

Court No. - 2

Case :- WRIT - C No. - 5638 of 2024

Petitioner :- Radha

Respondent :- U.P. Ziladhikari , Mohanlalganj , Lucknow And Others

Counsel for Petitioner :- Archana Rawat,Rahul Kumar Kaushal

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Ms. Archana Rawat, learned counsel for the petitioner as well as learned Standing Counsel for the State-respondent Nos.1 to 3.

2. In light of the proposed order, notices to respondent No.4 is dispensed with.

3. It has been submitted by learned counsel for the petitioner that her husband was the owner of Gata No.1397fa/0.2020 hectare situated at Village Tamoriya, Tehsil Mohanlalganj, District Lucknow. It has also been stated that portion of the said plot of the petitioner were sold by means of two sale deeds by the late husband of the petitioner to two individuals including the respondent No.4. It has been further stated that husband of the petitioner died on 14.06.2023 and proceedings for mutation of the name of the petitioner are still pending but respondent No.4 who has been given only 1/3 of the share in the said property is constructing over and above shares sold to her and accordingly by means of the present petition a prayer has been made to retain the respondent No.4 from raising the construction on the said land.

4. Learned Standing Counsel has raised preliminary objection and submitted that the present dispute is a private dispute for which the petitioner has adequate remedy to approach civil courts and in fact the petitioner has already filed an application under Section 116 of the U.P. Revenue Code before the Sub Divisional Magistrate, Mohanlalganj, Lucknow.

5. Considering the aforesaid circumstance and specially the fact that petitioner seeks to restrain the respondent No.4 from construction and the fact that the present dispute is a private dispute cognizance of which cannot be taken under Article 226

of the Constitution of India.

6. However, it is further noticed that the petitioner has already been initiated proceedings for demarcation of the said property and moved an application under Section 116 of the U.P. Revenue Code and it is provided that in case the respondent No.4 is raising construction over and above her share, the petitioner has efficacious remedy to move an application before the concerned authority where the application under Section 116 of the U.P. Revenue Code is under consideration.

7. It is provided that if such an application is been moved within ten days before the concerned authority, the concerned authority shall consider and pass necessary orders preferably within a period of one month thereafter in accordance with law after hearing the parties.

8. It shall be open for the concerned authority to pass an ad interim injunction in case the petitioner is able to demonstrate facts necessary for passing of the said order.

9. With the aforesaid directions, the petition is ***disposed of***.

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(Arun Kumar Singh Deshwal, J.) (Alok Mathur, J.)

Order Date :- 27.6.2024

Saurabh Yadav/-