

Court No. - 3

Case :- MATTERS UNDER ARTICLE 227 No. - 3320 of 2023

Petitioner :- Dhananjay Kumar Sharma

Respondent :- Civil Judge Junior Division, Bahraich And Others

Counsel for Petitioner :- Shakti Kumar Sharma, Shamshad Ahmad Khan

Hon'ble Subhash Chandra Sharma, J.

Vakalatnama filed today by Sri Anand Mani Tripathi, Advocate on behalf of petitioner is taken on record.

Heard learned counsel for petitioner and perused the record.

The present petition has been filed by the petitioner to issue an order or direction to the opposite party to stay the illegal ongoing construction work by opposite party no. 2 and 3 in Regular Suit No. 1238 of 2023 (Dharmendra Kumar Sharma Vs. Sarvesh Kumar and others) for permanent injunction pending before the Civil Judge (Junior Division).

It is submitted that in this case, opposite party nos. 2 and 3 are making illegal construction regarding which he filed an application before the prescribed authority to prevent such type of construction on which the prescribed authority passed an order with direction to S.H.O. to stop the construction against approved map. In compliance of which the police stopped the work and challaned both the parties under Section 107/116/116(3) Cr.P.C. on 19.5.2023 and reported to Superintendent of Police that the construction being made by opposite party was stopped. This report was filed by in-charge Inspector P.S. Dargarh Sareef on 21.5.2023 even though opposite parties are continuing to construct illegally, thereafter he filed this civil suit before the court of learned Civil Judge and moved an application for injunction but hearing of the application was adjourned. No any such order was passed though there is continuing illegal construction made by the opposite parties, therefore, request for direction to the learned civil court to decide the application on intrin injunction expeditiously.

Considering the contentions of learned counsel for the petitioner and perusal of record, it appears that an application regarding illegal construction said to be made by the opposite

party was made to the prescribed authority who passed an order by issuing direction to concerned S.H.O. to stop the work and in pursuance thereto the S.H.O. went on the spot and prevented the opposite party from making illegal construction on the site in dispute. In this way, there appears no any construction being continued to be made by the opposite party and does not appear urgency to make direction to the learned Civil Judge to decide the interim injunction application filed by him on which notices have already been issued to the defendant/opposite party, without proper hearing to the parties. Since prescribed authority has passed the order to stop the work, therefore, the petitioner has an option to approach the prescribed authority if illegal construction is not being stopped by opposite party who will ensure compliance of his order.

Learned Civil Judge is directed to decide the application for interim injunction as expeditiously as possible in accordance with law within prescribed period.

Accordingly, the present petition is ***disposed of*** finally.

Order Date :- 27.6.2023

A. Singh