

Court No. - 2

Case :- WRIT - C No. - 10086 of 2024

Petitioner :- Atiullah

Respondent :- District Magistrate/Collector Gonda And 4 Others

Counsel for Petitioner :- Irfan Alam

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy,J.

Hon'ble Brij Raj Singh,J.

1. Sri Pankaj Verma, Advocate has filed Vakalatnama on behalf of opposite party no.5 which is taken on record. Affidavit of service filed today is also taken on record.

2. Heard.

3. On 26.11.2024, we the passed the following order:-

"1. Heard.

2. After hearing the parties, what comes out is that a compromise was arrived at between the petitioner and opposite party No.5 at the Mediation Centre of this Court at Lucknow in pursuance to orders passed by a Division Bench of this Court in Criminal Misc. Writ Petition No.802 of 2023, which has been filed by the opposite party No.5 challenging the F.I.R. lodged by the petitioner and based on the said compromise, the F.I.R. was quashed and the petition was allowed by judgment dated 17.05.2023. However, subsequently as alleged by the petitioner, the opposite party No.5 violated the compromise and did not vacate the land measuring 38X232 feet adjoining the Chak Road. Although, the opposite party No.5 has received Rs.3,50,000/- from the petitioner on 11.03.2023. Being aggrieved, an application for recall of the judgment dated 17.05.2023 passed in the aforesaid petition was filed by the petitioner, but the said application was disposed of with the observation inter alia that in order to decide the issue, evidence would have to be led and such evidence cannot be taken by the High Court only by way of affidavit in this writ petition, which was filed for quashing of F.I.R., however, this aspect can be seen by the Contempt Court. Thereafter, the petitioner filed a contempt petition. The said petition has been disposed of with the observation inter alia that the Contempt Judge was of the considered opinion that dispute in question may not be adjudicated in contempt proceedings even if the private opposite party is flouting the direction of the Writ Court, the appropriate application may be preferred to the competent Administrative/ Police Authority and the grievance of the petitioner, if any, may be redressed strictly in accordance with law after carrying out the spot inspection. Accordingly, the contempt proceedings were dropped on 05.12.2023.

3. In these circumstances, the petitioner finds himself in an unenviable situation where firstly the F.I.R. lodged by him has been quashed based on a compromise and the violation of the compromise has been declined to be seen on an application for recall on the ground that evidence would be required instead contempt Judge may see the same whereas the Learned Contempt Judge has said that he may not be in a position to enter into such issues and the administrative Authorities may see. The end result is that F.I.R. stands quashed, the petitioner has paid an amount of Rs.3,50,000/- to opposite party No.5, as claimed, yet the petitioner's grievance remains un-redressed.

4. Although, ordinarily we do not interfere in such matters involving dispute between private parties, but in this case the Court itself in a petition for F.I.R. quashing, had referred the matter for mediation and a compromise was arrived at and had then disposed of the petition by quashing the F.I.R. based on such compromise. The allegation is of violation of Clause-D of the said compromise, which reads as under:- "That the parties have agreed that the First Party will have no concern or relation with respect to the plot in the Eastern side measuring 38X232 feet adjoining the chakroad and Smt. Nahid Parveen shall have exclusive right title & possession of the said land and in return the Second Party is handing over a draft of Rs.3,50,000/- (Rupees Three Lacs Fifty Thousand only) dated 11.03.2023 having no.024886 drawn on Jacab Circle Branch, Mumbai of Bank of India in favour of Ram Bhairi Pandey i.e. Second Party."

5. This is not a matter where extensive evidence may be required, at least as of now. The Revenue Authorities can be directed to visit the spot and submit a report as to the correct factual position in this regard after giving an opportunity of hearing to the petitioner and opposite party No.5 as to whether clause D of the said compromise has been complied or not? If not, then based thereon, if it is possible for this Court to get the aforesaid compromise implemented, then it shall do so, otherwise the petitioner will have to reconcile to his fate.

6. We accordingly direct the Sub-Divisional Magistrate concerned to visit the spot to conduct an on the spot inquiry, hear out the petitioner and the opposite party No.5, go through the terms of the compromise dated 17.04.2023, a copy of which shall be communicated by Shri Mahendra Kumar Mishra, learned Standing counsel to him and then submit his report in the light of the Clause-D of the said compromise as to whether it has been complied or not, if so in what manner.

7. List this case on 19.12.2024 as fresh.

8. It would be better if the Sub-divisional Magistrate concerned joins these proceedings through video conferencing.

9. Let Dasti notice be issued to the petitioner for service upon opposite party No.5 through the opposite party No.3, meaning thereby, the notices will be served by the petitioner in the office of opposite party No.3, who shall serve it on opposite party No.5 and file proof of service before the next date of listing.

10. Copy of the order be provided to the parties on payment of usual charges within 24 hours, if possible. "

4. Today, Sri Avnish Tripathi, Sub-Divisional Magistrate has joined the proceedings through video-conferencing. He says that he had visited the spot and found that Sri Ram Bihari Pandey who is opposite party no.5 herein and is represented through Sri Pankaj Verma, Advocate is in possession. He submits that Clause-D of the compromise arrived at between the parties before the Mediation Centre of this Court at Lucknow has not been complied and opposite party no.5 continues to be in possession of the said portion of the land as mentioned in Clause-D. Written report has been submitted by the S.D.M. to learned Standing Counsel along with covering letter dated 16.12.2024 which is taken on record.

5. In view of the aforesaid, we direct the S.D.M., Sadar-Gonda to execute/ implement Clause-D of the compromise as quoted in our earlier order dated 26.11.2024 in the presence of the petitioner and the petitioner shall be at liberty to erect boundaries of the said portion of the land referred in Clause-D and be in occupation of the same in terms of the compromise, if necessary, with the help of police authorities. This is necessary to do substantial justice in view of the facts already narrated in our order dated 26.11.2024. Opposite party no.5 who is also present in person is warned not to interfere with the possession of the petitioner on the land in question settled with the petitioner as per the compromise referred earlier and any intervention in the petitioner's possession or violation of our order disposing of the earlier writ petition in terms of the compromise would be treated very seriously and consequences would be very severe for him. Let this exercise be completed by the S.D.M. within three weeks. As regards F.I.R. lodged by the petitioner against opposite party no.5, we have nothing to say in the matter as that is not the subject matter of these proceedings. We **dispose of** this petition with the aforesaid observations/ direction especially as learned counsel for opposite party no.5 submitted that land is vacant and boundary existing thereon earlier had been demolished by opposite party no.5 so that petitioner may take possession thereof, meaning thereby, he has no objection to the order being passed herein. This was a fit case for imposition of cost upon opposite party no.5 but the only reason we do not do so at this stage is that we do not want to prolong the proceedings any further.

(Brij Raj Singh,J.) (Rajan Roy,J.)

Order Date :- 19.12.2024

Shanu/-