
(2011) 04 AHC CK 0052
In the Allahabad High Court
Case No : C.M.W.P. No. 73409 of 2010

Arjun Maurya

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

Citation : (2011) 113 RD 793

Hon'ble Judges : S.P. Mehrotra, J;Rajesh Chandra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.P. Mehrotra and Rajesh Chandra, JJ.—We have heard Sri Amit Kumar Srivastava, learned Counsel for the petitioner and the learned Standing Counsel appearing for the respondent Nos. 1, 2 and 3.

2. Counter-affidavit has been filed today on behalf of the petitioner in reply to the Affidavit of Compliance mentioned in the Order dated 17.2.2011.

3. The present writ petition has been filed by the petitioner, inter-alia, alleging that the respondent Nos. 4 to 6 have encroached upon the Chak Road situate on Araj No. 63, Village Mangalpur, Gaon Sabha Silauta, Pargana Mahaich, Tehsil Sakaldeeha, District Chandauli. It has been prayed in the writ petition that directions be given for removing the encroachment over the said Chak Road.

4. A short-counter-affidavit was filed on behalf of the respondent No. 2.

5. Alongwith the said short-counter affidavit, an Inspection Report was filed. In the said Report, it was, inter-alia, stated that no encroachment had been done on the aforesaid Chak -Road situate on Arazi No. 63. It was also stated in the said short-counter-affidavit that the said Inspection Report had been signed by the petitioner and other persons.

6. A short-rejoinder-affidavit was filed on behalf of the petitioner in reply to the aforesaid short counter-affidavit. In para 4 of the said short-rejoinder affidavit, it

was, inter-alia, alleged that the signature of the petitioner on the aforesaid Inspection Report had been taken under threat given to the petitioner by the Tehsildar, Circle Officer, Station House Officer and about 10 police personnel.

7. In view of the averments made in the said short rejoinder-affidavit filed on behalf of the petitioner, the Court passed an order dated 25.1.2011, inter-alia, directing the District Magistrate to make spot Inspection himself or through an Officer not below the rank of Additional District Magistrate and thereafter submit his report before this Court.

8. Pursuant to the said order dated 25.1.2011, the aforementioned affidavit of compliance was filed on behalf of the respondent No. 2 on 17.2.2011.

9. Alongwith the said affidavit of compliance, a report dated 14.2.2011 submitted by the Additional District Magistrate (Finance & Revenue), Chandauli on the basis of the spot inspection made by him on 14.2.2011 with the assistance of five-member team consisting of Revenue Officials, was filed as Annexure No. 2 to the said affidavit.

10. In the Report dated 14.2.2011, it was, inter-alia, stated that no encroachment had been found on the Chak Road situate on Arazi No. 63.

11. The petitioner has filed today the aforesaid counter-affidavit in reply to the aforementioned affidavit of compliance.

12. In the said counter-affidavit, the petitioner has reiterated his stand that encroachment has been done by the respondent Nos. 4 to 6 on the Chak Road situate on Arazi No. 63.

13. From the narration of the facts above, it is evident that factual controversy is involved in the present writ petition as to whether any encroachment on the Chak -Road situate on Arazi No. 63 has been done or not. Such dispute cannot appropriately be decided in the writ petition as Oral and Documentary Evidence will be required to be led by the parties for resolving such dispute. It is open to the petitioner to pursue appropriate remedy in this regard wherein tactual controversy may be decided on the basis of the evidence led by the parties.

14. In view of the above, the writ petition is liable to be dismissed, and the same is accordingly dismissed.

15. It is made clear that this Court has not adjudicated the claim of the petitioner on merits.

16. It is further made clear that this Order will not come in the way of the petitioner in pursuing appropriate remedy as may be available to him under law, if he is so advised.

Petition Dismissed.