

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 5163 of 2023

Petitioner :- Dinesh

Respondent :- Lalauva @ Udai Singh

Counsel for Petitioner :- Anoop Srivastava

Counsel for Respondent :- Jaleel Ahmad

Hon'ble Rajnish Kumar,J.

1. Heard Sri Anoop Srivastava, learned counsel for the petitioner and Sri Jaleel Ahmad, learned counsel for the respondent.

2. Submission of learned counsel for the petitioner is that the final relief claimed in the suit filed by the respondent for permanent injunction has been granted by the interim injunction by the trial court by means of the order dated 09.04.2021 passed in Regular Suit No.710 of 2018(Lalva versus Dinesh). The petitioner had preferred an appeal but the same has also been dismissed by the District Judge, Unnao by means of the order dated 11.08.2023 without considering the grounds raised by the petitioner. Therefore the petitioner is constrained to approach this Court by means of the present petition. He relies on *State of Uttar Pradesh and others versus Ram Sukhi Devi;2005 ALJ 214*.

3. Per contra, learned counsel for the respondent submits that interim injunction has rightly been passed after considering the prima facie case, balance of convenience and irreparable loss to the respondent. Therefore the impugned orders have rightly been passed in accordance with law. He further submits that the grounds taken by the petitioner before this Court were not taken before the appellate court. The appellate court had dismissed the appeal after considering the grounds raised by the petitioner.

4. Having considered the submissions of learned counsel for the parties, I have perused the records.

5. The respondent has filed a suit for permanent injunction against the petitioner with a prayer that petitioner may be directed not to make any drainage for discharge of rain water and polluted water towards the house of the respondent. Before the trial court, no objection was filed by the petitioner against the application for interim injunction. Learned trial court, after considering the grounds raised by the respondent and affording opportunity to the petitioner as well considering the Commission report found that there is prima facie case and balance of convenience in favour of the petitioner and in case the drainage is made, the respondent would suffer irreparable loss and the petitioner, if wants to discharge polluted water and rain water he may connect a drainage from his house to pond and accordingly granted an interim injunction by means of the order dated 09.04.2021.

6. The petitioner preferred an appeal against the said order on the ground that the said drainage is not in the ownership of anybody and on the basis of same, no prima facie case, balance of convenience or irreparable loss can be caused to anybody. However, ground has been taken that unless the commission report is proved, the same cannot be relied. Considering the grounds raised by the petitioner in the appeal, the appellate court has dismissed the appeal, by means of the order dated 11.08.2023 passed in Civil Appeal No.50 of 2022, recording a finding that in case the drainage is made for discharge of polluted water or rain water, the respondent would suffer irreparable loss during pendency of the Suit. The relevant portion of the order passed by the appellate court in paragraph 11 is extracted herein-below:

