

Court No. - 16

Case :- CRIMINAL MISC. WRIT PETITION No. - 5096 of 2024

Petitioner :- Ajeet Kumar Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And 4 Others

Counsel for Petitioner :- Suresh Kumar Upadhyay, Bajrangi Verma

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

Heard Sri Suresh Kumar Upadhyay, learned counsel for the petitioner and Sri Rajiv Kumar Verma, learned A.G.A.-I for the State and perused the record.

The instant writ petition has been filed seeking following main relief:-

"(i) To issue a writ in the nature of certiorari to quash the impugned judgment and order dated 06.07.2024 passed by the opposite party no.2 as well as judgment and order dated 08.01.2020 passed by the opposite party no.3 against the petitioner contained as Annexure No.1 and 2 to the writ petition."

Learned counsel for the petitioner submits that on the basis of police report dated 16.10.2019, learned Sub Divisional Magistrate, Sadar, Lucknow issued notice dated 17.10.2019 under Section 133 Cr.P.C. to the petitioner that he is encroaching public land. That notice was challenged before the Division Bench of this Court by filing Writ Petition No. 31241 (M/B) of 2019, which was dismissed vide order dated 15.11.2019 with direction to approach the Sub Divisional Magistrate, Sadar, Lucknow by filing reply of the said show cause notice. Thereafter the reply was filed and the case was finally decided vide order dated 08.01.2020 against the petitioner and it was held by the Sub Divisional Magistrate, Sadar, Lucknow that the petitioner has encroached the public land and a direction was given to remove the said encroachment within fifteen days and a further direction was also given to the Station House Officer, Police Station Chinhath, Lucknow that if the petitioner does not remove the encroachment within fifteen days, then he may remove the same within next fifteen days.

He further submits that aggrieved by the aforesaid order dated 08.01.2020, the petitioner preferred a Criminal Revision No.21

of 2020 before learned Additional District and Sessions Judge, Court No.9, Lucknow, which was also dismissed by a detailed order dated 06.07.2024 and the order passed by the learned Sub Divisional Magistrate, Sadar, Lucknow was confirmed. He further submits that aggrieved by both the orders, the present writ petition has been filed.

He further submits that the petitioner has not done any encroachment and the matter is purely civil in nature in respect of Plot No.234M and in this regard, a civil suit has already been filed before the court of learned Civil Judge Hawali (J.D.), Lucknow alongwith injunction application, which is still pending and no injunction order has been granted to the petitioner.

He further submits that both the orders have been passed without considering the evidence on record and no encroachment was ever made by the petitioner on the land.

On the other hand, learned A.G.A.-I for the State opposed the entire arguments as advanced by learned counsel for the petitioner and submits that on the basis of police report, the Sub Divisional Magistrate, Sadar, Lucknow had issued notice under Section 133 Cr.P.C. as the petitioner has encroached the public land bearing Plot No.234M creating hindrance on the entrance of opposite party no.5. He further submits that after the police report and on spot inspection and considering the entire evidence on record, the learned Sub Divisional Magistrate, Sadar, Lucknow by a detailed order dated 08.01.2020 had allowed the application under Section 133 Cr.P.C. and directed the petitioner to remove the encroachment within fifteen days. The Station House Officer, Police Station Chinhath, Lucknow was also directed to remove the illegal encroachment of the petitioner within fifteen days, however, inspite of removing the same, the petitioner preferred a Criminal Revision before the court of learned Additional District and Sessions Judge, Court No.9, Lucknow, which was dismissed by a detailed order dated 06.07.2024. Thus, he submits that it is crystal clear that the petitioner has encroached the public land and the impugned order passed by the learned Sub Divisional Magistrate, Sadar, Lucknow dated 08.01.2020 as well as by the learned Additional District and Sessions Judge, Court No.9, Lucknow dated 06.07.2024 have been correctly passed and there is no illegality or perversity in the aforesaid orders, therefore, there is no need of interference by this Court and the instant writ petition is liable to be dismissed.

Learned A.G.A.-I for the State further submits that in the civil suit, which was filed by the petitioner before the learned Civil

Judge Hawali (J.D.), Lucknow, there is no injunction order passed in his favour and if he is aggrieved, he may approach the same for redressal of his grievance.

After considering the arguments as advanced by learned counsel for the respective parties as well as after perusal of records, this Court is of the view that the order passed by the learned Sub Divisional Magistrate, Sadar, Lucknow dated 08.01.2020 is just and proper as the same has been passed after considering the police report and the entire evidence available on record. The learned Sub Divisional Magistrate, Sadar, Lucknow gave a finding that the petitioner has encroached the land and a positive direction has been given to remove the encroachment, which has not been done yet and even the Criminal Revision filed by the petitioner against the order dated 08.01.2020 has also been dismissed by a detailed order dated 06.07.2024 passed by learned Additional District and Sessions Judge, Court No.9, Lucknow. Thus, this Court does not find any justification to quash the impugned orders under challenge in this writ petition.

This Court is also of the view that if the petitioner is aggrieved, he may approach the authorities concerned by moving appropriate application before the competent forum where the civil suit is pending as the relief sought in this petition cannot be granted.

With the aforesaid observations, the instant writ petition stands **dismissed**.

Order Date :- 19.7.2024

Saurabh