

Court No. - 6

AFR

Case :- MATTERS UNDER ARTICLE 227 No. - 5218 of 2023

Petitioner :- Ayaz Ahmad And 2 Others

Respondent :- Civil Judge (Junior Division), Kadipur, Distt. Sultanpur And 6 Others

Counsel for Petitioner :- Pradeep Kumar Shukla

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

Hon'ble Rajnish Kumar,J.

1. Heard Shri Skand Bajpai, Advocate holding brief of Shri Pradeep Kumar Shukla, learned counsel for the petitioners, learned Additional Chief Standing Counsel and Shri Mohan Singh, learned counsel for the opposite party no.6.

2. This petition has been filed for setting-aside the order dated 20.09.2023 passed in Original Suit No.723 of 2023 by the Civil Judge, Junior Division, Kadipur, District- Sultanpur. A further prayer has been made for direction not to demolish the housing abode described in the foot of plaint and they may not dislodge the peaceful possession and occupation of petitioners over the land in question described in the foot of plaint and for a direction for deciding the application for interim injunction on merits on the next date fixed.

3. Learned counsel for the petitioners submits that on the basis of spot inspection on 10.09.2023, the petitioners were directed to remove the alleged encroachment made by the petitioners on 10x10 part of Gata No.20/0.038 hec., which is recorded as Naveen Parti and encroached by the petitioners which has been selected for R.R.C. Center. It has further been observed that in the notice, in case the petitioners do not violate the direction issued by the authorities, the temporary encroachment would be removed immediately. Being aggrieved by the said notice, the

petitioners, after a notice under Section 82 of the C.P.C., filed a suit for permanent injunction before the Civil Judge, Junior Division, Kadipur, District- Sultanpur alongwith an application for interim injunction. The application for interim injunction has not been considered merely on the ground that there is a caveat by a private person and without notice to him the same can not be heard, whereas there was no occasion for a private person to file a caveat in regard to the government land and caveat has been filed by the husband of the Gram Pradhan due to political reason so that the petitioners may not get any indulgence from the trial court. The learned trial court, without considering the provisions of Order-39, Rule-3 C.P.C. that on account of urgency in the matter, there is no requirement of issuance of notice to the opposite parties, passed the impugned order, therefore, the petitioners are constrained to approach this Court and submit that the order passed by the trial court may be set-aside and the injunction may be granted.

4. Learned Additional Chief Standing Counsel submits that once a caveat was filed, it is for the concerned court to see that the orders are not passed without any opportunity to the caveator, therefore there is no illegality or error in the impugned order. He further submits that petitioners have filed a suit for permanent injunction without any prayer for declaration, therefore no injunction can be granted against the owners. The petitioners have disclosed in paragraph-4 of the plaint that the petitioners have perfected their right under Section 123(1) of the U.P. Zamindari Abolition and Land Reforms Act and Section 67-A(i) of the U.P. Revenue Code-2006 and they have become owner of the land in dispute, therefore unless they are able to show as to how they are owner of the land in dispute, they are not entitled for injunction.

5. Learned counsel for the Gaon Sabha also adopting the submissions of learned Additional Chief Standing Counsel submits that since the suit for permanent injunction has only been filed without any prayer for declaration, no injunction can be granted against the true owner.

6. I have considered the submissions of learned counsel for the parties and perused the record.

7. This petition has been filed challenging the order dated 20.09.2023 passed in Regular Suit No.723 of 2023 by Civil Judge (J.D) Kadipur, Sultanpur, by means of which the trial court has observed that a caveat has been filed in the matter therefore without hearing the caveator/ defendants it would not be appropriate to pass an ex-parte order and issued the notice to the caveator/ defendant. It appears that neither the counsels for the defendants were present, when the regular suit filed by the petitioner alongwith an application for interim injunction was taken up by the trial court nor the caveator.

8. A copy of the caveat has been placed on record by the petitioners as annexure no.7. Perusal of the caveat filed by the private opposite party i.e. opposite party no.7 indicates that it has been filed stating that he is residing on the land in dispute, which is a Gram Sabha land and he has come to know that the opposite party wants to harass him by filing a false suit in the court. He has further given the boundaries of the land in dispute with a prayer that in case any suit is filed in regard to the land in dispute, no order may be passed without opportunity to him.

