

Court No. - 40

Case :- WRIT - C No. - 38753 of 2023

Petitioner :- Smt.Pooja Yadav And 3 Others

Respondent :- Collector Bulandshahar And 2 Others

Counsel for Petitioner :- Suraj Mishra,Om Prakash Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard Shri Om Prakash Mishra, learned counsel for the petitioners and learned Additional Chief Standing Counsel for the State-respondents.
2. By means of the present writ petition, the petitioners have prayed for a writ of mandamus directing the respondent no. 2 to decide the application of the petitioners which is pending since 26.08.2023 and also prayed not to register the sale deed.
3. Sri Ambrish Shukla, learned Additional Chief Standing Counsel raised an objection regarding maintainability of the writ petition on the ground that admittedly, the petitioners had preferred a Civil Suit bearing No. 256 of 2022 on 20.09.2022 petitioners and it is stated that the dispute in question is private in nature. He submits that in case, there is disobedience or breach of injunction, the efficacious remedy is to prefer an application under Order XXXIX Rule 2A of Code of Civil Procedure, 1908 (CPC).
4. The core issue before us is whether the writ jurisdiction in the High Court is available for enforcement of such rights claimed by and against private individuals or against the State.
5. As per record, there is no doubt that the dispute is between private persons with respect to an immovable property. Further, a suit covering either directly a portion of the property, which is in dispute in the present case, or in any event some other parts of the same property, is already pending in the civil court/revenue court.
6. We do not agree that on account of this development, the petitioners are entitled to maintain this writ petition before this Court. It has repeatedly been held by this Court that regular suit is the appropriate remedy for settlement of dispute relating to property rights between the private persons or with the State and the remedy under Article 226 of Constitution of India shall not be available, except where violation of some statutory duty

on the part of a statutory authority is alleged.

7. 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.

8. Considering the facts and circumstances of the case, once the petitioners have already approached the competent civil court, we are not inclined to entertain the writ petition. Needless to say, it is always open to the petitioners to press this relief as available in law.

9. With the aforesaid observation, the writ petition stands **disposed of**.

Order Date :- 5.12.2023

Rama Kant