

Court No. - 18

Case :- MATTERS UNDER ARTICLE 227 No. - 4893 of 2023

Petitioner :- Harishankar Prajapati

Respondent :- State Of U.P. Thru. Prin. Secy., Deptt. Of Revenue, Lucknow And 3 Others

Counsel for Petitioner :- Nimit Srivastava, Suyash Manjul

Counsel for Respondent :- C.S.C., Mohan Singh, Ratnesh Chandra

Hon'ble Shree Prakash Singh, J.

Heard Sri Nimit Srivastava, learned counsel for the petitioner, Sri Hemant Pandey, learned Standing Counsel for the State, Sri Ratnesh Chandra, learned counsel for the opposite party no. 3.

Under challenge in this petition is the order dated 15-09-2023, in Case No. 15251 of 2023 passed by the learned Sub. Divisional Officer, Sadar, Unnao. Further prayer is made that the interim protection granted vide order dated 23-08-2023, passed in Case No. 15251 of 2023, may be restored.

Contention of learned counsel for the petitioner is that the case was instituted bearing case no. 15251 of 2023, wherein the Sub.Divisional Officer passed the order on 23-08-2023, whereby the parties were directed to maintain status-quo and further an application was moved by the opposite party no. 3 before the Sub.Divisional Officer, whereby vide order dated 12-09-2023, the Sub.Divisional Officer, Sadar, Unnao, directed the Naib Tehsildar and the Regional Revenue Inspector to make demarcation of the land in question after making spot inspection and the enquiry of the records. He added that the opposite party no. 3, deliberately moved an application and has obtained the order dated 12-09-2023 in his favour though it was in his knowledge that the Case No. 15251 of 2023 has already been instituted by the petitioner, is pending consideration before the Sub.Divisional Officer.

Further contention of learned counsel for the petitioner is that the Sub.Divisional Officer, at one hand, has passed the order on judicial side and on

the other hand, he has passed the order on administrative side, for the same land in question. He also added that on 15-09-2023, the Sub.Divisional Officer denied to extend the interim order passed vide order dated 23-08-2023 and therefore, the erroneousess is apparent in the order passed by the Sub.Divisional Officer. Therefore, submission is that the order dated 15-09-2023 may be set aside and the Sub.Divisional Officer may be directed to restore the interim order passed on 23-08-2023.

On the other hand, learned counsel appearing for the opposite party no. 3 as well as learned State Counsel have vehemently opposed the contentions aforesaid and submitted that after the order dated 23-08-2023, which was passed ex-parte, the opposite party no. 3 appeared before the Sub. Divisional Officer and brought all the facts that no construction is being done on the land in question and therefore, the Sub.Divisional Officer rejected the application of the petitioner for extension of the interim order granted vide order dated 23-08-2023. They further submitted that infact, there is no ambiguity or perversity in the order passed by the Sub.Divisional Officer and once the fact was brought in his knowledge that no construction is being done on the land in question, the order was passed while not extending the interim order as the order dated 23-08-2023 was passed behind the back of the opposite party no. 3 and the court was not aware with respect to the actual facts.

Adding their arguments, they submitted that infact the order dated 12-09-2023 was passed on administrative side after an application moved by the opposite party no. 3, as the petitioner himself was making hindrance over the land in question and thus, the Sub.Divisional Officer passed the order for demarcation of the land in question. Therefore, submission is that the order dated 12-09-2023 does not have any bearing or the effect on the orders dated 15-09-2023 and 23-08-2023.

Considering the submissions of learned counsels for the parties and after perusal of material placed on record, it transpires that the order dated 23-08-

2023 was passed passed ex-parte and once, this fact was brought before the Sub.Divisional Officer that he is not making any construction over the land in question, the application for extension of interim order was rightly rejected by the Sub.Divisional Officer. Further the order dated 12-09-2023 has been passed on an application moved by the opposite party no. 3, who, being aggrieved that the petitioner himself is intervening in his possession over the land, the Sub.Divisional Officer entertaining the same, has passed the order on administrative side and thus, the order passed by the Sub.Divisional Officer in Case No. 15251 of 2023, would not be affected by any of the means.

This court has also noticed the fact that the petitioner has approached this court against the order by which the prayer for extension of interim order has been rejected, therefore, the factual matrix with respect to the possession/hindrane over the land in question, cannot be examined at this stage.

Thus, this petition lacks merit,hence, it is hereby **dismissed**.

However, it is open to the petitioner that if he is aggrieved with the order dated 15-09-2023, he can move an application for interim relief, thereby adducing the evidences that the balance of convenience goes in his favour.

Order Date :- 5.12.2023
AKS