

(2015) 01 AHC CK 0099

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 68256 of 2014

Blooming Buds Co-Educational School and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Citation : (2015) 2 ADJ 254 : (2015) 109 ALR 517 : (2015) 2 AWC 1299 :
(2015) 127 RD 474

Hon'ble Judges : Vijay Lakshmi, J.; Rakesh Tiwari, J.

Bench : Division Bench

Advocate : Prabhakar Awasthi, for the Appellant

Judgement

Vijay Lakshmi, J.—The petitioner Blooming Buds Co-Educational School, Village Bholeshwar, Joya Road, Sambhal has preferred this petition challenging the validity of order dated 22.11.2014 passed by the respondent No. 2 Sub-Divisional Magistrate, Sambhal. Heard learned counsel for the petitioners and standing counsel on behalf of all the respondents.

2. The contention of learned counsel for the petitioner is that the impugned order is wholly without jurisdiction as the Sub Divisional Magistrate has no jurisdiction to pass an order in the manner in which it has been passed. It is next contended that impugned order over-reaches the order passed in judicial proceeding in the form of interim injunction. Learned counsel for the petitioner has submitted that the petitioner had filed the objections before S.D.M., who without considering his objections has passed the order impugned merely on the basis of the case, as set up by respondent No. 4 on surmises and conjectures.

3. A perusal of the record shows that due to certain disputes with regard to the western boundary wall of petitioner's school, the petitioner had filed civil suit No. 1160 of 2014 in the Court of Civil Judge (Junior Division), Sambhal, in which he had moved an application 6C praying for interim injunction which had been allowed ex parte in his favour vide order dated 23.9.2014. By the interim order

defendants were restrained to demolish the western boundary wall of petitioner's school. The respondent Nos. 2, 3 and 4 were fully aware of the order of injunction, which fact is evident from the order dated 22.11.2014, itself of S.D.M. Sambhal. Therefore, the S.D.M. Sambhal should not have passed order dated 22.11.2014 to demolish the wall when he had full knowledge that there is an injunction order passed by competent Court of law not to demolish that wall. But the S.D.M. Sambhal, without considering the objections raised by the petitioner and in clear defiance of the order of the Civil Court, has passed the impugned order.

4. The impugned order reads as under:

5. Even assuming that Gata number of the land mentioned in the order of Court was different from Gata number of the land mentioned in the revenue records, even then as there was a clear mention that the western boundary wall of the school was not to be demolished during pendency of the suit, S.D.M. had no authority to pass such order. The S.D.M., Sambhal, only on the basis of statement of respondent No. 4 and without considering the objections raised by the petitioner and without even any measurement of the disputed area has ordered to demolish the boundary wall of the institution.

6. In view of the above, the writ petition deserves to be allowed and the impugned order of S.D.M. Sambhal is liable to be quashed.

7. The writ petition is, accordingly, allowed. The order dated 22.11.2014 is quashed. The S.D.M. is also warned for the future not to pass any order in defiance of any order passed by a Court of law. A certified copy of this order shall be produced by the petitioner within a period of fifteen days from today before the S.D.M., Sambhal for necessary compliance and also for his future guidance.