

Court No. - 51

Case :- WRIT - C No. - 33922 of 2023

Petitioner :- Smt. Ranjeeta Maurya

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Vijay Pratap Singh

Counsel for Respondent :- C.S.C., Aprajit Yadav, Shyam Lal Yadav

Hon'ble Chandra Kumar Rai, J.

1. Instruction dated 3.10.2023 placed by Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents is taken on record.

2. Heard Mr. Ayub Khan holding brief of Mr. Vijay Pratap Singh, Counsel for the petitioner, Mr. Shyam Lal Yadav and Mr. Aprajit Yadav, Counsels for respondent no.5 and Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents.

3. On 27.9.2023 following order was passed by this Court:-

"1. Heard Mr. Ayyub Khan, holding brief of Mr. Vijay Pratap Singh, learned counsel for the petitioner, learned Standing Counsel for the State-respondents and perused the material available on record.

2. The instant petition has been filed for mandamus directing the Sub Divisional Magistrate, Tehsil-Soraon, District-Prayagraj, respondent no.2, to decide Case No.8982 of 2023, under Section 116 of the U.P. Revenue Code, 2006, within stipulated period as well as to restrain the respondents from changing the nature or making any construction over the plot in dispute till final decision of Case No.8982 of 2023, under Section 116 of the U.P. Revenue Code, 2006.

3. Learned counsel for the petitioner submitted that the aforementioned suit for partition, filed at the instance of the petitioner is pending before respondent no.2. He further submitted that the trial court, vide order dated 8.9.2023, granted interim order, directing both the parties to maintain status quo till the next date fixed in the matter. He further submitted that on 20.9.2023, the interim order was further extended till the next date fixed in the matter and the case was fixed for 22.9.2023. He submitted that on 22.9.2023, an application for extension of interim order was filed, which has been annexed as Annexure No.7 to the writ petition but no order has been passed by the court, as such, contesting respondents are raising construction over the plot in dispute. He submitted that necessary direction be issued restraining the respondents from raising construction over the plot in dispute.

4. Considering the facts and circumstances of the case, Sub Divisional Magistrate, Tehsil-Soraon, District-Prayagraj, respondent

no.2, is directed to pass order on the stay extension application dated 22.9.2023, by the next date fixed in the matter i.e. 03.10.2023.

5. Put up this matter, as fresh, on 04.10.2023.

6. Registrar (Compliance) is directed to communicate this order to the respondent no.2 within two days."

4. In pursuance of the order dated 27.9.2023, Sub Divisional Officer has passed the order dated 3.10.2023 which runs as under:-

"आदेश पत्रक

न्यायालय उपजिलाधिकारी

मण्डल प्रयागराज, जनपद प्रयागराज, तहसील सोरांव

वाद संख्या 8982/2023

कंप्यूटरीकृत वाद संख्या T202302030308982

श्रीमती रंजीता मौर्य बनाम हमीदा बीबी आदि

अंत्रगत धारा 116, अधिनियम: उत्तर प्रदेश राजस्व संहिता 2006

आज पत्रावली पेश। उभयपक्ष हाजिर आए। वादी द्वारा PD हेतु बात कही गई एवं स्थगत प्रार्थना पत्र को बढ़ाने हेतु पत्र दाखिल किया गया। प्रतिवादी सं० 3 द्वारा उपरोक्त आराजी में अलग-2 खाते में संबंध म बात की गई। RI/ ले० को इस निर्देश के साथ पत्र जारी हो कि दो कार्यदिवस में संबंधित पक्षों के कब्जे एवं खाते के संबंध में स्पष्ट आख्या प्रस्तुत करें। पत्रावली वास्ते अग्रिम कार्यवाही दिनांक 22.9.23 को पेश हो। तब तक के लिए स्थगन आदेश बढ़ाया जाना न्यायोचित प्रतीत होता है।

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22.9.2023- अधिवक्तागण न्यायिक कार्य से विरत है। सा० ति० 26.9.2023।

