

Court No. - 51

Case :- WRIT - C No. - 32096 of 2023

Petitioner :- Kshama Kant Sharma

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Mahesh Prasad Vishwakarma, Ankur Vishwakarma, Kapoor Chandra Vishwakarma, Nitesh Vishwakarma

Counsel for Respondent :- C.S.C, Hari Narayan Singh

Hon'ble Chandra Kumar Rai, J.

1. Heard learned counsel for the petitioner, Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for State-respondents and Mr. Hari Narayan Singh, learned counsel appearing for respondent No.6/ Gram Sabha.

2. The instant petition has been filed for the following relief:

"(1) issue a writ, order or direction in the nature of mandamus commanding the respondent authority to restrain the respondent No.7 to interfere in the peaceful possession over the land of area 0.024 hectare of Arazi No.363 area 1.30030 hectare area purchased by the petitioner through the registered sale deed.

(ii) issue a writ, order or direction in the nature of mandamus commanding the respondent authority to make the measurement of the petitioner's land and construct the chak road if any over the Gram Sabha land."

3. This Court vide dated 27.09.2023 has directed the learned Standing Counsel to obtain instruction in the matter but instruction has not been received by learned Standing Counsel.

4. Mr. Abhishek Shukla, learned Additional Chief Standing

Counsel however submitted that there is a private dispute between the petitioner and respondent No.7. He further submitted that petitioner has prayed that respondent No. 7 be restrained from interfering with the peaceful possession of the Plot No. 363 area 0.024 hectare, which was purchased by the petitioner through a registered sale deed. He further submitted that a civil suit filed by the petitioner impleading respondent No. 7 as well as others being Suit No.195 of 2023 computerized Case No.UPAU 120008872023 is pending before the Civil Court and interim injunction is operating against the defendants. He further submitted that if there is any violation of injunction passed in civil suit, then petitioner can initiate the proceeding under Order 39 Rule 2A of Civil Procedure Code, as such, no interference is required in the matter.

5. In reply, learned counsel for the petitioner submitted that petitioner is owner of the land in question by way of registered sale deed, which has not been cancelled at all. He further submitted that petitioner's right has been interfered with by the private respondent as well as State-authorities, as such, the instant petition is maintainable. He further submitted that petitioner has already filed an application 19.07.2023 before the Sub Divisional Officer, Tehsil-Bidhuna, District-Auraiya in which order was passed that demarcation be made in accordance with law, but no demarcation has been taken place. He further submitted that authorities be directed to demarcate the petitioner's land in accordance with law and the authorities including private respondent be restrained from interfering with the right, title and possession of the petitioner till the demarcation is taken place in accordance with law.

6. I have considered the argument advanced by learned counsel for

the parties and perused the record.

7. There is no dispute about the fact that civil suit filed by the petitioner impleading the respondent No. 7 along with others is pending before the civil court and interim injunction is operating in the pending civil suit.

8. In view of the pendency of the civil suit in respect to the plot in dispute, the writ for mandamus under Article 226 of Constitution of India to settle private dispute cannot be entertained at the instance of the petitioner.

9. So far as demarcation of the plot in dispute is concern, it is always open to petitioner to initiate proper proceeding for demarcation as provided under Section 24 of U.P. Revenue Code, 2006 read with Rule 22 of U.P. Revenue Code, rules 2016 rather misc. application before the authorities.

10. Considering the entire facts and circumstances no interference is required in the matter.

11. Writ petition is dismissed with liberty to petitioner to press his pending Civil Proceeding or initiate proper revenue proceedings, if any, in accordance with law.

Order Date :- 18.10.2023

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