

Court No. - 51

Case :- WRIT - C No. - 39443 of 2023

Petitioner :- Champa Devi

Respondent :- State Of U.P. And 47 Others

Counsel for Petitioner :- Rahul Sahai

Counsel for Respondent :- C.S.C., Vibhu Rai

Hon'ble Chandra Kumar Rai, J.

1. Heard Sri Saumitra Anand, Advocate, holding the brief of Sri Rahul Sahai, learned counsel for the petitioner, Sri Abhishek Shukla, learned Addl. C.S.C. for the state-respondents and Sri Vibhu Rai, learned counsel for respondent no.48-Nagar Nigam.

2. Counsel for the petitioner submitted that the partition suit under Section 116 of the U.P. Revenue Code, 2006, filed on behalf of the petitioner along with prayer for interim relief is pending before respondent no.2 and the contesting respondents are raising construction over the land in dispute, as such, interim protection is required during the pendency of the suit proceeding. He also submitted that the court concerned has not passed any order on the interim relief application in the pending suit, as such, necessary direction be issued for the disposal of the pending application.

3. Mr. Abhishek Shukla, learned Addl. C.S.C. and Sri Vibhu Rai, learned counsel for respondent-Nagar Nigam submitted that the writ petition is not maintainable for the relief claimed in the matter. They further submitted that petitioner should press the suit proceeding in accordance with law.

4. I have considered the arguments advanced by learned counsel for the parties and perused the records.

5. There is no dispute about the fact that the partition suit filed at the instance of the petitioner is pending before respondent no.2 along with prayer for interim relief.

6. Considering the facts and circumstances of the case, without expressing any opinion on the merits of the case, this petition is disposed of with the direction to respondent no.2/Sub Divisional Magistrate, Sadar, District Gorakhpur to

decide the aforesaid interim application dated 4.7.2023, as expeditiously as possible, preferably within a period of 4 weeks, from the date of production of a certified copy of this order before the authority concerned, after affording proper opportunity of hearing to the parties concerned, in accordance with law. After deciding the application for interim relief, the entire suit be decided, in accordance with law, expeditiously, in the light of the provisions contained under Rule 109(10) of the U.P. Revenue Code Rules, 2016.

Order Date :- 7.12.2023

C.Prakash