

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 2739 of 2023

Applicant :- Sushil Kumar Agarwal

Opposite Party :- Shri Sudhir Garg, Addl. Chief Secy. Revenue, Civil Secrtt. Lko.

Counsel for Applicant :- Manoj Kumar Dubey

Hon'ble Rajesh Singh Chauhan,J.

1. Heard.

2. This Court has passed the order dated 06.10.2023, which reads as under:-

"1. In compliance of the order dated 21.08.2023, the petitioner has already filed a supplementary affidavit which is on record.

2. The order of Writ Court dated 20th of April, 2023 passed in Writ-C No. 3124 of 2023 reads as under:

"Shri Ravindra Pratap Singh, Advocate, filed Vakalatnama today on behalf of opposite party No.8 is taken on record.

Heard.

By means of the present petition, the petitioner is assailing the validity of the order(s) dated 31.12.2022 and 20.03.2023 passed by opposite party No.3 in Case No.14091 of 2022, (Rekha Kapoor and others vs. State of U.P. and others).

Shri Hemant Kumar Pandey, learned counsel for the State stated that the statutory remedy is available to the petitioner by preferring an application for recall of order.

In response, Shri Sudeep Seth, Advocate, assisted by Shri Manoj Kumar Dubey, learned counsel for the petitioner says that no doubt that the remedy as indicated by State Counsel is available, however, the present petition has been filed on the ground that the land situates in the urban area and the provisions of U.P. Revenue Code of 2006 would not attract in the instant case, as such the opposite party No.3- Sub-Divisional Magistrate, Sadar, Lucknow under Section 24 was not having any jurisdiction to pass the order on an application under Section 24 of the Code of 2006 (in short "Code of 2006"). The order passed therein is wholly without jurisdiction. In nutshell, this is a case of inherent lack of jurisdiction of the opposite party No.3- Sub-Divisional Magistrate, Sadar, Lucknow. As such the petitioner has directly approached this Court by means of the present petition.

This Court finds that matter requires consideration.

Accordingly, on the aforesaid aspect of the case, prior to issuance of notice, this Court is of the view that matter be heard in the next week.

List/put up this case on 27.04.2023.

Learned counsel for the parties shall come prepare on the issue aforesaid.

Till the next date of listing, the operation and implementation of the impugned order shall remain stayed."

3. In para 7 of the supplementary affidavit dated 25.08.2023, the following submissions have been made which reads as under:

"That on 24.04.2023, large number of police force came upon the Land of the Applicant situated at Municipal number 538-Gha/61 & 538-gha 61/1, Iradat Nagar, Mohalla Patauraganj, Lucknow and in presence of DCP Smt. Aparna Raj Kaushik, ACP Miss Neha Tripathi and the then SHO Sri Sunil Kumar Azad, and Sub Inspector Pramod Choudhary, the locks were put on the gate installed at the land of the applicant."

4. Learned counsel for the petitioner is directed to provide two copies of the contempt petition to Sri Sunil Bajpai, learned Additional Chief Standing Counsel who shall seek the specific instructions from opposite parties nos. 5 and 6 as to whether the direction being issued by the Writ Court on 20.04.2023 (supra) has been followed or flouted.

5. List on 27.10.2023, within top ten cases."

3. In compliance of the aforesaid order, Sri Amarendra Pratap Singh, learned Additional Chief Standing Counsel has provided a detailed instructions letter dated 25.10.2023 submitted by Sri Abhay Kumar Singh, Inspector Incharge, Police Station-Madeyganj, District-Lucknow addressing to the Chief Standing Counsel, the same is taken on record. A photocopy of the aforesaid instructions letter has been provided to the learned counsel for the petitioner by the learned Additional Chief Standing Counsel.

4. By means of the aforesaid instructions letter, not only the detailed instructions have been provided but parawise reply to the contents of the contempt petition has been provided to the learned Chief Standing Counsel. The Inspector Incharge has categorically stated that the order of the Writ Court dated 20.04.2023 has not been flouted or violated in any manner whatsoever inasmuch as after the order of the Writ Court dated 20.04.2023 having been passed no police officers/ officials have ever been visited at the site in question and the submission of the petitioner is absolutely incorrect. The instructions further read that the petitioner has filed the present contempt petition having ulterior motive in his mind.

5. On that, learned counsel for the petitioner has stated that the

aforesaid instructions are not correct inasmuch as the Writ Court vide order dated 20.04.2023 has not directed to maintain status-quo but has stayed the impugned order, therefore, there is no question of maintaining status-quo. He has further submitted that the aforesaid instructions given by the Inspector Incharge is misconceived and misleading.

6. Be that as it may, since the writ petition is pending consideration before this Court and what direction of the Writ Court has been flouted may only be seen by the Writ Court itself inasmuch as the contempt Court after perusing the instructions letter dated 25.10.2023 (supra) may not arrive on the conclusion that any specific direction of the Writ Court has been flouted. Therefore, the petitioner may very well file an application before the Writ Court where the writ petition of the petitioner is still pending to seek appropriate direction and the Writ Court may examine the fact as to whether any direction of the Writ Court has been flouted or not. In case there is any violation of direction of the Writ Court, any appropriate order may be passed by the Writ Court inasmuch as the factual dispute, if any, may not be adjudicated in the contempt jurisdiction.

7. Accordingly, the instant contempt petition is ***disposed of finally*** with the aforesaid observations.

[Rajesh Singh Chauhan,J.]

Order Date :- 27.10.2023
Suresh/