"11. इस प्रकार पत्रावली के अवलोकन से स्पष्ट है कि अपीलार्थी/प्रतिवादी नक्शा नजरी वादपत्र में अक्षर अ, ब, स, द से दर्शित प्रत्यर्थी / वादी के सहन, जो उसकी भूमि नम्बर 434 का जुज भाग है, से नवशे में दर्शित अक्षर स, द, य, र स्थान से नाली निकालना चाहता है। उक्त अभिवचन शपथ पत्र 8 ग से समर्थित है तथा प्रत्यर्थी / वादी द्वारा अपने कथन के समर्थन में नकल नक्शा चकबंदी व इंतखाब खतौनी प्रस्तुत की गई। अपीलार्थी/प्रतिवादी की ओर से उक्त अभिवचनों के खण्डन में कोई आपत्ति एवं प्रति शपथ पत्र प्रस्तुत नहीं किया गया है। ऐसी स्थिति में इस स्तर पर प्रत्यर्थी / वादी के अभिवचन अखण्डित है। यद्यपि अपीलार्थी/प्रतिवादी की ओर से अपील की पत्रावली पर नाली निर्माण के सम्बंध में पूर्व प्रधान के प्रमाण-पत्र प्रस्तुत किये गये हैं, जिनके संबंध में निष्कर्ष साक्ष्य अभिलिखित किये जाने के उपरान्त, वाद के अंतिम निस्तारण के समय ही दिया जा सकता है। वाद के तथ्य एवं परिस्थितियों के दृष्टिगत प्रथम दृष्टया केस एवं सुविधा का संतुलन प्रत्यर्थी / वादी के पक्ष में बनना प्रतीत होता है। यदि दौरान वाद अपीलार्थी/प्रतिवादी द्वारा प्रत्यर्थी / वादी की भूमि से नाली बनाकर गंदा एवं बरसाती पानी बहाया जाता है, तो प्रत्यर्थी / वादी को अपूर्णनीय क्षति होने की संभावना से इन्कार नहीं किया जा सकता है। जहां तक अपीलार्थी/ प्रतिवादी की ओर से प्रस्तुत तर्क कि नाली किसी व्यक्ति की व्यक्तिगत मिलकियत नहीं होती है तथा कमीशन आख्या 16 ग पुष्टिकृत ना होने के कारण, उसका अवलम्ब नहीं लिया जा सकता है, साक्ष्य का विषय है। जिस पर वाद के अंतिम निस्तारण के समय ही मंतव्य व्यक्त किया जा सकता है। उपरोक्त विवेचन से न्यायालय इस निष्कर्ष पर पहुंचती है कि विद्वान अवर न्यायालय द्वारा पारित आक्षेपित आदेश मामले के तथ्यों का समग्र परिशीलन के उपरान्त विधिनुसार पारित किया गया है। जिसमें किसी प्रकार के हस्ताक्षेप की आवश्यकता प्रतीत नहीं होती है। तदनुसार प्रस्तुत प्रकीर्ण अपील निरस्त किये जाने योग्य है।"

7. In view of above, it is apparent that the ground raised by the petitioner before this Court was not raised before the appellate court. So far as the grounds raised by the petitioner is concerned, this Court is of the opinion that the trial court has passed the order after coming to the conclusion

that prima facie case and balance of convenience are in favour of the respondent and in case the interim injunction granted by the trial court is not granted, he would suffer irreparable loss and injury. Learned counsel for the petitioner failed to challenge the said findings or argued anything in regard to the aforesaid findings recorded by the trial court as well as recorded by the appellate court considering the grounds raised by the petitioner.

8. So far as the judgment relied by learned counsel for the petitioner in the case of *State of Uttar Pradesh and others versus Ram Sukhi Devi (Supra)* is concerned, the Hon'ble Apex Court has observed that the interim relief may not be granted for no better reason than that of a prima facie case has been made out without being concerned about the balance of convenience, the public interest and a host of other considerations. On repeated query being put to learned counsel for the petitioner, he failed to indicate as to what other interim injunction could have been granted in the aforesaid facts and circumstances of the case in which, in case of discharge of polluted water or rain water towards the house of any body may cause hazardous situation of spreading of diseases causing irreparable loss and injury, learned counsel for the petitioner failed to answer the same. Even otherwise the option of making a drainage towards pond has not been disputed.

9. In view of above and considering the overall facts and circumstances of the case this court is of the view that there is no illegality or error in the impugned order.

10. At this stage, learned counsel for the petitioner submits that aforesaid suit was filed in the year 2015 and more than 5 years have passed, therefore a direction may be issued for expeditious disposal of the suit. To which there is no objection

by the other side. However, copy of the order sheet has not been placed on record. Learned counsel for the parties have also failed to indicate the stage of the Suit.

11. This court on administrative side has already issued directions to the court below to obtain zero pendency of cases which are more than five years old. In view of directions already issued on administrative side, this court is not inclined to pass any further order on judicial side.

12. However, it is always open for the petitioner to move appropriate application before the court before which the matter is pending for expeditious hearing. In case any such application is moved within two weeks from today the same shall be considered and disposed of within two weeks thereafter and endeavour shall be made to decide the Suit within a time frame.

13. With the aforesaid, the petition is **dismissed**.

14. No order as to costs.

Order Date :- 1.11.2023

Akanksha