

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 9732 of 2023

Petitioner :- Rajesh Kumar And 4 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Vishal Agarwal

Counsel for Respondent :- C.S.C.,Kaushal Kishore Mani

Hon'ble Jayant Banerji,J.

1. Heard Shri Vishal Agarwal, learned counsel for the petitioner. Learned Standing Counsel appears for the State-respondents. Respondent no. 2- Gaon Sabha is represented by Shri Kaushal Kishore Mani, Advocate.

2. This petition has been filed to challenge the order dated 10.7.2023 passed by the Additional District Judge, Court No. 9, Saharanpur in Misc. Civil Appeal No. 9 of 2022 whereby the order of the trial court dated 20.1.2022 passed in Original Suit No. 841 of 2021 directing the parties to maintain status quo has been reversed.

3. The contention of the learned counsel for the petitioner is that the petitioners are residing over the disputed plot since the time of their ancestors and since the respondent nos. 1 and 2 started interfering in their possession, therefore, the suit for injunction was filed against them. It is admitted to the parties that the suit property is recorded in the revenue record as of the Gaon Sabha.

4. A perusal of the order passed by the 1st Additional Civil Judge (Senior Division)/A.C.J.M., Saharanpur in Original Suit No. 841 of 2021 reflects that the order was passed cursorily without considering the mandatory provision of Section 106(1) of the U.P. Panchayat Raj Act, 1947 which bars filing of a suit or other legal proceedings against a Gaon Sabha until expiration of two months next after notice in writing has been given to the Gaon Sabha and the plaint is required to contain a statement that such a notice has been delivered in or left at the office of the Gaon Sabha. It is further provided in sub-section (2) of Section 106 that no action such as is described in sub-section (1) shall be commenced otherwise than within six months next after the accrual of the cause of action.

5. In a copy of the plaint that has been filed today along with supplementary affidavit, the only averment made in paragraph

no. 11 of the plaint is that it is necessary to give a notice under Section 80 of the CPC to the defendant no. 1 but notice under Section 106 of the Panchayat Raj Act on the defendant no. 2-Gaon Sabha is not necessary.

6. Since, there is a bar of institution of a suit against the Gram Sabha without compliance of the provision of sub-section (1) of Section 106 of the U.P. Panchayat Raj Act, interference in the order impugned is declined, which order, even otherwise appears to be justified in the facts and circumstances of the case.

7. This petition is, therefore, **dismissed**.

Order Date :- 7.12.2023

A. V. Singh

(Jayant Banerji, J.)