

Court No. - 4

Case :- WRIT - A No. - 19686 of 2023

Petitioner :- Dr. Ashok Kumar Sharma And Another

Respondent :- District Magistrate Varanasi And 3 Others

Counsel for Petitioner :- Ashish Kumar Srivastava

Counsel for Respondent :- CSC

Hon'ble Prakash Padia,J.

1. The present petition has been filed with the prayer to set-aside the notice issued by the respondent no.3- Station House Officer, Police Station Dashashwamedh Varanasi dated 18.11.2023 against the petitioners.

2. The following order was passed by this Court on 28.11.2023:-

"1. The petitioners have preferred the present writ petition with the prayer to quash the order dated 18.11.2023 issued by the respondent No.3/Station House Officer, Police Station Dashashwamedh Varanasi by which a direction has been given to the petitioners to vacate the premises namely First Floor and Second Floor of House No.D36/17-18 August Kunda Varanasi or in alternative, appear before the Police Station on 19.11.2023 at 11 O'clock morning along with the order, if any passed by any competent Court.

2. It is argued by learned counsel for the petitioners that ex-parte orders were passed by the Court below against the petitioners by which a direction to vacate the premises in question. It is admitted by the learned counsel for the petitioners that the Execution proceedings is still going on and objection under Section 47 C.P.C. has also been filed by the petitioners in the matter. It is argued that the despite the aforesaid proceedings is pending, the respondent No.3 wholly illegally passed the order in question. It is argued that an application under Order 9 Rule 13 C.P.C. has also been filed by the petitioners to recall the ex-parte judgement and decree dated 19.04.2018. Learned counsel for the petitioners placed reliance upon paragraph 10 of the order dated 19.03.2002 passed by the Hon'ble Supreme Court in the case of State of West Bengal and others Vs. Vishnunarayan & Associates (P) Ltd. and another reported in (2002) 4 SCC 134. The paragraph 10 of the aforesaid order is reproduced hereinbelow:-

"10. It is the settled position of law that the State or its executive officers cannot interfere with the rights others unless the can point to some Specific provision, of law, which authorities their acts. A Constitution Bench of this Court in Bishan Das v. State of Punjab AIR 1961 SC 1570: (1962) 2 SCR 69 held that the State or its executive officers did not have any right to take law into their own hands and remove a person by an executive order. The Court further observed:

Before we part with this case, we feel it our duty to say that executive action taken in this case by the State and its officers is destructive of the basic principle of the rule

of law.

3. Time and again such kind of orders are coming before this Court by which a direction was given by the Police Authorities to the tenants to vacate the premises without any authority of law. Earlier in the case of *Vijay Shankar Tiwari and others Vs. Additional Commissioner City and others* (Writ A No.16875 of 2023) and *Sundram Kumar Sonkar and others Vs. Additional Commissioner City and others* (Writ A No.16912 of 2023), similar direction was given by the Police Authorities to the tenants to vacate the premises. Directing the tenants to vacate the premises by the Police Authorities without any authority of law is a matter of serious concern.

4. As prayed by Sri Suresh Kumar Verma, learned Standing Counsel, twenty four hours time is granted to seek instructions in the matter.

5. Put up as fresh tomorrow, i.e., on 29.11.2023.

6. Sri Suresh Kumar Verma, learned Standing Counsel is directed to inform regarding this order to the respondent No.3/Station House Officer, Police Station Dashashwamedh Varanasi through Commissioner of Police today itself."

3. Pursuant to the same, personal affidavit has been filed by respondent no.3 -Station House Officer, Police Station Dashashwamedh Varanasi, who is also present in person before this Court. The personal affidavit is taken on record.

4. It is argued by Sri Kunal Ravi Singh, learned Chief Standing Counsel appearing on behalf of respondent no. 3 that notice in question has been issued by way of inadvertent mistake for which the respondent no. 3 is tendering his unconditional apology. It is further argued that respondent no. 3 will pass appropriate orders to recall the aforesaid notice within 24 hours.

5. In this view of the matter, this Court is of the opinion that since an undertaking has been given by respondent no. 3 as stated in the affidavit also, the respondent no.3 is permitted to recall the notice dated 18.11.2023.

6. Sri Kunal Ravi Singh, learned Chief Standing Counsel is required to provide a copy of the order to be passed by respondent no. 3 as stated above, upon the counsel for the petitioners within 48 hours.

7. Since, the notice which is under challenge is going to be recalled/withdrawn by the respondent no. 3, the present petition is now become infructuous and is liable to be dismissed. Accordingly, the present petition is dismissed as having become infructuous.

Order Date :- 29.11.2023

S.K.