

Court No. - 40

Case :- WRIT - C No. - 35496 of 2023

Petitioner :- Smt. Rihana

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Pankaj Kumar Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. In pith and substance, the petitioner is prayer to command the respondents to refrain respondent no.5 from interfering in the peaceful possession of the petitioner.

3. It transpires from the record that petitioner has filed Civil Suit NO.284/2023 (Smt. Rihana vs. Mohammad Ali) before Civil Judge (JD) Hawali, Meerut, wherein, direction was issued to maintain status quo vide order dated 28.04.2023. Counsel for the petitioner submits that inspite of the said direction, the contesting respondent, who is indulged in various criminal activities, is trying to grab the property of the petitioner and as such, this Court may come to the rescue and reprieve of the petitioner.

4. Learned Standing Counsel raises preliminary objection on the maintainability of the writ petition and submits that as there is serious dispute qua the rights/title of the property in question, the same cannot be adjudicated in writ jurisdiction under Article 226 of the Constitution of India. A writ petition for enforcement of the common law remedies under Article 226 of the Constitution of India is not ordinarily maintainable for such reliefs against persons, who do not have any public duties to perform. The petitioner has adequate and efficacious alternative remedy to move an application under Order XXXIX Rule 2A CPC and as such, this Court may not interfere in the matter.

5. Considering the facts and circumstances and the objection so raised by learned Additional Chief Standing Counsel, we are not at all inclined to issue any direction in the matter. In case an injunction order is being flouted or there is any breach of

injunction by the defendants/respondents, the appropriate remedy for petitioner is to approach the Competent Civil Court by moving an application under Order XXXIX Rule 2A CPC. It is also open for the petitioner to approach the Authority concerned in case any law and order situation is created on the spot.

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

Order Date :- 13.10.2023

A. Pandey