

Court No. - 13

Case :- HABEAS CORPUS WRIT PETITION No. - 350 of 2023

Petitioner :- Mohd. Quresh Thru. His Daughter Afsana Khatoon

Respondent :- State Of U.P. Thru. Prin. Secy. Home U.P. Lko. And 5 Others

Counsel for Petitioner :- Farooqahmad

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar,J.

1. Heard Shri Farooq Ahmad, learned counsel for the petitioner, learned A.G.A. for respondent nos.1 to 3.

2. Notices to respondent nos. 4 to 6 are dispensed with in view of the proposed order.

3. Through this petition the petitioner has prayed for the following relief nos. 1 and 2:-

"I. Issue a writ of habes corpus directing the opp. parties to produce the corpus of the petitioner/detenué unsound mind before this Hon'ble Court and to release the petitioner/detenué unsound mind from illegal detention of the opp. party no.4 to 6 and to give petitioner/detenué unsound in the custody of the next friend/daughter of the petitioner/detenué forthwith.

II. Issue a writ of mandamus commanding the opp. party no.1 to 3 to search and recover the petitioner from the illegal custody of opp. party no.4 to 6 and to save the life of the petitioner/detenué unsound mind forthwith."

4. The brief facts, as alleged in this petition, are

that the detenue is of unsound mind person and was living with his daughter Smt. Afasana Khatoon. There is no other son and daughter of the detenue except the deponent, who has filed this petition. Although the detenue is the resident of Mohalla Poore Miyan, Qasba-Post-Pargana-Tehsil and Police Station Rudauli, District Faizabad, however, due to mental problem the detenue was residing with his daughter in village Rasauli, Police Station Kotwali, Pargana and Tehsil Nawabganj, District Barabanki.

5. It is further pleaded that in the month of July, 2023 the detenue desired to meet his brother and other relatives, who are residing in Qasba Rudauli therefore, the daughter of the detenue went to Rudauli and left the detenue in Qasba Rudauli, District Faizabad.

6. It is pleaded that taking advantage of unsound mind/illness of the detenue, respondent nos. 4 to 6 have called the detenue and kept him in their custody and also got registered two sale deeds of the plots, which belong to the detenue, for a meager amount against the valuation of the

property. The sale deeds are on record. Respondent nos. 4 to 6 have not permitted the deponent and next friend of the detenue to meet the detenue and he is in illegal custody of respondent nos. 4 to 6. It is further submitted that consideration amount given to the detenue has also been withdrawn by the respondents.

7. Learned counsel for the petitioner submits that the detenue is in illegal custody of respondent nos. 4 to 6 with the active connivance of respondent no.5 and the life of the detenue is in danger. Respondent nos. 1 to 3 are not paying heed to get free the detenue from the illegal custody of the private respondents. The detenue has legal right to get himself liberated from the illegal detention of respondent no. 4 to 6.

8. Per contra, learned A.G.A. for the respondent State, has vehemently opposed the contention, on the basis of written instruction received by him from the concerned Police Station which have been submitted after due enquiry on the complaint given by the deponent, which is taken on record.

9. It is submitted by learned A.G.A. that after

enquiry conducted upon the application given by the petitioner it was found that father of the deponent is mentally fit. He does not want to live with the married daughter of his divorced wife. The dispute is regarding the property. It is further submitted by learned A.G.A. that in the complaint letter given by the deponent alleging illness/unsound mind of his father no medical report has been filed. He further submits that life and liberty of the detinue is not in danger but he himself does not want to live with his married daughter.

10. Perused the record.

11. On due consideration to the submissions advanced by learned counsel for the parties and perusal of the record, it appears that the writ petition contains disputed questions of facts, which cannot be adjudicated in the writ jurisdiction. Moreover, although, in so many words, it has been pleaded in the petition that due to mental problem and unsound mind the detinue is residing with the deponent of this petition and the detinue is ill, however, no medical papers have

been filed by the deponent, who is the daughter of the detinue to show that her father is suffering from any medical condition or is of unsound mind. The pleadings made in the petition as well as the arguments advanced by learned counsel for the petitioner does not inspire confidence.

12. The writ petition contains disputed questions of fact. Prima facie this Court is not satisfied that it is a case of illegal detention as after enquiry conducted upon the application given by the petitioner it was found that father of the deponent is mentally fit and he does not want to live with the married daughter of his divorced wife.

13. Submission of learned A.G.A. appears to carry force that it is a property dispute.

14. Considering the above, I am of the opinion that no prima facie case is made out to issue a writ in the nature of Habeas Corpus against the respondent nos.4 to 6, hence the petition fails and is accordingly, **dismissed.**

Order Date :- 2.11.2023
Madhu