
(2018) 11 J&K CK 0136

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 2164 Of 2018, IA No. 01 Of 2018

Kuldeep Singh And Others

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 02-11-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2018) 11 J&K CK 0136

Hon'ble Judges : Dhiraj Singh Thakur, J

Bench : Single Bench

Advocate : S. S. Ahmed

Final Decision : Dismissed

Judgement

Dhiraj Singh Thakur, J

1. The main grievance of the petitioners in the present petition is with regard to the interference being caused by the private respondent Nos. 6 to 13 in the proprietary land of the petitioners' comprising Khasra No. 187 min measuring approximately 04 kanals situate at Village Taraf Manjli, Tehsil and District Kathua.

2. An apprehension has also been expressed that the official respondents were encouraging the said respondent Nos. 6 to 13 to construct a temple over the land belonging to the petitioners.

3. Considering the nature of dispute raised and the relief sought, it is clear that what has been sought to be enforced through the medium of the present petition are civil disputes between private parties, which is impermissible, insofar as, the exercise of extraordinary jurisdiction of this Court is concerned. The Apex Court in "Mohan Pandey & another Vs Smt. Usha Rani Rajgaria & ors" 1992(4) SCC 61 while dealing with the same issue in paragraph 6 held as under:-

"6. Mr. Arun Jaitley, the learned counsel appearing on behalf of respondent no. 1 has supported the impugned judgement on the ground that prayer for issuing a

direction against Delhi Administration and Commissioner of Police who were respondent nos. 1 and 2 was also made. It has to be appreciated that the present appellants were respondent nos. 3 and 4 before the High Court; and the High Court has by the impugned order, considered it fit to allow the prayer of the respondents against them for removal of the grills for access to the backyard. According to the stand of the landlord-respondent, since the police were taking a partisan attitude against her, the filing of a writ petition became necessary. We are unable to follow this argument. There is no doubt that the dispute is between two private persons with respect to an immovable property. Further, a suit covering either directly a portion of the house-property which is in dispute in the present case or in any event some other parts of the same property is already pending in the civil court. The respondent justifies the step of her moving the High Court with a writ petition on the ground of some complaint made by the appellants and the action by the police taken thereon. We do not agree that on account of this development, the respondent was entitled to maintain a writ petition before the High Court. It has repeatedly been held by this court as also by various High Courts that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons and that the remedy under Article 226 of the constitution shall not be available except where violation of some statutory duty on the part of a statutory authority is alleged. And in such a case, the court will issue appropriate direction to the authority concerned. If the grievance of the respondent is against the initiation of criminal proceedings, and the orders passed and steps taken thereon, she must avail of the remedy under the general law constitutional jurisdiction to be used for deciding disputes, for which remedies, under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special and extra-ordinary and should not be exercised casually or lightly. We, therefore, hold that the High Court was in error in issuing the impugned direction against the appellants by their judgement under appeal. The appeal is accordingly allowed, the impugned judgement is set aside and the writ petition of the respondents filed in the High Court is dismissed. There will be no order as to costs."

4. The petitioners are advised to avail a civil remedy before the appropriate forum. The petition is found to be without any merit and is, accordingly, dismissed along with connected IA.