26.09.2023- पी० ओ० महोदय प्रशासनिक कार्य में व्यस्त। सा० ति० 27.9.2023।

27.09.2023- अधिवक्ता न्यायिक कार्य से विरत है। सा० ति० 29.9.2023।

29.09.2023- अधिवक्तागण न्यायिक कार्य से संविरत है। सा० ति० 3.10.2023।

03.10.2023- आज पेश। उभयपक्ष हाजिर आए। वादी के स्टे प्रा० पत्र 22.9.23 के क्रम में सुना। प्रतिवादी संख्या 3 द्वारा बताया गया कि वादी 640 ख में सहखातेदार नहीं है। प्रतिवादी संख्या 3 द्वारा 640 ख/0.0640 हे० अकृषक घोषित किये जाने संबंधी पत्रालेख दिनांक 27.9.23 के क्रम में उपरोक्त आराजी पर एवं दिनांक 27.9.23 के आदेश के क्रम में उपरोक्त स्टे प्रा० पत्र गाटा संख्या 640 ख को छोड़कर 640 एवं 640 ग पर लागू

किया जाने देना न्यायोचित प्रतीत होता है। अतः आदेश दिनांक 8.9.23 गाटा संख्या 640 ख हेतु शून्य समझा जाए। पत्रावली वास्ते अग्रिम कार्यवाही दिनांक 1.10.23 पेश हो।

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सत्य प्रतिलिपि"

5. Counsel for the petitioner submitted that Sub Divisional Officer has passed the order dated 3.10.2023 in arbitrary manner with respect to plot No. 640 Ka. He further submitted that order dated 8.9.2023 passed for maintaining status quo in the aforementioned partition suit in respect to plot No. 640 Ka and 640 Ga has been made operative but with respect to plot No. 640 Kha order of status quo has been made inoperative without any basis. He submitted that respondents are raising construction over the plot in dispute, as such, necessary direction be issued restraining the contesting respondents from raising construction over the plot in dispute that plot Nos. 640 Ka, 640 Kha and 640 Ga. He further submitted that relief claimed in the plaint is in respect of all the three plots that is plot Nos. 640 Ka, 640 Kha and 640 Ga, as such, order of status quo is to be made operative for all the three plots.

6. On the other hand, Mr. Shyam Lal Yadav, learned Counsel for the contesting respondents submitted that suit filed by the petitioner is not maintainable. He further submitted that plot is Minjumla plot, as such, the remedy lies under Section 30 of the U.P. Revenue Code, 2006. He further submitted that suit for partition filed by the petitioner is pending before the Sub-Divisional Officer, as such, petitioner should press his pending suit in accordance with law rather writ of mandamus before this Court under Article 226 of the Constitution of India. He further submitted that even under the impugned order dated 30.10.2023, order has been passed maintaining the earlier order dated 8.9.2023 in respect to plot No. 640 Kha and 640 Ga, as such, no interference is required in the matter and writ petition is liable to be dismissed as petitioner has no right and title in respect to plot No. 640 Kha.

7. I have considered the arguments advanced by learned Counsel for the parties and perused the records.

8. There is no dispute about the fact that suit for partition filed by the petitioner is pending and there is also no dispute about the fact that plot which are in dispute are plot Nos. 640 Ka, 640 Kha and 640 Ga.

9. In pursuance of the order of this Court dated 27.9.2023, the order has been passed by Sub-Divisional Officer on 3.10.2023 that order for status quo shall be in operation in respect to plot Nos. 640 Kha and 640 Ga as petitioner is stated to be having no share in plot No. 640 kha, as such,

order of status quo shall not be operative in respect to plot No. 640 kha.

10. Order dated 3.10.2023 granting interim protection in respect of two plots and refusing the interim protection in respect of one plot is interlocutory in nature, as such, no interference can be made at this stage of the proceeding in exercise of jurisdiction under Article 226 of the Constitution of India by this Court. Needless to say that suit is pending before Trial Court, as such, petitioner can establish his claim in accordance with law in respect of all the three plots.

11. Considering the order dated 3.10.2023 as well as entire facts and circumstances, the instant petition is finally **disposed of** directing the respondent no.3, Sub Divisional Officer, Soraon, Prayagraj to decide the pending suit No. 8982 of 2023 for partition in accordance with law after affording proper opportunity of hearing to the parties expeditiously preferably within period of **three months** and the order for status quo which was granted in respect to plot Nos. 640 Ka and 640 Ga shall remain in operation till the pendency of the suit.

Order Date :- 12.10.2023

Vandana Y.