

Court No. - 2

Case :- MATTERS UNDER ARTICLE 227 No. - 2941 of 2024

Petitioner :- Ramesh Prasad Vishwakarma And Another

Respondent :- Samiullah And Others

Counsel for Petitioner :- Dinesh Kumar Mishra, Mohammad Ehtesham Khan, Ripu Daman Shahi

Counsel for Respondent :- Sandeep Kumar Srivastava

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Upendra Kumar Singh, Advocate holding brief of Sri Dinesh Kumar Mishra, learned counsel for the petitioners and Sri Anoop Kumar, learned counsel for the opposite party Nos.3, 4 & 5. However, no one has appeared on behalf of opposite party Nos.1 & 2.

2. Sri Anoop Kumar, learned counsel has filed short counter affidavits on behalf of opposite party Nos.3, 4 & 5, today in the Court, the same are taken on record.

3. In view of the proposed order, the notices to opposite party Nos.1 & 2 are hereby dispensed with.

4. By means of this petition filed under Article 227 of the Constitution of India, the petitioners have prayed for the following reliefs:-

"(i) to set aside the impugned judgment and order dated 27.05.2024 passed by the learned Additional District Judge, Court No.4, Gonda in Misc. Appeal No.18 of 2024 in re: Samiullah and others vs. Ramesh Prasad and another, contained as Annexure No.1 to this petition.

(ii) to restrain the opposite party Nos.1 to 4 from interfering in the peaceful use and enjoyment of the petitioners over Gata No.901, area 1.463 hectare, situated in Village-Narharpur (Bhudhapayer), Tehsil-Mankapur, District-Gonda till decision of the Regular Suit No.833 of 2024 filed by the petitioners.

(iii) to pass any other order or direction which this Hon'ble Court may deem fit under the facts and circumstances of the case."

5. Learned counsel for the petitioners has submitted with vehemence that the learned Civil Judge, Junior Division/ F.T.C.-II, District-Gonda has passed order dated 09.05.2024 granting interim injunction in favour of the petitioners. By means of the aforesaid order, all the relevant papers have been considered. Feeling aggrieved from the aforesaid interim

injunction order, the opposite parties have filed a misc. appeal before the learned court of Additional District Judge, Court No.4, Gonda and the learned appellate court passed the impugned order dated 27.05.2024 allowing the aforesaid misc. appeal setting aside the interim injunction order dated 09.05.2024 remanding back the matter to the learned court concerned thereby directing to pass a fresh order by affording an opportunity of hearing to the parties concerned and such order should be speaking and reasoned one.

6. Learned counsel for the petitioners has submitted that on 06.07.2024 the next date is fixed before the learned trial court. He has further submitted that though the order granting interim injunction was a speaking and reasoned order but the matter has been remanded back by the learned appellate court to the learned trial court for denovo proceedings deciding the interim injunction application a fresh by affording an opportunity of hearing to the parties concerned. While setting aside the interim injunction order, the learned appellate court should indicate that such application be decided strictly in accordance with law independently without there being influenced from any of the findings of the learned appellate court. However, the learned appellate court while remanding the matter to the learned trial court has specifically directed that the findings given in the appellate order should be adhered to by the learned trial court while deciding the interim injunction application a fresh. He has submitted that if all the findings of the learned appellate court would be binding upon the learned court below, then there would be no purpose to decide the interim injunction application a fresh by the learned trial court.

7. Learned counsel for the petitioners has further submitted that if the learned appellate court was convinced that the order of interim injunction was perverse, he could have set aside the order dated 09.05.2024 without remanding the same to the learned trial court to decide a fresh, but instead of passing such order, the issue has been remanded back by the learned appellate court to the learned trial court directing him/ her to decide the interim injunction application a fresh in terms of the findings of the learned appellate court, such direction is absolutely illegal and unwarranted.

8. Sri Anoop Kumar, learned counsel for the opposite party Nos.3, 4 & 5 has stated that the petitioners have not approached the learned trial court fairly and without disclosing the relevant facts and circumstances of the issue as well as without impleading the necessary party, namely, Smt. Sobhawati, who was the co-tenure holder and also without disclosing the fact that as to which party was in possession with the property in

question, the interim injunction order has been obtained, therefore, the learned appellate court has rightly set aside the interim injunction order dated 09.05.2024. He has further submitted that after the order having been passed by the learned appellate court, the property in question was commissioned by the court Amin and that aspect too should have been considered by the learned trial court while disposing off the interim injunction application a fresh.

9. However, on the point that the learned appellate court has remanded the issue before the learned court below to decide the interim injunction application a fresh directing the learned trial court to consider and follow the findings given by the learned appellate court is concerned, Sri Anook Kumar, learned counsel for the opposite party Nos.3, 4 & 5 has stated that the appellate order may be modified to that effect.

10. Having heard learned counsel for the parties and having perused the material available on record, without entering into merits of the issue, I hereby ***dispose of this petition finally*** at the admission stage directing the learned trial court i.e. Civil Judge (Junior Division)/ F.T.C.-II, Gonda to decide the interim injunction application a fresh in terms of the appellate order ignoring that portion of order wherein the learned trial court has been directed to follow and abide by the directions of the learned appellate court. However, it is needless to say that while disposing off the interim injunction application a fresh, the learned trial court shall not only afford an ample opportunity of hearing to the parties concerned but shall also, carefully, go through all the relevant material and evidences available on record. It is also needless to say that after considering all the material available on record and after considering all the relevant aspects of the subject matter, the order would be speaking and reasoned one.

11. Since the parties are present before this Court, therefore, it is expected that such interim injunction application shall be decided finally on the date fixed i.e. 06.07.2024 or within four weeks thereafter and the parties shall not take any unnecessary adjournment and shall participate in the proceedings properly.

12. Till the disposal of interim injunction application a fresh by the learned trial court or within a period of four weeks from today, whichever is earlier, the status-quo as on today in respect of the property in question, shall be maintained.

13. It is expected that the petitioners shall file an appropriate application of impleadment/ amendment before the learned trial court on the first opening day i.e. 01.07.2024 and the

appropriate order on such application may be passed by the learned trial court with expedition, strictly in accordance with law, so that the aforesaid interim injunction application may be disposed off finally in terms of the directions being issued by this Court.

[Rajesh Singh Chauhan,J.]

Order Date :- 18.6.2024
Suresh/