9. Section 148-A of the Civil Procedure Code- 1948 provides that where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted, in a Court, any person claiming a right to appear

before the Court on the hearing of such application may lodge a caveat in respect thereof, therefore the provision makes it clear that even if the caveator does not show his right in regard to issue in question and wants to be heard before any order is passed on the application, he has a right to be heard before passing any order, if the caveat has been lodged by him. Section 148-A of C.P.C. is extracted here-in-below:-

"148-A. Right to lodge a caveat.—*(1) Where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted, in a Court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.*

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgment due, on the person by whom the application has been, or is expected to be, made, under sub-section (1).

(3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court, shall serve a notice of the application on the caveator.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period."

10. Here is a case in which the caveator has disclosed some right in the land in dispute in caveat filed before the concerned court. Even otherwise it can not be said that the caveator is not required to be heard if it is a government land. The contention of learned counsel for the petitioner that a private person can

not file a caveat in regard to government land is misconceived and not tenable and failed to show any rule or law. Even otherwise both are claiming right on land in dispute on the basis of possession. It is also not the case of the petitioners that the caveat was not served on the petitioners and it has not been argued by the learned counsel for the petitioners also, therefore once the caveat was served on the petitioners, who have filed the suit, it was their duty to serve a copy of the suit on the counsel for the caveator and then could have argued before the trial court or this Court pointing out that the caveator has been served. This Court is of the view that there is no illegality or error in the impugned order in issuing notice to the caveator, if he was not served.

11. So far as the argument of learned counsel for the petitioner in regard to Order-39, Rule-3 is concerned, it is a discretion of the Court concerned to see as to whether the injunction is required to be granted without issuing the notices or not but it does not provide that the opportunity to the caveator would not be given before hearing on the suit/ application, who has a right of hearing under Section 148-A C.P.C., therefore, contention of learned counsel for the petitioners in this regard is also misconceived and not tenable. Order-39, Rule-3 C.P.C. is extracted here-in-below:-

"Order- XXXIX, Rule-3. Before granting injunction, Court to direct notice to opposite party.

The Court shall in all case, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant-

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with-

(i) a copy of the affidavit filed in support of the application;

*(ii) a copy of the plaint; and
(iii) copies of documents on which the applicant relies, and
(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent."*

12. In view of above, this Court is of the view that the impugned order dated 20.09.2023 has rightly been passed in accordance with law. There is no illegality or error in it, which may call for any interference by this Court. The contentions raised by learned counsel for the petitioners are not tenable which are hereby repelled. The petition is misconceived and lacks merit in regard to challenge to the impugned order dated 20.09.2023 and it is **liable to be dismissed** to that extent.

13. The other grounds as argued by the learned counsel for the parties are concerned, they may be argued before the concerned court, who may consider the same in accordance with law. This Court does not express any opinion on the same.

14. At this stage, learned counsel for the petitioners submits that the petitioner has also moved an application under Section 151 C.P.C. on 25.09.2023 for ad-interim injunction but the same has not been considered till date. On a query being put as to why it has not been considered, he submits that on account of strike of lawyers no orders could be passed on the same, therefore, the allegation for not considering the application can not be levelled against the court concerned.

15. Learned counsel for the petitioner, at this stage, submits that the petition may be disposed of with a direction to the concerned court to consider the application for interim injunction filed by the petitioners after hearing the parties including the caveator. To which there is no objection by the other side.

16. In view of above, this petition is **dismissed** in regard to

prayer for setting-aside the order dated 20.09.2023 in Original Suit No.723 of 2023 and **disposed of** in regard to other prayers without expressing any opinion thereon with liberty to the petitioners to press their application before the concerned court on the date fixed and thereafter. However in case the same could not be considered on the date fixed and disposed of within a reasonable period thereafter despite assistance by the petitioners, they may move appropriate application before the concerned court for expeditious disposal of the applications, which may be considered by the concerned court in accordance with law and pass appropriate orders thereon expeditiously and proceed accordingly as per law. No order as to costs.

(Rajnish Kumar, J.)

Order Date :- 17.10.2023
Haseen U.