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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 1064/2012 & CM No.16796/2012 (for stay)

KIRAN SINGH Petitioner

Through: Ms. Nupur Kumar, Adv.

Versus

SANJAY KUMAR AND ORS Respondents

Through: Mr. Santosh Kumar Tripathi & Mr.
Rizwan, Advs.

AND

CONT.CAS(C) 543/2017

KIRAN SINGH Petitioner

Through: Ms. Nupur Kumar, Adv.

Versus

ANKITA CHAKRAVARTY & ORS Respondents

Through: Mr. Naushad Ahmad, Adv. for GNCTD.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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04.09.2017

1. CM (M) No.1064/2012 under Article 227 of the Constitution of India impugns the order [dated 21st August, 2012 in Civil Suit No.296/2006/96 of the Court of Civil Judge, West District, Tis Hazari Courts, Delhi] vacating the interim order on an application under Order XXXIX Rules 1&2 of the Code of Civil Procedure, 1908 (CPC) earlier granted in favour of the petitioner / plaintiff on 7th June, 2012 restraining the respondent / defendant no.4 Gram Sabha, Village Asola from fencing “the suit property”.
2. The petition aforesaid came up first before this Court on 24th September, 2012 when while issuing notice thereof, till the next date, the respondents / defendants were restrained from taking possession of the property. The said interim order has continued till now.

3. I have enquired from the counsel for the petitioner as to how this petition under Article 227 of the Constitution of India has been preferred against the order of the Civil Judge on an application under Order XXXIX Rules 1&2 of the CPC and against which order the remedy of appeal under Order XLIII Rule 1(r) of the CPC is available. Though the petitioner / plaintiff has not placed the copy of the plaint in the suit from which this petition arises but it appears that the appeal, considering the valuation of the suit, would lie to the Court of Senior Civil Judge / District Judge and not before this Court.
4. The counsel for the petitioner / plaintiff states that the petitioner / plaintiff had in fact preferred an appeal but which was dismissed.
5. However the challenge in this petition is to the order dated 21st August, 2012 of the Civil Judge and not to any appellate order. The order dated 24th August, 2012 of the Court of Additional District Judge-06 (ADJ), West District, Tis Hazari Courts, Delhi to which attention is drawn, though in an appeal filed by the petitioner, but is of withdrawal of the said appeal by the counsel for the petitioner / plaintiff with liberty to file the same before the appropriate forum / Court.
6. Upon it being enquired from the counsel for the petitioner as to why the appeal was withdrawn and how this CM(M) No.1064/2012 under Article 227 of the Constitution of India is maintainable, she states that she was not the counsel then and has stepped into this petition also since the last date only.
7. The same cannot be a ground.

8. The petition is thoroughly misconceived and it is unfortunate that the petitioner has enjoyed an interim order for the last five years on such a misconceived petition.
9. The petition is dismissed. Needless to state that the interim order dated 24th September, 2012 stands vacated.
10. Cont. Cas (C) No.543/2017 has been filed averring that the alleged contemnors being the Sub-Division Magistrate, Saket, Block Development Officer, (South) and Station House Officer, Police State Fatehpur Beri have violated the order dated 24th September, 2012 in CM(M) No.1064/2012 by dispossessing the petitioner on 9th May, 2017.
11. The counsel for the alleged contemnors states that the alleged contemnors have dispossessed the petitioner in enforcement of the order in Execution Application No.23/2016 in Original Application No.36/2016 of the National Green Tribunal (NGT), New Delhi. It is also stated that the petitioner herein had on 8th May, 2017 undertaken to the NGT to vacate the said premises.
12. I have enquired from the counsel for the alleged contemnors that even if that be so, the alleged contemnors were still required to approach this Court for vacation of the order in view of the undertaking given before the NGT or the orders of the NGT.
13. The counsel for the alleged contemnors agrees and apologizes for the same having not been done.
14. The counsel for the petitioner has contended that the petitioner has undertaken to vacate some other premises and which has been vacated but the order in CM(M) No.1064/2012 was with respect to a different premises.

15. It is contended that in the garb of the order of the NGT, the other properties of the petitioner are being acted upon.

16. The counsel for the petitioner has also contended that the dispossession of the petitioner / plaintiff is also in violation of order dated 17th July, 1998 in the same suit from which CM(M) No.1064/2012 had arisen.

17. The order dated 17th July, 1998 is of direction of maintenance of *status quo* till further orders. Thereafter in the same suit, vide order dated 7th June, 2012 supra, the respondent / defendant no.4 Gram Sabha, village Asola was restrained and vide order dated 21st August, 2012, the interim order was vacated. I am unable to accept the contention that the vacation thereby was of the interim order dated 7th June, 2012 only and not of the interim order dated 17th July, 1998.

18. Though the order dated 24th September, 2012 in CM(M) No.1064/2012 is found to have been violated by the alleged contemnors but considering that there was an undertaking before the NGT and the suit was also with respect to the property subject matter of the proceeding before NGT and that it is an environment issue, no case for initiating contempt proceedings is made out.

19. Cont.Cas (C) No.543/2017 is also dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 04, 2017

‘gsr’..