

Court No. - 2

Case :- WRIT - C No. - 5186 of 2023

Petitioner :- Ubhan

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Revenue U.P. Civil Sectr. Lko. And Others

Counsel for Petitioner :- Shailendra Pathak

Counsel for Respondent :- C.S.C., Pankaj Gupta

Hon'ble Rajan Roy, J.

Hon'ble Syed Qamar Hasan Rizvi, J.

Heard.

Apart from the fact that the petitioner has already filed a suit for injunction and for cancellation of Patta granted to opposite parties no. 6 and 7 wherein there is no interim order / temporary injunction operating in their favour and also there is no suit for declaration of title by the petitioner in respect of the land in question, moreover, the opposite party no. 6 has already filed a petition bearing Writ C No. 4132 of 2023 wherein an interim order has been passed on 23.05.2023 which reads as under:-

"Heard.

Petitioner claims to have a patta in respect of Gata No. 305. It is alleged that office bearers of Kisan Union has facilitated encroachment of his land illegally.

Let the Sub Divisional Magistrate concerned visit the spot, ascertain the facts and apprise the Court about the same by submitting a report in this regard in a sealed cover. He shall also apprise the Court as to whether the patta of the petitioner is still subsisting.

List this case in the first week of July, 2023.

If the Sub Divisional Magistrate finds that the patta of the petitioner is still subsisting and he is recorded in the khatauni pertaining to Gata No. 305 and there is no other legal impediment then he shall ensure that the land over which petitioner has right, he is allowed to reap the benefit thereof without any interference or encroachment thereon by any person, if need be, by use of force against the encroachers, if any."

We are of the opinion that this petition is not maintainable, especially as, the petitioner is not recorded in respect of the land in question. He claims title based on possession which can't be seen in writ jurisdiction. Admittedly, the land is recorded in the name of opposite parties no. 6 and 7. The petitioner may, if he has a cause and locus, move an application for impleadment or intervention in the writ petition filed by opposite party no. 6, as referred hereinabove, but this petition cannot be entertained, of course, this is without prejudice to the rights of the petitioner, if any, in the suit for injunction and patta cancellation which are being filed.

Accordingly, this writ petition is **dismissed**, however, with liberty aforesaid, as per law.