

Court No. - 40

Case :- WRIT - C No. - 35192 of 2023

Petitioner :- Naima Begum And Another

Respondent :- State Of U.P. And 23 Others

Counsel for Petitioner :- S.M. Iqbal Hasan

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard Shri S.M. Iqbal Hasan, learned counsel for the petitioners and learned Additional Chief Standing Counsel for the State respondents.

2. Present writ petition is preferred with the prayer to command the respondent authorities to restore possession of the house of petitioners situated in Mohalla Mahel Banwali Masjid Ke Pass, Qasba Ujhari, Tehsil Hasanpur, District Amroha. It is also prayed to direct the respondent authorities to recover and hand over the articles looted by the respondent nos.5 to 24 to the petitioners and direct the respondent authorities to pay the compensation for the damages caused and mental agony suffered by the petitioners.

3. Learned Additional Chief Standing Counsel raised preliminary objection regarding maintainability of the writ petition on the ground that the parties were in loggerhead in the Civil Suit No.113 of 2012. The said suit was decreed by judgement and order dated 22.08.2023 in favour of contesting respondent. The said judgement and order was subject matter of challenge in Civil Appeal No.68/2022 (Shamim Ahmad and others vs. Aas Mohammad and others) preferred by the petitioner. The same has been entertained by learned District Judge, Amroha on 18.09.2023. While considering the interim injunction application (6-C), the District Judge, Amroha has passed the order, which is reproduced as under:-

"Applicants/appellants has above application seeking for stay of the impugned judgement, order or decree till the disposal of the instant civil appeal on the very ground that they are owner-in-possession of the property in dispute and have filed above appeal with full hope and expectation of their success. Hon'ble High Court vide order dated 07.12.2012 passed in Writ Petition no.63161 of 2012 has directed the parties to maintain status quo over the property in suit until further order. But under the said judgment and decree respondents very desirous to illegally possess over the property in dispute. To substantiate the arguments, following case is also referred:

01- Mool Chand Yadav vs. Raza Buland Sugar Co. Ltd. Rampur and Others (SC) Civil Appeal No.3343 of 1982

in which Hon'ble Supreme Court has held that judicial approach requires that during the pendency of the appeal the operation of an order having serious civil consequences must be suspended when the appeal is admitted.

Considering the facts and circumstances of the case and in view of the case law, operation of the impugned judgement and decree is stayed till the disposal of the instant appeal subject to the condition that appellants would fully cooperate in the early disposal of the appeal"

4. He submits that even before filing the aforesaid appeal, alleged eviction was already took place and the same was not in dispute while pressing 6-C application by the petitioner (defendant). He submits that even in case petitioners allege that during the pendency of the appeal they were dispossessed with the help of local administration, the said aspect can also be examined by the Appellate Court in the appeal, which is stated to be pending consideration. The said disputed fact cannot be agitated in writ jurisdiction, whereas, the regular proceeding is pending consideration before learned District Judge.

5. The High Court cannot allow the constitutional jurisdiction to be used for deciding disputes for which remedies, under general law, civil or criminal, are available. The jurisdiction under Article 226 of Constitution of India is special and extraordinary and should not be exercised casually or lightly.

6. Considering the aforementioned facts and circumstances, we are not inclined to entertain the writ petition. It is always open for the parties to press the relief before the Appellate Court.

7. With these observations, the writ petition is ***disposed of***.

Order Date :- 3.11.2023

A. Pandey