

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 1726 of 2023

Petitioner :- Shakir Ali Alias Mijjan And Another

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home, Lko. And Others

Counsel for Petitioner :- Pawan Kumar Dwivedi, Anupam Bajpai, Virendra Mishra

Counsel for Respondent :- G.A., Aviral Srivastava, Vivek Pandey

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Narendra Kumar Johari, J.

Order on C.M. Application No.I.A./5/2023

1. Sri Vivek Pandey, learned counsel for the respondent, has pressed his application under Section 340/195 of the Cr.P.C., which was filed alleging forging of documents.
2. This Court having perused such application and also the documents filed with the writ petition finds no good ground to show interference.
3. After arguing at some length, learned counsel for the respondent, has prayed that he may be permitted to withdraw this application.
4. Accordingly, the present application under Section 340/195 of the Cr.P.C. is **rejected** as withdrawn.

Order on Petition

1. Heard Sri Virendra Mishra, learned counsel for the petitioners, Sri Vivek Pandey, learned counsel for the respondent and learned A.G.A. for the State.
2. This petition has been filed by the petitioners praying for quashing of the F.I.R. No.0073 of 2023 dated 14.02.2023 lodged by the respondent no.4 under Sections 419, 420, 467, 468, 471 I.P.C. at P.S. Kotwali Dehat, District Gonda.
3. It has been submitted by learned counsel for the

petitioners that the petitioners had purchased 0.10 hectare of land of Gata No.476. Petitioners had not purchased land of Gata No.486, which is the land recorded in the name of Gaon Sabha of Dadua Kanoongo, Pargana, Tehsil and District Gonda. However, during the drafting of the sale deed, Gata No.486 was also mentioned by Mohd. Zakir s/o Mustafa, the vendor. The petitioner has not been given possession of land of Gata no.486, which continues to be recorded in the name of the Gaon Sabha. When the petitioners came to know about mischief played by Mohd. Zakir, they also filed a Suit for correction/ rectification of sale deed before the Civil Judge (Junior Division), Gonda, registered as Regular Suit No.3420 of 2022, which is pending. Apart from this, the petitioner no.1 has also informed the District Magistrate and the Sub Divisional Magistrate Gonda that action may be taken against the Vendor.

4. The respondent no.4, who is the cousin of the petitioner no.1, out of personal enmity was not permitting the petitioners to raise construction over the land of Gata no.476, and therefore, the petitioners had also approached the local authorities against such intimidating attitude of respondent no.4 and he approached this Court in Criminal Misc. Writ Petition No.6841 of 2022: *Shakir Ali Vs. State of U.P. and others*, and this Court by its order dated 30.09.2022 had directed the Police Authorities not to interfere at the instance of the respondent no.4 in the construction being raised by the petitioner on his own land over Gata No.476. There is no dispute regarding purchase of land of Gata no.476. The dispute is only with the land of Gata No.486, which admittedly is the land of Gaon Sabha recorded in Banjar Khata.

5. The petitioner has relinquished all his claims over such Gata Nos.486 and 486 sa, which have been mentioned in the sale deed that was executed by the Vendor Mohd. Zakir, for which he had already filed a rectification Suit which is pending before the Civil Judge (Junior Division), Gonda. A copy of the plaint has been filed as annexure-4 to the petition.

6. It has been submitted that the respondent no.4 out of personal enmity has lodged the F.I.R. No.0073 of 2023 on 14.02.2023 alleging therein that he had derived the information that Gata no.486 ad-measuring 0.0850 hectare and Gata no.486 sa ad-measuring 0.040 hectare belong to Gaon Sabha and have been wrongly bought along with Gata no.476/0.1250 hectare by the petitioners from Mohd. Zakir. He had made a complaint to the District Magistrate, who in turn directed the Sub Divisional Magistrate and the Sub Divisional Magistrate directed the Lekhpal to conduct on-the spot inspection and enuiry report was submitted on 05.09.2022 saying that the land of plot nos.486 and 486 sa is recorded as *Banjar* and *Raasta* in the khatauni and belong to the Gaon Sabha. Hence, the F.I.R. should be registered for alleged fraud committed by the petitioners by buying such land from Mohd. Zakir.

7. It has been submitted by learned counsel for the petitioners that petitioners had no idea that Mohd. Zakir was not the owner of land of Gata no.486 and 486 sa. He has already made an application for rectification Suit no.2405 of 2022, which is pending before the Civil Judge (Junior Division), Gonda.

8. This Court is of the opinion that the dispute regarding Gata No.486 and 486 sa, being plots of land belonging to the Gaon Sabha, is no longer to be looked into in criminal jurisdiction. It is a civil dispute and the petitioners have already filed a Civil Suit for the same. However, petitioners have not impleaded the Gaon Sabha as a defendant in the said Civil Suit.

9. The petitioners are directed to implead the Gaon Sabha through the Land Management Committee in Regular Suit No.2405 of 2022, said to be pending before the Civil Judge (Junior Division), Gonda, within a period of two weeks.

10. The writ petition is ***disposed of*** with a direction to the respondents not to arrest the petitioner in pursuance of the impugned F.I.R. No.0073 of 2023 under Sections 419, 420, 467, 468 and 471 of the I.P.C., P.S. Kotwali Dehat,

District Gonda, till some credible evidence regarding forcibly taking over Gata No.486 and 48 sa is collected.

Order Date :- 30.11.2023

Rahul