

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 11340 of 2023

Petitioner :- Imran Khan And 3 Others

Respondent :- Nagar Nigam Jhansi And Another

Counsel for Petitioner :- Manish Kumar Pandey,Devi Prasad Tripathi

Counsel for Respondent :- Gopal Krishna Pandey

Hon'ble Prakash Padia,J.

1. Heard learned counsel for the petitioner and Sri Gopal Krishna Pandey, learned counsel for respondents.

2. The present petition has been filed with the following prayer:-

"A) To set aside the judgment and order dated 16.10.2023 passed by Additional District Judge Court No. 1 Jhansi passed in Misc. Civil Appeal No.63/2022 (Imran Khan & others Vs Nagar Nigam and another) as well as order dated 30.09.2022 passed by Additional Civil Judge (J.D.) Court No.3 Jhansi in O.S. No.232 of 2021 (Imran Khan Vs Nagar Nigam).

B) To direct the respondents not to interfere in the peaceful possession of the shop-in-question and also not dispossess to the petitioner upon the shop in question."

3. Counsel for the petitioner has been placed before this Court a judgment and order dated 26.10.2023 passed by the Division Bench of this Court in Writ-C No. 36631 of 2023, which was filed by the petitioner. The order dated 26.10.2023 reads as follows:-

"1. Heard learned counsel for the petitioners, learned Standing Counsel for the State and learned counsel appearing for respondent Nos.2 and 3.

2. Leaned counsel for the petitioners submits that the petitioners have filed a suit being Original Suit No.232 of 2021 (Imran Khan and others v. Nagar Nigam Jhansi and another), which is pending before the Additional Civil Judge (JD)/Court No.3, Jhansi. He submits that respondent Nos.2 and 3 are not appearing in the said proceedings instead they are going to make allotment of the shop in question. He prayed that the said suit may be directed to be decided as expeditiously as possible.

3. Learned counsel for respondent Nos.2 and 3 undertakes to appear in the aforesaid suit proceedings pending before the Additional Civil Judge (JD)/Court No.3, Jhansi on a regular basis. He further undertakes that respondent Nos.2 and 3 will not create any impediment in the expeditious disposed of the aforesaid suit.

4. Considering the urgency of the matter, without expressing any opinion on the merits of the case, the writ petition is disposed of directing the concerned trial court to conclude the proceedings of Original Suit No.232 of 2021 expeditiously, preferably

within a period of six months from the date of production of certified copy of this order. If the trial court think it necessary, it may proceed with the suit proceedings on day to day basis. "

4. It reveals from perusal of the above that in the aforesaid writ petition, the only prayer made by the petitioner is to direct the court below to decide the Original Suit No. 232 of 2021. In the aforesaid suit, the respondents did not appeared in the proceeding instead they tried to make allotment of the shop in question, hence a prayer has been made for expeditious disposal of the Original Suit No. 232 of 2021.

5. It transpires from the perusal of the prayer made in the present petition that before the aforesaid writ petition was decided, an order was passed by the court below on 30.9.2022 rejecting the interim injunction application, which was filed in Original Suit No. 232 of 2021. Thereafter, an appeal being Misc. Appeal No. 63 of 2022 was filed. The same was also rejected vide order dated 16.10.2023.

6. In this view of the matter, this Court is of the opinion that the present petition is barred on the principles of res-judicata and constructive res-judicata. No relief could be granted to the petitioner.

7. With the above, the present petition is dismissed.

8. Petitioner is at liberty to approach the appropriate forum, if so advised.

Order Date :- 11.12.2023

S.K.