

Court No. - 51

Case :- WRIT - C No. - 39788 of 2023

Petitioner :- Indrajeet And Another

Respondent :- State Of U.P. And 33 Others

Counsel for Petitioner :- Tripathi B.G. Bhai, Pramod Kumar Singh

Counsel for Respondent :- C.S.C., Ashok Kumar, Rajesh Kumar
Chitragupt, Sandeep Kumar

Hon'ble Chandra Kumar Rai, J.

1. Heard Sri Tripathi B.G. Bhai, learned counsel for the petitioners, Sri Ashok Kumar, learned counsel for private respondent nos. 29 & 30, Sri Abhishek Shukla, learned Addl. C.S.C. for the state-respondents and Sri Rajesh Kumar Chitragupt, learned counsel for respondent no.27- Nagar Panchayat.

2. Brief facts of the case are that petitioners have filed a suit under Section 144/134 of U.P. Revenue Code, 2006 for declaration with respect to Plot No.222/1 situated at Village-Dumariyaganj, Tappa- Hallaur, Pergana- Rasoolpur, District-Siddharth Nagar alongwith an application under Section 146 of U.P. Revenue Code, 2006. Petitioners filed a writ C No.13287 of 2020 Indrajeet versus State of U.P. and Others before this court for registration of the case as well as for passing order on pending stay application. This Court vide order dated 2.9.2020 disposed of the Writ C No.13287 of 2020 directing the trial court to pass appropriate orders on stay application within period of 3 months. Trial Court vide order dated 6.1.2021 dismissed the stay/injunction application filed by petitioners. Revision filed by petitioners against the order dated 6.1.2021 was also dismissed by Board of Revenue vide order dated 16.6.2023 although during pendency of the revision interim order for maintaining status quo was passed by Board of Revenue. Petitioners filed an application dated 22.6.2023 as well as 27.6.2023 before Sub Division Officer that contesting respondents are bent upon to raise constriction over disputed plot, as such, protection be granted, but no steps were taken by the authorities. Petitioners challenged the order of Board of Revenue dated 16.6.2023 before this court through Writ C No.2463 of 2023 which was disposed of by this court vide order dated 8.8.2023 directing the trial court/Sub Divisional

Officer to pass appropriate orders on the application dated 22.6.2023 by the next date fixed in the matter and till the disposal of the application dated 22.6.2023 status quo was ordered to be maintained. Trial Court/Sub Divisional Officer vide order dated 21.10.2023 restrained the parties from transferring the disputed plot but no order has been passed restraining the parties to raise construction over the plot in dispute hence this writ petition on behalf of petitioner challenging the order dated 21.10.2023, passed by respondent no.2-Sub Divisional Officer, Dumariyaganj, District Siddharth Nagar, passed in Case No.T202017630402017 of 2017 (Indrajeet and another vs. Ashok Kumar and Others), under Section 144 of the U.P. Revenue Code, 2006 as well as for mandamus, directing the opposite party not to raise construction over the land in dispute and to maintain status quo with regard to nature and possession over the land in question during the pendency of the suit.

3. Counsel for the petitioners states that the suit under Section 144 of the U.P. Revenue Code, 2006 has been filed on behalf of the petitioners which is pending before respondent no.2. He submitted that under the impugned order, an injunction order has been passed only restraining the parties from creating 3rd party interest in respect to the land in dispute but no order has been passed restraining the parties to raise construction. He further submitted an application dated 22.6.2023 was filed by the petitioners, praying for maintaining status quo as well as for restraining the defendants from raising construction and for creating 3rd party interest in respect to land in dispute but the S.D.O. has passed only an order only for restraining the parties to create 3rd party interest in respect to plot in dispute, although the contesting respondents are adamant to raise construction over the plot in dispute. He also submitted that the earlier writ petition filed by the petitioners was disposed of, directing respondent no.2 to decide the application dated 22.6.2023, expeditiously and till the disposal of the application, status quo was ordered to be maintained by the parties in respect to the property in question. He submitted that the S.D.O. without considering the case of the petitioners as well as the averments made in the application dated 22.6.2023, passed the injunction order only in respect to creation of 3rd party interest but the other prayer has not been considered by the S.D.O. which is wholly illegal. He

also submitted that necessary direction be issued for disposal of the pending suit filed in the year 2020 in accordance with law and till the disposal of the suit, the parties may be directed to maintain status quo with respect to nature and possession of the plot in dispute as defendants are adamant to raise construction over the plot in dispute.

4. Mr. Ashok Kumar, learned counsel for the private respondent nos. 29 & 30, Mr. Abhishek Shukla, learned Addl. C.S.C. and Mr. Rajesh Kumar Chitragupt, learned counsel for respondent no.27-Nagar Panchayat submitted that the writ petition is liable to be dismissed on the ground of alternative remedy as against the order of the S.D.O., petitioner can file revision before the revisional court.

5. Mr. Ashok Kumar, learned counsel for respondent nos. 29 & 30 further submitted that in pursuance of the order of this Court dated 8.8.2023, an order has been passed by respondent no.2/S.D.O., restraining the parties from creating any 3rd party interest, as such, no further interference is required in the matter. He further submitted that respondent nos. 29 & 30 are not going to raise any construction, as such, there is no necessity to pass any other interim order except the order restraining the parties to create any 3rd party interest, which has already been passed by respondent no.2. He also submitted that the suit may be decided in accordance with law.

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

7. There is no dispute about the fact that the suit under Section 144 of the U.P. Revenue Code, 2006 filed by the petitioners is pending before respondent no.2 wherein no written statement has been filed by the contesting respondents till date. There is also no dispute about the fact that in pursuance of the order of this Court dated 8.8.2023, the S.D.O. has passed an injunction order, only restraining the parties from creating any 3rd party interest in respect to disputed plot.

8. Perusal of the plaint of suit under Section 144 of U.P. Revenue Code, 2006 as well as the application for interim relief reveals that petitioners have prima facie case for an interim protection for maintaining status quo in respect to

plot in dispute. It is also material that this Court had directed respondent no.2 to decide the application dated 22.6.2023 and had also directed to maintain status quo till the disposal of the application but the S.D.O. has not given any reason in the impugned order as to why the order for maintaining status quo should not be granted.

9. Considering the facts and circumstances as well as the nature of the suit filed by the petitioners, it will be appropriate that status quo with respect to nature and possession of the plot in dispute be maintained by the parties so that the disputed property may not be affected in any manner.

10. In view of 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 to decide the aforesaid proceedings under Section 144 of the U.P. Revenue Code, 2006, as expeditiously as possible, preferably within a period of 3 months, 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.

11. For a period of 3 months or till the disposal of the aforesaid suit, whichever is earlier, strict status quo with respect to nature and possession of the plot in dispute shall be maintained by the parties.

12. The impugned order dated 21.10.2023 passed by respondent no.2/S.D.O. is modified accordingly.

13. It is made clear that the trial court/respondent no.2 shall decide all the pending applications including the impleadment application dated 25.7.2023 before deciding the suit on merit.

14. Notice has not been issued to other private respondents as the suit is to be decided on merit by trial court although other private respondent can file recall application before this court if they will have any grievance against this order.

Order Date :- 30.11.2023/C.Prakash