

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 10150 of 2023

Petitioner :- Ritu Shukla

Respondent :- Union Of India And 5 Others

Counsel for Petitioner :- Amit Pandey, Santosh Kumar Kesarwani

Counsel for Respondent :- A.S.G.I., C.S.C., Prem Shanker Prasad

Hon'ble Jayant Banerji, J.

1. Heard learned counsel for the petitioner and Shri Prem Shanker Prasad, learned counsel appearing for the respondent nos. 1, 3 and 4. Learned Standing Counsel appears for the respondent no. 2.

2. This petition has been filed seeking the following relief:

"A. to set aside the impugned order dated 16.03.2022, passed by Civil Judge (Senior Division)/FTC, Varanasi in Original Suit No. 1197 of 2021 (Ritu Shukla & ors. Versus Vinay Kumar Singh & ors.), rejecting the application (paper no. 6-Ga-2) filed by the plaintiff/petitioner.

B. to set aside the impugned order dated 31.05.2023, passed by the Additional District Judge/ Special Judge (Prevention of Corruption Act) Special Court No.1, Varanasi in Misc. Civil Appeal No. 40 of 2022 (Ritu Shukla & Another Versus Vinay Kumar Singh & others.) dismissing the appeal of the plaintiff/petitioner, filed against Impugned order dated 16.03.2022.

C. to issue an order for direction restraining the respondent nos. 1, 3 & 4 (defendant nos. 2, 4 & 5) from releasing the amount of compensation regarding the suit property being Arazi No. 119 area 0.514 H., Arazi No. 140 area 1.603 H., Arazi No. 172 area 0.380 H. situated at Village Ralhupur, Pargana Ramnagar, Tehsil sadar, District Varanasi, during pendency of proceedings of the Original Suit no. 1197 of 2021 (Ritu Shukla & ors. Versus Vinay Kumar Singh & ors.) pending before Civil Judge (Senior Division)/FTC, Varanasi.

D. to direct the respondent nos. 1, 3 & 4 (defendant nos. 2, 4 & 5) to deposit the amount of compensation before trial court during pendency of Original Suit No. 1197 of 2021 (Ritu Shukla & ors. Versus Vinay Kumar Singh & ors.) under Order 39 Rule 10 CPC.

E. in addition to or in substitution above, to grant such other and further relief in favour of petitioners, which this Hon'ble Court may deem just and proper in the interest of justice.

F. award the cost."

3. The plaintiff-petitioner and the plaintiff-respondent no. 6 filed a suit against the private-defendant respondent no. 5 and the respondent nos. 1 to 4 seeking decree of permanent injunction against the defendant nos. 2 to 5 (who are the Union of India and its functionaries and the State of Uttar Pradesh) for paying the amount of compensation for acquisition of the suit property to the plaintiffs and not to the defendant-respondent. It appears that some of the respondents had filed a written statement. Along with the

suit, an application for temporary injunction bearing Paper No. 6C2 was filed seeking a temporary injunction that the amount of compensation for the acquisition be deposited in the court. Objections were invited and thereafter, by the order dated 16.3.2022, the application was rejected. The plaintiffs then filed an appeal challenging the aforesaid order dated 16.3.2022 passed by the trial court in Misc. Civil Appeal No. 40 of 2022. By the impugned order dated 31.5.2023, the appeal was dismissed.

4. The contention of the learned counsel for the petitioner is that the Union of India had admitted acquisition of the land in dispute but the trial court, only on the basis that notification of the acquisition was not filed, proceeded to reject the application for temporary injunction. It is further stated that a valid will was executed by the erstwhile owner of the acquired land in favour of the plaintiffs but the appellate court discarded consideration of the aforesaid will by stating that a prior sale deed was executed and that, therefore, the defendants cannot claim on the basis of the will deed.

5. A perusal of the plaint of the Original Suit No. 1197 of 2021 reflects that it alleges a registered will deed dated 16.1.2020 executed by one Ram Ratan Shukla in favour of the plaintiffs on 16.1.2020. Ram Ratan Shukla died on 29.1.2020. In paragraph no. 4 of the plaint, it is stated that the Inland Waterways Authority of India had acquired the suit property by means of a notification dated 6.9.2009. It is stated that the defendant first set, who is the defendant-respondent no. 5 in the present petition, got registered a sale deed dated 6.9.2018 without any monetary consideration from the aforesaid late Ram Ratan Shukla, which is a fraudulent document. It is stated that therefore on the basis of the aforesaid will, the plaintiffs were entitled to the amount of compensation.

6. A perusal of the impugned order passed by the trial court dated 16.3.2022 reflects that the trial court had observed that no copy of the notification had been filed by the plaintiff. It was therefore stated that it is not known that in the year 2009, in what manner and for what purpose the notification was issued and without perusing the notification, it is not possible to arrive at any decision. It was stated that as far as the sale deed dated 6.9.2018 is concerned, which is stated to have been executed fraudulently, it was noticed that the sale deed was attested by the husband of the plaintiff no. 1 himself. It was noticed that on the basis of the sale deed, the name of the defendant no. 1 was already recorded in the revenue records and therefore, the entitlement of the compensation or otherwise cannot be adjudicated at the stage of grant of

temporary injunction. The trial court observed that the matter has to be seen after the evidence is recorded and on the basis of preponderance of probabilities, the balance of convenience exists in favour of the defendant. Accordingly, the application was rejected.

7. By the impugned appellate order dated 31.5.2023, it was noted that as per the statement of the plaintiff, a sale deed was executed by the owner of the suit property in favour of the defendant no. 1. As such, the defendant no. 1 appeared to be a bonafide purchaser. It is noted that after two years of execution of the sale deed, the testator by means of a will had bequeathed only those movable properties, immovable land to the plaintiffs which was under his ownership. Accordingly, the appellate court deduced that since the land in dispute were sold prior to the execution of the will deed, it cannot be transferred by means of the will deed. It was further noted that no relief was sought regarding declaration of the sale deed as void. It was noted that no evidence had been produced that on which date, the fixation of the compensation was done by the competent authority of the acquired land and therefore, it was a question of evidence which can be decided after witnesses are examined. It was noted that the balance of convenience is also not in favour of the plaintiff-appellants and irreparable injury would be caused to the defendant if temporary injunction is granted. Accordingly, the appeal was dismissed.

8. It needs mention that even in this petition, the plaintiff-petitioner has not filed any copy of the notification by which the land was acquired. In case the land was acquired under the Land Acquisition Act, 1894, it is an special act that provides for the procedure of acquisition, the assessment of compensation, apportionment of compensation as well as adjudication of disputes connected thereto, provision of reference under Section 18, and a right of appeal, which would render the maintainability of the suit questionable. It appears that material facts have not been disclosed in the suit. No interference is called for in the orders impugned and this petition is, therefore, **dismissed**.

9. Registrar (Compliance) is directed to communicate this order to the court concerned within a period of fifteen days from today.

Order Date :- 8.12.2023

A. V. Singh

(Jayant Banerji, J.)