

Court No. - 46

Case :- WRIT - C No. - 39721 of 2023

Petitioner :- Nisha Gupta

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Vijendra Kumar Mishra

Counsel for Respondent :- CSC, Vibhu Rai

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Syed Aftab Husain Rizvi, J.

Petitioner claims herself to be the owner of Plot No.52/1, admeasuring 0.55 decimal area situated at village Jateypur Uttar in Gorakhpur. According to petitioner, her plot abuts public passage, which is 15 feet wide. It is asserted that certain influential persons have encroached upon the passage and the Nagar Nigam is now trying to encroach upon petitioner's land, treating her land to be public land. Prayer, accordingly, has been made in the writ petition to restrain the Nagar Nigam from constructing pathway on petitioner's plot.

Sri Vibhu Rai, learned counsel for the respondent states that petitioner has already filed a civil suit, which fact is also disclosed in the writ petition. In the said suit, i.e. Original Suit No.987 of 2022, relief of injunction has been claimed against 18 individuals.

We have heard learned counsel for the parties and perused the materials on record. It transpires that there is an issue with regard to identity and demarcation of petitioner's Plot No.52/1, in respect of which a civil suit is already pending. The nature of dispute raised before this Court would require ascertainment of factual issues, which can more appropriately be examined by the Civil Court at the first instance. Argument advanced by learned counsel for the petitioner that since Nagar Nigam is not a party, as such no relief can be claimed in the suit, is not worthy of acceptance, inasmuch as it is always open for the petitioner, to seek appropriate impleadment in the pending suit or to file a fresh suit against the Nagar Nigam concerned. A writ petition would not be entertained for the nature of dispute raised by the petitioner before this Court.

Leaving it open to the petitioner to raise appropriate remedy before the competent forum, this petition is consigned to records.

Order Date :- 20.11.2023

SP/-