
(2011) 09 AHC CK 0127

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 52036 of 2011

Rajendra Prasad
Dubey

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Sept. 16, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 107, 116
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 176

Citation: (2011) 114 RD 454

Hon'ble Judges: A.P. Sahi, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

A.P. Sahi, J.

This writ petition has been filed with a prayer that the orders of the Sub Divisional Magistrate, Macchlishahar passed on 18.6.2011, 15.6.2011 and 4.8.2011, be directed to be complied with by the Respondent Nos. 4 and 5 and the Respondents be further directed not to interfere with the constructions being raised by the Petitioner over plot No. 242 situated at village Bhaupur, Pargana Ghisuawa, Tehsil Macchlishahar, District Jaunpur. A further prayer has been made that the suit filed u/s 176 of the U.P.Z.A. & L.R. Act, 1950 in relation to plot No. 243 be directed to be decided within some stipulated period.

2. It appears that the litigation began with the filing of a civil suit being Suit No. 520 of 2011 before the Civil Judge (J.D.), Jaunpur by some of the co-tenure holders of plot No. 243 praying for a decree for permanent injunction restraining the Petitioner and Ors. to raise any construction over the plot in dispute or to remove the trees standing thereon. A copy of the plaint has been filed as annexure-2 to the writ petition. This dispute was only

in relation to plot No. 243.

3. Another suit for partition of plot No. 243 came to be filed u/s 176 of the U.P.Z.A & L.R. Act, 1950 in which the Petitioner is also a Defendant along with his brothers. Needless to mention that the said suit is also in relation to plot No. 243 only. In the said suit, the Sub Divisional Magistrate, who is the competent authority, passed an order on 25th May, 2011 directing the parties to maintain status quo.

4. The Petitioner's mother Smt. Ganga Devi purchased part of plot No. 242 to the extent of 2.5 decimals. After her death, the name of the Petitioner and his brothers came to be mutated as is evident from the Khatauni of 1414 to 1449 Fasli filed along with the writ petition as annexure-1. The Petitioner, who is a humble practising Advocate of this Court started raising constructions over plot No. 242 against the area which was in his occupation.

5. The Respondent No. 6 and his associates under the garb of the interim order dated 25.5.2011, which was in relation to plot No. 243 only, created disturbance and obstructed the constructions of the Petitioner which was being raised over plot No. 242. Their objection was that without there being any demarcation of the said plots, the Petitioner appears to have encroached over plot No. 243 and, therefore, no construction should be allowed to be raised.

6. It is at this stage that the Respondent authorities including the Sub Divisional Magistrate and the Station House Officer of the police station, Macchlishahar intervened. The Petitioner moved an application on 11th June, 2011 before the Sub Divisional Magistrate stating therein that the demarcation should be carried out and it should be clarified that the interim order in relation to plot No. 243 does not affect the rights of the Petitioner to raise constructions over plot No. 242. The Sub Divisional Magistrate passed an order on 18th June, 2011 which stands endorsed on the application of the Petitioner contained in annexure-5, to the effect that the Petitioner's construction over plot No. 242 should be confined to the said plot and should not be obstructed.

7. The Station House Officer instead of complying with the orders of the Sub Divisional Magistrate made a request for demarcation of the plots and on the said request the Sub Divisional Magistrate called for a report, which was submitted through the Revenue Inspector on 21st June, 2011 stating therein that a team, consisting of the Revenue Inspector, Lekhpal and Police force, carried out the demarcation proceedings and it has been found that the Petitioner was raising his constructions in plot No. 242 only. The demarcation which was carried out was counter signed by all the Revenue officials, who were present at the time of demarcation.

8. Thereafter the Petitioner again started raising construction on which again an obstruction was made by the Respondents on which an application was moved by the Petitioner before the Sub Divisional Magistrate, who directed that in case a situation of

law and order has arisen then recourse should be taken to proceedings u/s 107/116, Code of Criminal Procedure A subsequent report was again submitted on 3rd August, 2011 which was founded on a demarcation carried out by a team of Revenue Inspector and four Lekhpals. The said report also demarcated plot Nos. 242 and 243 and ultimately indicated that the Petitioner is raising constructions over plot No. 242 only. The Map which was prepared for demarcation is contained along with the report and filed as annexure-8 to the writ petition.

9. Despite all this having been done, the authorities were unable to allow the situation to be resolved. It is alleged by the Petitioner that the constructions were being stopped at the instance of Respondent No. 5, the Station House Officer concerned. On these allegations, the present writ petition came to be filed.

