

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 11681 of 2023

Petitioner :- Mohd. Din And 5 Others

Respondent :- Muttalib

Counsel for Petitioner :- Himanshu Srivastava

Hon'ble Ashutosh Srivastava,J.

Heard Shri Himanshu Srivastava, learned counsel for the petitioners.

Considering the nature of the order that is proposed to be passed, the service of notice upon respondent is being dispensed with.

The present petition under Article 227 of the Constitution of India has been filed for expeditious disposal of the Interim Injunction Application (6C) under Order 39 Rule 1 CPC filed in Original Suit No. 1880 of 2023 (Mohd. Din and others versus Muttalib), pending before the Court of Civil Judge (Jr.Div.), Haveli, Saharanpur within the time frame fixed by this Court and till disposal of 6C application, parties may be directed to maintain status quo over the land in question.

Learned counsel for the petitioners has submitted that the suit has been filed for injunction restraining the defendant-respondent from installing water tank in the way of the petitioners situate over Khasra No. 429, area 0.010 hectare in Village Jaghaita Najeeb, Pargana Sarsawa, Tehsil Nakud, District Saharanpur.

In order to substantiate the case of the petitioners, learned counsel for the petitioners has invited attention of the Court to the plaint map, which has been filed at Page 35 of the petition, to show that the land identified by letters 'EFGH' is the house of the petitioners and the passage marked by letters 'ABCD' is being used for access to the Government road. He submits that the passage marked by letters 'ABCD' is only passage available to the plaintiffs-petitioners to access the road. The defendant under the garb of setting up the water tank over the plot No. 429 are digging up the said passage and blocking the ingress and egress of the petitioners and, therefore, a direction be issued to the Court concerned for expeditious disposal of 6C application.

Learned counsel for the petitioners submits that the Court below under the order dated 22.9.2023 being of the view that the exparte injunction was not liable to be granted to the petitioner, had issued notices inviting objections from the defendant. He submits that despite various opportunities being given to the defendant and various dates have not been fixed for filing the written statement, the defendant has not appeared nor filed written statement and is continuing with his activities to obstruct the passage of the plaintiffs-petitioners.

I have heard learned counsel for the petitioners and have perused the record.

From the plaint map annexed at Page 35, it is borne out that the passage marked by letters 'ABCD' is the only passage available to the petitioners to access the government road. The Court below has already issued notices to the defendant. Further, despite various dates being fixed, the defendant has not appeared to contest the 6C application. No objections or written statement has also been filed.

In the opinion of the Court, ends of justice would stand served, if directions are issued to the Court concerned, namely, Civil Judge (Jr.Div.), Haveli, Saharanpur seized with the injunction application paper No. (6C) under Order 39 Rule 1 CPC filed in Original Suit No. 1880 of 2023 (Mohd. Din and others versus Muttalib) to take up the same and pass appropriate orders thereon expeditiously preferably on the next date fixed or within three weeks from the date fixed upon service of certified copy of the order of this Court, in accordance with law.

Further considering the submissions of learned counsel for the petitioners that the ingress and egress of the petitioners has been restricted on account of the obstruction in the access to the Government road, it is provided that for a period of four weeks from the date of service of certified copy before the Court below or till the disposal of 6C application, whichever is earlier, the parties are directed to maintain status qua. All endeavour shall be made by the Court concerned to dispose of the 6C application within the time frame fixed by this Court.

Ordered accordingly.

Order Date :- 4.12.2023

Ravi Prakash

(Ashutosh Srivastava, J.)