

Court No. - 40

Case :- WRIT - C No. - 40536 of 2023

Petitioner :- Santosh Kumar Maurya

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Vinod Kumar, Lal Ji Maurya

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard learned counsel for the petitioner and Ms. Uttara Bahuguna, learned Additional Chief Standing Counsel for the State-respondents.

2. By means of this petition, the petitioner has sought following principal reliefs:-

"i) Issue a writ, order or direction in the nature of mandamus directing the respondents to permit the petitioner alongwith his family to reside in the house in dispute i.e. House/Plot No.1A Mohalla Buxpur (now Radha Nagar) City Fatehpur till disposal of the pending Appeal No.149/74 of 2017 (Gangadeen Maurya vs. Rambali and others).

ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to recover the entire household articles which have been taken away by the concerned police with the collusion respondent no.3 to 9 and seized the same without having any judicial order in this regard."

3. The matter was taken up on 04.12.2023 and on the said date, following order was passed:-

"Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

The grievance of the petitioner in the present writ petition is that he has been illegally dispossessed from his residential house by private respondents in collusion with local police led by Station House Officer of Police Station Radha Nagar, District Fatehpur and the belongings of his family were thrown out on the road. It has been stated that despite representations to the Superintendent of Police, Fatehpur and Additional Director General of Police, Prayagraj Division, Prayagraj, no action has been taken by the aforesaid authorities against the Station House Officer, Radha Nagar, Fatehpur.

Put up as fresh case on 11.12.2023 before the appropriate Court.

On that date, the Station House Officer, Police Station Radha Nagar, District Fatehpur, the Superintendent of Police, Fatehpur and Additional Director General of Police, Prayagraj Division, Prayagraj shall be personally present in the Court.

This case shall not be treated as tied up or part heard to this Bench."

4. In compliance of the aforesaid order, Sri Chandra Prakash, I.G. Range, Prayagraj Division, Prayagraj on behalf of Sri Bhanu Bhaskar, Prayagraj Zone, Prayagraj, Sri

Udai Shanker Singh, Superintendent of Police, Fatehpur (respondent no.10) and Sri Raj Kishor, SHO, Radha Nagar, District Fatehpur (respondent no.2) are present in the Court.

5. Learned Additional Chief Standing Counsel has produced detailed instruction dated 10.12.2023 sent by the Superintendent of Police, Fatehpur, which is taken on record. She has filed Exemption Applications on behalf of respondent nos.2 and 10. She has also pressed exemption on behalf of the Additional Director General of Police, Prayagraj Division, Prayagraj.

6. Ms. Uttara Bahuguna, learned Additional Chief Standing Counsel, on the basis of instruction, submits that the father of the petitioner late Gangadeen Maurya filed a Civil Suit No.195 of 2001 in the Court of Civil Judge (Senior Division)/Fast Track Court, Fatehpur and the same was dismissed by the Civil Court on 09.8.2017 with the finding that the petitioner is in illegal possession over the land in dispute. Aggrieved with the said order, the father of the petitioner had preferred Civil Appeal No.149/74 of 2017 in District Court, Fatehpur and the same was also dismissed for want of prosecution on 18.09.2021. Meanwhile, the father of the petitioner has died. Thereafter, the petitioner has made a complaint before the Additional Director General of Police, Prayagraj Division, Prayagraj and on the said complaint, cognizance was taken on 28.11.2023 and the enquiry is going on. Meanwhile, the petitioner has filed the present writ petition for the aforesaid reliefs. It is submitted that the disputed fact cannot be pressed before this Court under Article 226 of the Constitution of India and the writ petition is liable to be dismissed.

7. In the present matter, highly disputed facts have been urged, which cannot be adjudicated under Article 226 of Constitution of India and as such, we are not inclined to proceed further in the matter at this stage. However, it is always open to the petitioner to press the relief while pressing the restoration application before the competent appellate court.

8. The exemption applications are allowed and the presence of respondent nos.2 and 10 as well as the Inspector General of Police, Prayagraj Division, Prayagraj are dispensed with.

9. With the aforesaid leave, the writ petition stands **disposed of**.

Order Date :- 11.12.2023

Rama Kant