10. The Respondent No. 6, who put in appearance through Sri A.K. Mishra, Advocate, filed an impleadment application, which was allowed by a separate order, has filed his counter affidavit. Along with the said affidavit, the Respondent No. 6 has brought on record the sale deed dated 5.9.2011 in relation to plot No. 242 claiming that the said Respondent along with others has purchased 1.75 decimals of plot No. 242 as well and hence the constructions raised by the Petitioner should not be allowed to continue. It has further been stated by the learned Counsel for the contesting Respondent that the Petitioner admitted that he has purchased 2.5. decimals of land but the constructions are being raised over 4 decimals, hence there is an obvious encroachment over more land than what has been purchased by the Petitioner. It is, therefore, submitted that the authorities had rightly intervened in the constructions being raised by the Petitioner, hence this writ petition deserves to be dismissed.

11. It is further contended by the learned Counsel for the contesting Respondent that the demarcation should again be carried out in relation to the share of the Petitioner to the extent purchased by him and then only the constructions should be permitted.

12. The matter had been taken up on the last occasion on 8th September, 2011 on which date the matter was fixed for today calling upon the learned Standing Counsel to obtain instructions from the Sub Divisional Magistrate and the Station House Officer concerned about the nature of the allegations made against them and also as to whether the Petitioner was raising constructions over plot No. 242 or over plot No. 243.

13. Learned Standing Counsel has produced the instructions received from the Sub Divisional Magistrate as also from the Station House Officer, Macchlishahar, Jaunpur dated 11.9.2011. The Sub Divisional Magistrate in his instructions has clearly stated that the Petitioner was raising constructions only over plot No. 242 and other co-tenure holders have no objection to the said constructions. Not only this, the Petitioner's father is also a co-tenure holder of plot No. 243 as well and in order to resolve the controversy a team of Revenue Inspector and Lekhpals was constituted, who have carried out the demarcation and submitted a report that the Petitioner's constructions, which have been

raised upto the level of seven feet are over plot No. 242. The report further mentions that the suit for partition u/s 176 of the 1950 Act is pending in relation to plot No. 243.

14. The report of the police Inspector also indicates that obstructions were being created as a result whereof proceedings u/s 107/116, Code of Criminal Procedure have been undertaken in which the opposite parties had been bailed out and the co-tenure holders of plot No. 242 had no objection in relation to the constructions being raised by the Petitioner.

15. Through the impleadment application and the affidavit filed in support thereof, the newly impleaded Respondent No. 6 has added a new dimension by bringing on record the sale deed dated 5th September, 2011 of having purchased part of plot No. 242 to the extent of the area mentioned therein. On this basis, the Respondent No. 6 contends that the share purchased by the answering Respondent and Ors. would be affected if the Petitioner is allowed to raise the constructions.

16. Having heard learned Counsel for the parties, it is evident that the Respondent No. 6 has set up a sale deed dated 5.9.2011 which has been executed during the pendency of these proceedings. The name of the said Respondents have not been mutated and even otherwise, the same is not in respect of the area over which constructions have been raised by the Petitioner. This is evident as the sale deed itself recites that the area purchased by the Respondent No. 6 and Ors. does not contain any construction whereas the Petitioner has already raised the constructions much prior to the execution of the sale deed. In such a situation, the said sale deed for the time being cannot in any way affect the right of the Petitioner to raise constructions. Even otherwise, the balance of land in plot No. 242 is still available over which the contesting Respondent can claim his share which he is alleged to have purchased during this litigation.

17. The authorities have categorically indicated in their instructions that the constructions are being raised over plot No. 242 only and not over plot No. 243. This being the admitted position and nothing to the contrary having been shown by the Respondent No. 6, the Respondent authorities cannot restrain the Petitioner from raising his constructions.

18. So far as the allocation of shares and demarcation is concerned, it is open to the contesting party to institute appropriate proceedings in accordance with law, if available for any such relief. For the time being, there being no proceeding in relation to plot No. 242, the administration cannot unjustifiably prevent the Petitioner from raising any constructions. The Respondent No. 6, who is a private party, cannot take any undue advantage without having approached any appropriate forum merely on the basis of a subsequent sale deed.

19. Accordingly, the Petitioner is permitted to raise his constructions in view of the report of the Sub Divisional Magistrate, that can be done at his own risk subject to any other legal proceedings that may be undertaken by any aggrieved party.

20. With the aforesaid observations, the writ petition stands disposed of.

Disposed of.

For orders, see order of date passed on separate sheets.