.J.K. को विपक्षीय से अवमुक्त कराकर कब्जा भू-स्वामी को नियमानुसार दिलाकर, अपनी आख्या दिनांक 11.04.2022 तक प्रस्तुत करना सुनिश्चित करें। आदेश के साथ मूल पी० ए० वाद सं. 11/1987 की प्रति एवं मूल पी० ए० वाद या अपील सं. 11/1987 के साथ दाखिल किये गये नक्शे की प्रति संलग्न कर भेजी जाये। किसी भी जटिलता के निवारण के उद्देश्य से अमीन अदालत को निर्देशित किया जाता है कि वह दखल परवाना जारी होने के बाद कब्जे की कार्यवाही के सम्बंध में पुलिस बल के साथ मौके पर उपस्थित रहेंगे एवं इस संदर्भ में न्यायालय में आख्या प्रस्तुत करेंगे कि डिकीत सम्पत्ति पर अपीलीय न्यायालय के आदेशानुसार डिकीधारक को कब्जा दिला दिया गया। तदनुसार दखल परवाना जारी हो। भू-स्वामी नियमानुसार आवश्यक पैरवी अविलम्ब करे। पत्रावली पुलिस आख्या एवं अमीन आख्या हेतु दिनांक 11.04.2022 को पेश हो।"

14. In view of the above, the order dated 27.04.2023 passed by Additional District Judge, Court No.5, Pilibhit, in Civil Revision No. 19 of 2022 as well as the order dated 22.03.2022 passed by the Prescribed Authority/Civil Judge (S.D.), Pilibhit in Execution Case No.01 of 2019 are lawful orders and did not call for any interference by this Court in exercise of power under Article 227 of the Constitution of India. The misc. petition filed under Article 227 of the Constitution of India is dismissed.

15. No order as to costs.

Order Date :- 20.11.2023

saqlain