
(2005) 03 AHC CK 0148

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3077 of 2005

Krishna Ashray Srivastava

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 04-03-2005

Acts Referred:

Citation : (2005) 03 AHC CK 0148

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.—This writ petition is directed against order dated 7122004 passed by Commissioner, Azamgarh Division, Azamgarh on the application of respondent No. 7 dated 7122004. Through the said order Commissioner has directed that opposite party i.e. petitioner of the instant writ petition shall be restrained from making unauthorized construction without demarcation.

2. Gulab Chand and Gauri Shanker Lal who are the son and father and arrayed as respondents No. 6 and 7 in the writ petition have filed counteraffidavit. They are the only contesting respondents. Sri Ajay Srivastava, learned Counsel for petitioner as well as Sri Murli Dhar, learned senior Counsel of respondents No. 6 and 7 have been heard. The dispute in between petitioner and respondents No. 6 and 7 relates to their bhumidhari lands which are adjacent to each other. Gulab Chand, Respondent No. 6 and son of respondent No. 7 filed a civil suit before Civil Judge (Jr. Div.), Mohammdabad, District Azamgarh being O.S. No. 731 of 2004 on 27112004. In the said suit plaintiff could not obtain temporary injunction. The said suit is still pending. Thereafter respondent No. 7 filed an application before Commissioner, Azamgarh Division, Azamgarh copy of which is Annexure4 to the writ petition. Application was filed on 7122004. In the said application wild charges of corruption and acceptance of bribe were made against S.D.M., Sagrhi. In the said application it was mentioned that son of the applicant had earlier filed an application on 16112004 to the effect that the land should be demarcated and unauthorized occupation on Gaon Sabha land should be

stopped, however, S.D.M., Sagrhi after accepting bribe from petitioner, permitted the petitioner to raise construction over Gaon Sabha land. In the next paragraph it was mentioned that S.D.M. permitted the petitioner to raise construction over the land of the applicant i.e. Gauri Shanker Lal. It was also mentioned in the said application that the son of the applicant had filed suit before the Court which was pending. The prayer was that action should be taken against S.D.M. for accepting bribe from the petitioner, unauthorized occupation from Gaon Sabha land should be removed and after holding enquiry against the S.D.M. suitable action should be taken against him so that other officers could be warned. In the last sentence it was prayed that construction being raised by the petitioner after demolishing wall of respondent No. 7 should be stopped.

3. Counteraffidavit has been sworn by respondent No. 6 Gulab Chand, in which he has stated that he is U.D.C. in some Government office. In para9 of the counteraffidavit it has been stated that formal application for demarcation has been filed on 9122004 i.e. after the application by respondent No. 7 and order of Commissioner thereupon dated 7122004.

4. During argument learned Counsel for respondents 6 and 7 expressly disowned the allegations made in the application filed by respondent No. 7 before Commissioner. Learned Counsel stated that neither S.D.M. accepted any bribe from the petitioner nor in any manner S.D.M. was involved in the construction made by the petitioner. Learned Counsel further stated that absolutely no question of attempt to occupy Gaon Sabha land by petitioner was involved. The learned Counsel has laid the entire blame in respect of wild allegations in the said application at the door of the drafts man of the said application.

5. Commissioner does not exercise any original jurisdiction. He is only appellate or revisional authority. In any case if Commissioner was prima facie satisfied with the allegation contained in the application dated 7122004 then he should have immediately initiated proceedings against the S.D.M. against whom charges were leveled. Respondents No. 6 and 7 are utterly abusing the process of Court. First they filed the suit and when they failed to obtain any injunction order in the suit they filed an application before Commissioner. The Commissioner on the said application passed the impugned order on the same day to the effect that without demarcation opposite party of the said application i.e. the petitioner should be restrained from making illegal construction and compliance report should be sent to the Commissioner. As respondent No. 7 is an aged person, hence Court is refraining from taking any action against respondent No. 7. The Commissioner is directed to be extra careful in future. His order can be described only as a misadventure which shall be avoided in future at every cost.

6. Consequently writ petition is allowed. Order dated 7122004 passed by Commissioner, Azamgarh Division, Azamgarh is set aside. Application of respondent No. 7 dated 7122004 on which the said order was passed is dismissed.

7. Let the order be communicated to Commissioner concerned by Sri S.K. Maurya, learned standing Counsel to whom copy of this order be supplied free of cost within three days.

8. Writ petition is according allowed.

However, suit pending before Civil Court and the injunction application filed therein shall be decided on merit expeditiously without being influenced by any observation made in this judgment.