

**Court No. - 38**

**Case :-** WRIT - C No. - 35606 of 2023

**Petitioner :-** Ram Prasad Sonkar And Another

**Respondent :-** State Of U.P. And 7 Others

**Counsel for Petitioner :-** Pranab Kumar Ganguli, Ashutosh Ganguli

**Counsel for Respondent :-** C.S.C.

**Hon'ble Ashutosh Srivastava, J.**

1. Heard Shri Pranab Kumar Ganguli, learned counsel for the petitioners and learned Standing Counsel for the State-respondents.

2. Considering the nature of the order that is proposed to be passed, the service of notice upon private respondents are being dispensed with.

3. It is the case of the petitioners that they have purchased the land contained in Arazi No. 698 vide sale deed dated 19.5.1992 from one Bakheru son of Talukdar Yadav and are in joint possession of the said land to the extent of 0.34 hectare and are cultivating Bazra crop and have also erected tin sheds, *nad*, *khutan* etc. The respondent Nos. 4 to 6 have also purchased land in the said Arazi No. 698 under the sale deed dated 23.10.1990 from Tilak son of Jagardev. Both the petitioners and the respondent Nos. 4 to 6 are in joint possession of the Arazi No. 698. The respondent Nos. 4 to 6 have instituted a suit for partition of the Arazi in question under Section 116 of the U.P. Revenue Code before the Sub Divisional Magistrate, Kerakat, Jaunpur on 17.3.2021. The petitioners are also a party in the said proceedings.

4. It is alleged that an *exparte* order came to be passed in the partition suit on 23.1.2023 (Annexure-5 to the writ petition). The petitioners on getting information about the *exparte* order have filed a restoration application on 18.5.2023 on which three dates were fixed, namely, 17.7.2023, 24.8.2023 & 26.9.2023. It is alleged that on all these dates no orders were passed on the application and the restoration application is pending as on date and is well within the knowledge of the respondent Nos. 4 to 6. It is next contended that the respondent Nos. 4 to 6 surreptitiously got an order passed by the respondent No. 7, who was holding the

post of Sub Divisional Magistrate at the relevant time to dispossess the petitioners. The respondent No. 8, who succeeded in office to the respondent No. 7 has also passed orders for dispossessing the petitioners even though they were very much aware that the restoration application is pending consideration and is fixed for 26.9.2023. Perusal of the orders passed by respondent Nos. 7 and 8, it is alleged that the petitioners have dispossessed from the land in questions on 25.8.2023 under which crop standing on the Arazi in question as well as the Nad, Khutan, etc., have been destroyed. It is contended that the action of the respondents is contrary to the Government Order dated 16.9.2015.

5. In the opinion of the Court, once the restoration application was stated to be pending and a date had already been fixed, which was well within the knowledge of the respondents, propriety demands that such an order for dispossessing the petitioners ought not to have been passed.

6. Learned counsel for the petitioners submits that the restoration application is still pending consideration and the private respondents are still bent upon from depriving the petitioners from the beneficial enjoyment of the land that they have purchased under the sale deed.

7. In the opinion of the Court, since the orders are yet to be passed on the restoration application, the writ petition can be disposed of by requiring the Sub Divisional Magistrate seized with the restoration application to pass appropriate orders on the restoration application expeditiously preferably on the next date fixed, in accordance with law after hearing all the parties concerned.

8. Till the orders are passed on the restoration application, the parties are direction to maintain status quo.

9. The writ petition stands ***disposed of*** accordingly.

**Order Date :- 13.10.2023**

Ravi Prakash

(Ashutosh Srivastava, J.)