

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 12580 of 2023

Petitioner :- Ajay Kumar And 2 Others

Respondent :- Dharmpal Alias Kalu And 2 Others

Counsel for Petitioner :- Shreya Gupta, Ravi Anand Agarwal

Hon'ble Prakash Padia, J.

1. Heard learned counsel for the petitioner/petitioners and learned Counsel for the respondents.

2. In view of the order proposed to be passed herein, no useful purpose would be served by putting the opposite party to notice and keeping this petition pending before this Court. However, in case the opposite party feels aggrieved by the order his/her right to seek modification/variation of the order is being kept reserved.

3. The plaintiffs-petitioners filed Original Suit No. 648 of 2023 seeking the relief to issue a decree restraining the defendants in suit to make any construction over the land prescribed in the map appended alongwith the plaint. Alongwith the said application an application for grant of interim relief was also filed, on the said application for grant of interim relief order dated 20th September, 2023 was passed stating therein that the public works department was not arrayed as one of the defendant in the suit. It is further stated that without hearing other side it is not a fit case for grant of any interim injunction. It is argued that though a prima facie case has been made out by the plaintiffs-petitioners in the court below but without considering the same order dated 20th September, 2023 was passed. It is further argued that though various reasons were given and arguments were made for grant of ex-parte interim protection but there were not taking into consideration and only a routine order has been passed issue notice to the defendant in the suit. It is further argued that the plaintiffs-petitioners have not means of ingress and egress from Khasra No. 76 and 77 to the Meerut Bijnor Road, except from the area shown by letters स ढ in the plaint map. It is further argued that in case, the defendants-respondents succeed in raising the permanent construction over the suit property before consideration of temporary injunction on merits the plaintiffs-petitioners will suffer irreparable loss. It is further argued that during the pendency in the aforesaid suit an application under Order 7

Rule 11 CPC was also filed which is pending consideration.

4. It reveals from the perusal of relief sought for in the plaint the reasons given for the grant of interim injunction, the court is of the prima facie opinion that it is a fit case for grant of interim relief.

5. Since the application under Order 7 Rule 11 CPC is still pending consideration and it is well settled law that before proceeding further in the suit, order would be passed first on the application under Order 7 Rule 11 C.P.C, the court below, before whom the application is pending, is directed to pass appropriate orders within a period of six weeks from the next date fixed in the matter. Further direction is given that after disposal of the said application, in case the said application was rejected, only then the court below will consider the application for interim injunction and pass appropriate orders on the same strictly in accordance with law within a further period of six months,

6. For a period of four months from today or till the time the order is passed on injunction application filed by the plaintiffs-petitioners, whichever is earlier, status quo as on date shall be maintained in respect of the land in dispute .

Order Date :- 8.12.2023

Vikram