

**Court No. - 4**

**Case :-** CONTEMPT APPLICATION (CIVIL) No. - 2853 of 2023

**Applicant :-** Tarun Kumar Mishra

**Opposite Party :-** Sri Rajendra Bahadur, Prescribed Authority/ S.D.M., Regulated Area, Balrampur

**Counsel for Applicant :-** Ankit Mishra, Sachin Kumar Mishra

**Counsel for Opposite Party :-** Prabhakar Tiwari

**Hon'ble Rajesh Singh Chauhan, J.**

1. Heard learned counsel for the petitioner and Sri Prabhakar Tiwari, learned counsel for the opposite party.

2. Sri Prabhakar Tiwari has filed short counter affidavit, the same is taken on record.

3. The present contempt petition has been filed for not following the order of the writ court dated 27.04.2023 passed in Matters Under Article 227 No.1088 of 2023, which reads as under:-

*"Heard Shri Sachin Kumar Mishra, learned counsel for the petitioner, the State Counsel for opposite party nos.1 to 3, Shri Mohd. Ali, learned counsel for opposite party no.4 and Shri Rajnish Kumar, learned counsel holding on behalf of Shri Rajesh Kumar, learned counsel for opposite party no.5.*

*Petition under Article 227 of the Constitution of India has been filed seeking a direction to the prescribed authority for execution of its order dated 12.12.2022 passed in Case No.30 of 2020.*

*On 3.3.2023, following order was passed: -*

*"Heard learned counsel for petitioner, learned State counsel for opposite parties no.1 to 3 and Mr. Mohd. Ali, learned counsel for opposite party no.4.*

*In view of order being proposed to be passed, notices to opposite party no.5 stand dispensed with.*

*Petition under Article 227 of the Constitution of India has been filed seeking a direction to the prescribed authority for execution of order dated 12.12.2022 passed in case no.30 of 2020 under Section 10 of the Regulation of Building Operations Act, 1958.*

*Learned counsel for petitioner submits that due to encroachment being made on public land by opposite party no.5, petitioner had filed a complaint and after hearing all the parties concerned, the prescribed*

*authority by means of order dated 12.12.2022 has directed demolition of the encroachment of opposite party no.5. It is submitted that despite almost three months having passed, the aforesaid order is not being implemented and therefore necessary directions are required.*

*From perusal of material available on record, it appears that order under Section 10 of the Act of 1958 have been passed on 12.12.2022, learned counsel for petitioner submits that no appeal against the aforesaid order has been filed till date.*

*In such circumstances, learned State counsel is directed to obtain instructions from opposite party no.3 i.e. Sub Divisional Magistrate, Balrampur with regard to execution and implementation of the order dated 12.12.2022.*

*List this case on 16.03.2023, as fresh."*

*In pursuance of a direction issued earlier, learned State Counsel on the basis of oral instruction submits that against the order dated 12.12.2022, the opposite party no.5 has filed an appeal before the authority concerned, which is pending consideration, and in which objections have been filed. It is further submitted that an application for stay has also been filed along with the appeal, which is also pending consideration.*

*It is thus evident that against the order dated 12.12.2022 the opposite party no.5 has invoked the appellate jurisdiction where the proceedings are pending although no interim order has been passed by the appellate authority.*

*In the aforesaid circumstances, the opposite party no.3, Sub Divisional Magistrate, Balrampur may ensure compliance of his directions dated 12.12.2022 passed in Case No.30 of 2020 (State of U.P. v. Dwijendra Mishra) in case there is no legal impediment.*

*With the aforesaid direction, the petition stands disposed of."*

4. Sri Prabhakar Tiwari has drawn attention of this Court towards Annexure No.2 of the short counter affidavit, which is an order dated 19.09.2023 passed by this Court in Matters Under Article 227 No.4598 of 2023, Dwijendra Kumar Mishra Vs. State of U.P. and 4 Others. The aforesaid writ petition was filed by the appellant-Dwijendra Kumar Mishra. The order dated 19.09.2023 is being reproduced herein below:-

*"Heard.*

*In view of the order proposed to be passed by this Court, notice to the private-respondents is dispensed with.*

*The present petition has been filed for the following main reliefs:-*

*"i. Issue a direction to the opposite parties to maintain status quo regarding house no. 451 situated in Mohalla Tedi Bazar, Balrampur till disposal of the appeal no. 01 of 2023, pending before the opposite party no. 2.*

ii. Issue a direction to opposite party no. 2 to decide the appeal no. 01 of 2023 (Dwijendra Kumar Mishra Versus State of U.P. & Others) expeditiously within stipulated time."

