

Court No. - 40

Case :- WRIT - C No. - 39021 of 2023

Petitioner :- Digambar Singh

Respondent :- The State Of U.P. And 18 Others

Counsel for Petitioner :- Mata Achal Mishra, Ram Kumar

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 Sri F.A. Ansari, learned Standing Counsel for the State respondents.
2. Digambar Singh, S/o Nawal Singh has approached this Court for issuing direction in the nature of mandamus commanding the respondent nos.2, 3 and 4 to take necessary action against the private respondent nos.5 to 19, who are interfering in cultivation and farming in his bhumidhari land of Plot Nos.323, 344, 327, 343, 335 and 317-M, situated in Village Dhana Jivana, Tehsil Sadar, District Mathura within stipulated time.
3. Sri F.A. Ansari, learned Standing Counsel has raised preliminary objection regarding maintainability of this petition on the ground that earlier the petitioner's wife namely Yashoda and 5 others had approached this Court by preferring Writ C No.19754 of 2021 (Yashoda and 5 others vs. State of UP and 8 others) for the similar relief and a Division Bench of this Court had proceeded to pass a detailed order on 22.11.2021 and the writ petition was consigned to records. He submits that for the same plot/land, the present writ petition is liable to be treated as second writ petition. In view of Rule VII Chapter XXII of the High Court Rules, the second petition for the same relief is not maintainable and the same is liable to be dismissed with exemplary cost. The order dated 22.11.2021 passed in earlier writ petition reads as under:-

"This writ petition has been filed for a mandamus restraining the respondent nos.1 to 6, who are the State authorities, not to dispossess the petitioners from land of Khasra Nos.343, area 0.506 and 227, area 0.2355 Hectare situated in Village Dharmapura, Tehsil Sadar, District Mathura without following the due process. It has also been prayed that the authorities be directed to initiate inquiry and to pay compensation on account of unauthorized detention of petitioners by respondent no.7, who happens to be Sub-Inspector of police station concerned. According to petitioners, there is no order passed by any competent Court against them, yet the State authorities are compelling the petitioners to surrender their possession to private respondents and to settle their land dispute. Reliance is placed upon a judgment of this Court in Criminal Misc. Writ Petition No.16386 of 2020 (Shiv Kumar Verma and others Vs. State of U.P. and others), as also Government Order dated 30th January, 2021.

Perusal of records would go to show that petitioners are claiming right over the aforesaid plot of land on the basis of their ancestry for which a pedigree is disclosed in para 4 of the petition. It further transpires from record that part of land of the aforesaid plot number has been transferred, in respect of which Original Suit No.812 of 2020 is pending before the competent court. Another civil suit being Original Suit No.291 of 2020 is also pending, wherein relief of cancellation of sale deed dated 22.12.2020 has been sought. Apparently the sale deed is in favour of petitioner no.1, of which cancellation has been sought in the aforesaid suit. Petitioners, therefore, are also the persons having interest in the suit where substantive right of parties are yet to be dismissed.

During the pendency of the aforesaid suits some incident appears to have occurred on the spot, on account of which criminal proceedings under Sections 107 and 116 Cr.P.C. have been initiated. In that context the petitioners contend that the private respondents are forcing them to settle their dispute and to hand over the possession of the land to them.

Since the rights of the parties over the land in question are yet to be established and the proceedings are pending before the civil court, this Court in exercise of writ proceedings under Article 226 of the Constitution of India would not be justified in interfering in the matter, at this stage, or to protect the possession of one of the parties vis-a-vis other. It is always open for the parties to seek appropriate injunction in the pending proceeding before the civil court. Allegation as to whether the authorities of State are siding with one of the private parties also does not require any scrutiny from this Court, at this stage, inasmuch as a First Information Report has also been lodged in the matter in Case Crime No.361 of 2021 on 15th July, 2021 and the proceedings are pending. This Court therefore refrains from making any observation with regard to claim of either of the parties, on merits, particularly as the issues are yet to be resolved by the competent civil court.

Before concluding, however, it would be appropriate to clarify that in a case of kind where private parties are litigating over their rights, it would not be open for the State authority to take sides and the matter ought to be left to competent court to adjudicate such rights. The State Government has also issued government order, according to which police authorities are not expected to interfere in such circumstances. Any interference by the police authorities has to be as per law, alone. Senior authorities of the State, therefore, shall ensure that none of the police authorities interfere with the private rights of any of the parties and the matter will have to be left to be resolved by the competent court. The role of the police authorities would be restricted to maintenance of peace and tranquility in the locality, and to desist from any attempt to interfere with the possessory rights of the parties.

Subject to the observations made above, this writ petition is consigned to records."

4. Once the objection is raised then we have proceeded to examine the record in question and find that Yashoda is the wife of the first petitioner, who claims rights over the property in question. Categorical averment is mentioned in paragraph-6 of the writ petition, wherein the petitioner himself states that the wife of the petitioner had purchased the land of plot No.327 area 0.2355 hec. through registered sale deed dated 22.12.2020 from Shobha Ram

@ Om Prakash. She had earlier filed Writ C No.19754 of 2021 for issuance of writ of mandamus restraining the respondent nos.1 to 4, who are the State authorities not to dispossess the petitioner from the land of Khasra No.343 and 227 without following the due process of law and the same was consigned to record. From the record it is clear that the petitioner's wife Yashoda is recorded tenure holder and as such, the objection so raised by learned Standing Counsel is sustainable.

5. The issue of filing successive writ petition has been considered by the Hon'ble Supreme Court time and again and held that even if the earlier writ petition has been dismissed as withdrawn, Public Policy, which is reflected in the principle enshrined in Order 23 rule 1 C.P.C., mandates that successive writ petition cannot be entertained for the same relief. (Vide **M/s. Sarguja Transport Service Vs. State Transport Appellate Tribunal & Ors.**, AIR 1987 SC 88; **Ashok Kumar & Ors. Vs. Delhi Development Authority**, 1994 (6) SCC 97; and **Khacher Singh Vs. State of U.P. & Ors.**, AIR 1995 All. 338).

6. In **Dr. Buddhi Kota Subbarao Vs. K. Parasaran & Ors.**, AIR 1996 SC 2687, the Hon'ble Supreme Court has observed as under:-

"No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. However, access to justice should not be misused as a licence to file misconceived and frivolous petitions."

Similar view has been reiterated by the Supreme Court in **K.K. Modi Vs. K.N. Modi & Ors.**, (1998) 3 SCC 573.

7. In **Tamil Nadu Electricity Board & Anr. Vs. N. Raju Reddiar & Anr.** AIR 1997 SC 1005 the Hon'ble Supreme Court held that filing successive misconceived and frivolous applications for clarification, modification or for seeking a review of the order interferes with the purity of the administration of law and salutary and healthy practice. Such a litigant must be dealt with a very heavy hand.

8. In **Sabia Khan & ors. Vs. State of U.P. & ors.**, (1999) 1 SCC 271, the Hon'ble Apex Court held that filing totally misconceived petition amounts to abuse of the process of the Court and such litigant is not required to be dealt with lightly.

9. In **Abdul Rahman Vs. Prasoni Bai & Anr.**, (2003) 1 SCC 488, the Hon'ble Supreme Court held that wherever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further and refuse the party from pursuing the remedy in law.

10. In view of the above, the present writ petition is not

maintainable for seeking the same relief and is accordingly dismissed.

Order Date :- 12.12.2023
RKP