

Court No. - 40

Case :- WRIT - C No. - 39696 of 2023

Petitioner :- Kanhayyalal

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Nagendra Kumar Singh

Counsel for Respondent :- CSC

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard Sri N.K. Singh, learned counsel for the petitioner and learned Standing Counsel for the State respondents.

2. Present writ petition is preferred inter-alia with following prayer:-

"1. To issue a writ of mandamus to the respondent no.2, Sub Divisional Magistrate, Tehsil Sikandararau, District Hathras to protect the property of the petitioner which is five bigha kaccha bagh and ten shops and one residential house behind the shop situated in Kasba Brahmanpuri, Purdilnagar, District Hathras from the hand of the private respondent nos.5 and 6, who are bhu-mafias of the area and without right or title over the property of the petitioner they are adamant to dispossess the petitioner from the aforesaid property of the petitioner and to take suitable action against the respondent nos.5 and 6 as per G.O. dated 08.05.2017 (Annexure No.3 to this writ petition) in the interest of justice."

3. Learned counsel for petitioner submits that the petitioner is permanent resident of Village Brahmanpuri, Purdilnagar, Tehsil Sikandararau, District Hathras and the ancestors of the petitioner had built ten pakka shops on the land in dispute. Once the private respondent nos.5 and 6 tried to interfere in the property in dispute, then the petitioner had preferred Original Suit No.479/2004 (Kanhaiya Lal Sharma vs. Gopal Babu Bharadwaj) for permanent injunction in the Court of Civil Judge (Senior Division), Hathras on 17.12.2004 and the same was decreed ex-parte on 25.01.2006. The petitioner is in possession of the property in question. He submits that direction may be issued to the respondent no.2 for ensuring compliance of the ex-parte decree/injunction order dated 25.01.2006 as the private incumbents are still creating all sort of hindrance in the premises in question.

4. Learned Standing Counsel submits that the dispute is between private respondents and petitioner and the writ petition is not maintainable as there is serious dispute qua the rights/title of the property in question and the same cannot be adjudicated in writ jurisdiction under Article 226 of the Constitution of India.

5. Considering the facts and circumstances and the objection so raised by learned Standing Counsel, we are not at all inclined to

issue any direction in the matter. In case the ex-parte decree/injunction is being flouted or there is any breach of injunction by the defendants/respondents, the appropriate remedy of the petitioner is to approach the Competent Civil Court by moving an application under Order XXXIX Rule 2A CPC.

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

Order Date :- 1.12.2023

RKP