

Court No. - 17

Case :- WRIT - C No. - 9189 of 2023

Petitioner :- Kamil Hussain Fagil Hussain Farooqui

Respondent :- State Of U.P. Thru. Prin. Secy. (Revenue), U.P. Lucknow
And 5 Others

Counsel for Petitioner :- Azam Shafeequi, Viplav Sahu

Counsel for Respondent :- C.S.C., A.S.G., Pankaj Gupta

Hon'ble Alok Mathur, J.

1. Heard Sri Azam Shafeequi, learned counsel for the petitioner as well as learned Standing counsel on behalf of respondent No.s 1, 2 and 4 while notice on behalf of Gram Sabha concerned has been accepted by Sri Pankaj Gupta.

2. By means of the present writ petition the petitioner has prayed for a direction the opposite parties to remove unauthorized construction made on *abadi* land of gata No.602 of Village Narainpur Pargana Vihar, Tehsil Kunda, District Pratapgarh and also for a direction to the respondents to raise construction on *banjar* land of gata No.601 of the same village.

3. It has been submitted by learned counsel for the petitioner that ancestral home of the petitioner was built on gata No.602 which is adjacent to the *banjar* land i.e. gata No.601 and in case the said water tank is constructed it will completely block the approach to the land of the petitioner and it is in aforesaid facts that prayer has been made for restraining the respondents from making construction on gata No.601.

4. It is further submitted that the petitioner has already filed a civil suit before Civil Judge (Senior Division), Kunda, District Pratapgarh praying for permanent injunction against the respondents from making any construction.

5. Learned Standing counsel, on the other hand, has opposed the writ petition. He has submitted that the prayer which has been sought in the present writ petition, for the same cause of action the petitioner has already preferred civil suit No.39 of 2023 in the court of Civil Judge (Senior Division), Kunda, Pratapgarh and submits that for the same cause of action writ petition would not be maintainable.

6. I have heard learned counsel for the parties and perused the record.

7. It seems that the petitioner has occupied said gata No.601

while the opposite parties are making construction of water tank on gata No.602 which is adjacent to the land in possession of the petitioner. The grievance of the petitioner is that in case water tank is constructed on gata No.602 it will partially block the ingress and egress of the petitioner. It is further noticed that for the same cause of action the petitioner has already preferred a civil suit before Civil Judge (Senior Division), Kunda, District Pratapgarh which has been registered as Suit No.39 of 2023 where an application under Order 39 Rule 1 and 2 of CPC has been preferred seeking to restrain the respondents from making the said construction.

8. Undoubtedly, the present controversy involves disputed questions of facts with regard to ownership and possession by the respective parties which can be adequately looked into by the court of competent jurisdiction where the civil suit is pending. It is further noticed that for the same cause of action two proceedings simultaneously cannot be pursued and once the recourse to civil suit has already been undertaken by the petitioner for the same cause of action writ petition would not be entertainable.

9. For the reasons stated above, the present petition is devoid of merits and is accordingly **dismissed**.

10. Learned Civil Judge (Senior Division), Kunda, District Pratapgarh shall proceed to decide the case on merits without being influenced by the order passed by this Court in the present writ petition.

(Alok Mathur, J.)

Order Date :- 27.10.2023
RKM.