
(2010) 01 AHC CK 0140
In the Allahabad High Court

Ausan (B.C.C.)

APPELLANT

Vs

D.M., Lucknow & 5 Ors.

RESPONDENT

Date of Decision : 05-01-2010

Acts Referred:

Citation : (2010) 01 AHC CK 0140

Hon'ble Judges : Pradeep Kant, J and Ritu Raj Awasthi, J

Final Decision : Disposed Of

Judgement

Ritu Raj Awasthi, J.—These are two writ petitions, which are being decided together, for the reason that in Writ Petition No. 7107 (MB) of 2007, the petitioner, Ausan, has claimed relief of issuing a direction to the opposite party no. 5, namely, Station House Officer in Police Station Sarojini Nagar, Kanpur Road, Lucknow, to comply with the measurements report dated 31.7.06, which apparently has been submitted in a demarcation proceedings initiated under Section 41 of Land Acquisition Act and in the second writ petition bearing number 10728 (MB) of 2009, which has been filed by Ram Kishun son of Ausan, it has been claimed that the interim order passed in the earlier writ petition is coming in his way, though his Khasra plot number is 465C, measuring 3 Bigha 1 Biswa and it has nothing to do with the land, which is the subject matter of Writ Petition No. 7107 (MB) of 2007.

2. Further prayer in the writ petition of Ram Kishun is that a direction be issued to the respondents, restraining them from interfering in the peaceful possession over Khasra No. 465C, of which the petitioner is attorney holder.

3. Since the dispute has been raised with respect to plot number 465 by Ausan and Ram Kishun also claims that he has exclusive right over plot number 465C, therefore, both the writ petitions are being disposed of by a common order.

4. In regard to the plea of Ausan that a direction be issued for complying with the report dated 31.7.06, suffice would be to mention that there is a clear averment in the affidavit filed by opposite parties no. 8 and 9 that the said report

has been rejected by the Sub Divisional Magistrate, Lucknow vide his order dated 18.1.07. That being so, there cannot be any occasion for this Court to issue any direction for complying with the said report.

5. It may be taken note of, that Writ Petition No. 7107 (MB) of 2007 has been filed with respect to the land in question but in view of the fact that demarcation proceedings were initiated and report dated 31.7.06 has been rejected by the Sub Divisional Magistrate on 18.1.07, no relief can be granted to the petitioner (Ausan) in this regard. In case he is aggrieved by the orders passed in demarcation proceedings, he has the remedy of approaching the higher forum in accordance with law, but the writ petition is not the appropriate remedy.

6. So far the Writ Petition No. 10728 (MB) of 2009 filed by Ram Kishun is concerned, it raises disputed questions of fact and the relief claimed for, namely, issuing a direction to the opposite parties for not interfering with his possession, cannot be entertained. According to the own showing of the petitioner Ram Kishun in paragraph 9 of the writ petition, some persons have forcibly taken the possession over the land of the petitioner's father, namely, Khasra No. 465/1, measuring area 10 Biswa and 465/2, measuring 3 Bigha 14 Biswan, who had applied for demarcation, as observed earlier.

7. The plea in this case about the land of Ausan being taken by some persons cannot be entertained, as the writ petition has been filed by Ram Kishun and not by Ausan.

8. We, however, do not intend to enter into the determination of right of any of the parties, as they have to be seen in appropriate forum but in view of the fact that Sri R.N. Gupta, learned counsel appearing for Ram Kishun mainly stressed that the order of maintaining status quo passed in the writ petition of Ausan is adversely affecting the petitioner's (Ram Kishun) interest and since the petition filed by Ausan is liable to be dismissed, for the reasons aforesaid, no further orders need be passed in the writ petition of Ram Kishun.

9. The Writ Petition No. 7107 (MB) of 2007 filed by Ausan is hereby dismissed. The interim order stands discharged.

10. The Writ Petition No. 10728 (MB) of 2009 is accordingly disposed of.