

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 8276 of 2023

Petitioner :- Rani Mayawati

Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Deptt. Home Lko And Others

Counsel for Petitioner :- Nitin Kumar Mishra

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

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Narendra Kumar Johari,J.

(1) Heard the learned counsel for the petitioner and the learned A.G.A. who appears for the Opposite party nos.1 to 4 and the learned counsel for the Opposite party no.5 at length.

(2) A supplementary affidavit has been filed by the learned counsel for the petitioner which is taken on record.

(3) Learned A.G.A. was directed to seek instructions from the police station concerned as to whether the building in question has been partly demolished as alleged by the learned counsel for the petitioner during the course of argument.

(4) Learned A.G.A. has produced before this Court the instructions dated 08.11.2023 sent by Shri Lallan Yadav, the Inspector of Police Station Kotwali Nagar, District Ayodhya, wherein it has been stated that he had visited the spot in question and had found that some part of the building has been demolished due to widening of Rampath Marg whereas the remaining portion is still existing.

(5) Learned counsel for the petitioner has stated that the petitioner and her sister, are two legal heirs of Smt. Leelawati, the mother and Puttu Lal, father. Smt. Leelawati was the owner of the property in question and she had given it to the petitioner- Rani Mayawati and not to her sister. Their father- Puttu Lal, illegally sold off the half portion of the property in favour of his other daughter Rekha Gupta. The petitioner has filed a Civil Suit for

cancellation of Sale Deed on 27.05.2008 alongwith prayer for permanent injunction. A copy of the plaint of Regular Suit No.196 of 2008 pending before the learned Civil Judge (Senior Division)/F.T.C. Court, Faizabad, has been filed as Annexure-4 to the petition. Learned Civil Judge (Senior Division), Court No.14, Faizabad, has pleased to pass an order for maintenance of status-quo on 28.04.2010. The said order is still operating in favour of the petitioner. In the meantime, during the pendency of the said Suit the petitioner's sister Rekha Gupta has sold off the property to the Respondent no.5 through the Power of Attorney holder, Prateek Kumar Vaisy through the Sale Deed dated 12.09.2019, a copy of which has been filed as Annexure-6 to the petition.

(6) A complaint was preferred by the Respondent no.5 to the police station concerned and thereafter a report was submitted on which the proceedings were initiated under Section 145 Cr.P.C. by the City Magistrate. No notice was served on the petitioner of said proceedings and an order for attachment of the house was passed by the Magistrate under Section 146 (1) Cr.P.C. on 27.03.2023. The police thereafter took possession of the house of the petitioner on 06.04.2023. The petitioner challenged the order of the City Magistrate dated 27.03.2023 before the District Judge, Faizabad. The order dated 27.03.2023 was set aside on 07.07.2023 in Revision No.58 of 2023.

(7) The order of Revision passed by the District Judge was challenged by the Respondent no.5 in a writ petition which was disposed of by this Court on 25.07.2023. The order of the District Judge dated 07.07.2023 became final.

(8) Since the order of attachment of property had been set aside by the District Judge, the petitioner moved an application for release of property in her favour. Shri Manoj Kumar Srivastava, the Respondent no.5, also moved the similar application. Both the applications have been rejected by the impugned order passed by the Magistrate on 11.09.2023 saying that since the title of the property in question is unclear and parties are at loggerhead, there is all possibility of breach of peace if possession is handed over to one of the Parties/Applicants.

(9) It has been submitted by the counsel for the petitioner that no such proceedings under Section 145 Cr.P.C. could take place as Civil Suit was pending with regard to the

same property.

(10) The petitioner has not raised the question of the maintainability of the proceedings under Section 145 Cr.P.C. before this Court and he has not prayed for quashing of the proceedings and he has only prayed for quashing of order dated 11.09.2023.

(11) This Court having gone through the order dated 11.09.2023 and finds no infirmity in the same, hence, the writ petition stands ***disposed of*** leaving it open to the petitioner to challenge the proceedings which are still pending before the Magistrate concerned in the Competent Forum.

Order Date :- 7.12.2023

N.PAL