Submission of learned Counsel for the petitioner is to the effect that petitioner preferred an appeal under Section 15(2) of Regulation of Building Operation Act 1958 (in short 'Act of 1958') and Section 15(3) of the Act of 1958 specifically provides that "The Controlling authority may, pending the decision of any appeal filed under sub section (2), stay the operation of the order appealed against" and in the instant case the respondent no.2/Controlling Authority, Regulated area Balrampur/ District Magistrate Balrampur, entertained the appeal on 05.01.2023, however, no interim protection was granted on that date and thereafter on 24.03.2023 the appeal was taken up and time for filing objection was granted to the side opposite. In the appeal in issue, after 24.03.2023, no date has been fixed and appeal is pending consideration till date.

He further stated that the person at the behest of whom the proceedings under the Act of 1958 were instituted against the petitioner, during the pendency of appeal preferred a Writ under Article 227 of Constitution of India No. 1088 of 2023 (Tarun Kumar Mishra Versus State of U.P. and Others) for compliance of order under appeal dated 12.12.2022 passed by the prescribed authority/ Sub Divisional Magistrate, Balrampur, against the petitioner in the case No. 30 of 2020-21 under Section 10 of the Act of 1958 and this Court directed the authority concerned to ensure compliance of order dated 12.12.2022, if there is no legal impediment, as would appear from the order of this Court dated 27.04.2023.

He further submitted that it appears that on account of pendency of appeal, no action was taken by the Prescribed Authority pursuant to order dated 12.12.2023 and now the District Authorities are in action because of the order of this Court dated 27.04.2023 and order passed by this Court dated 25.08.2023 in Contempt Application (Civil) No. 2853 of 2023 (Tarun Kumar Mishra Versus Sri Rajendra Bahadur, Prescribed Authority/S.D.M., Regulated Area, Balrampur), which was preferred by Tarun Kumar Mishra (plaintiff). As such the indulgence of this Court is required in the matter.

Sri Ravindra Pratap Singh learned State Counsel and Sri Satish learned Advocate holding brief of Sri K.K.Singh, learned Counsel for Nagar Palika Parishad, Balrampur, could not dispute the fact that appeal is pending before respondent no.2 and as per statutory provision i.e. Section 15(3) of the Act of 1958, the authority is empowered to stay the operation of order under appeal, which in the present case is the order dated 12.12.2022.

Considering the facts and circumstances, this Court is of the opinion that no gainful purpose will be served in keeping the present petition pending.

Accordingly, in the ends of justice the present petition is disposed of with direction to respondent No.-2/Controlling Authority, Regulated area Balrampur/ District Magistrate, Balrampur, to consider and decide the pending appeal of the petitioner most expeditiously, after affording full opportunity of hearing to the parties, but without granting any adjournment to either of the parties preferably within a period of six months from the production of a certified copy of this order, if there is no

*other legal impediment in this regard.*

*In regard to interim relief, the respondent no. 2 is directed to consider and decide the interim relief application of the petitioner within 15 days from the date of production of certified copy of this order. Till 15 days, the possession of petitioner shall not be disturbed pursuant to order dated 12.12.2022 under appeal.*

*It is made clear that the Court has not examined the case of either of the parties on merits and the authority concerned shall be free to decide the matter strictly in accordance with law.*

*With the aforesaid, the petition is disposed of."*

5. In compliance of the aforesaid order, the appellate authority has issued notice to the present petitioner to appear on 06.10.2023 for disposal of interim relief application.

6. Learned counsel for the petitioner has stated that the petitioner appeared on 06.10.2023 before the appellate authority but he was not heard. He has further submitted that the petitioner was not even allowed to enter into the room of the appellate authority. However, learned counsel for the opposite party has shown a copy of order dated 10.10.2023, photocopy thereof is taken on record.

7. As per the aforesaid order dated 10.10.2023, the appellate authority has granted interim order staying the operation and implementation of the order dated 12.12.2022 fixing the next date for 05.12.2023.

8. Sri Prabhakar Tiwari, learned counsel for the opposite party has stated, on the basis of specific instructions from the authority, that the aforesaid proceedings shall be concluded on the next date, if the petitioner cooperates in such proceedings. He has also stated that if the petitioner does not cooperate in the proceedings on the date fixed, the matter may be decided by fixing short date and without giving any unnecessary adjournment. He has submitted that in any case, the proceedings shall be concluded, with expedition, in terms of the orders of the writ court.

9. Having considered the aforesaid submissions of learned counsel for the parties and having regard the fact that the appellate court has granted interim order and fixed the next date for final disposal of the proceedings, I think that nothing remains to be adjudicated in the present contempt petition.

10. Accordingly, the present contempt petition is **dismissed**.

11. Notice is discharged.

12. However, it is expected that the appellate authority shall abide by the directions being issued by the writ court to expedite the proceedings, failing which the petitioner may file an application in the present contempt petition itself apprising that the appellate authority is delaying the proceedings for no cogent reasons.

**[Rajesh Singh Chauhan,J.]**

**Order Date :- 28.10.2023**  
RBS/-