

(2018) 12 UK CK 0045

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 2135 Of 2018

Prem Shankar and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 10-12-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 12 UK CK 0045

Hon'ble Judges : Ramesh Ranganathan, CJ; Lok Pal Singh, J

Bench : Division Bench

Advocate : Vivek Shukla, Pratiroop Pandey, Aditya Singh

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, C.J

1. The petitioners have invoked the jurisdiction of this Court seeking a mandamus to command respondent nos. 3 and 4 to provide adequate protection to the lives, liberty and property of the petitioners from respondent nos. 5, 6 and 7; and a writ, order or direction, in the nature of mandamus, commanding respondent nos. 5, 6 and 7 not to interfere in the peaceful possession of the property of the petitioners.

2. Mr. Vivek Shukla, learned counsel for the petitioners, did not press for the second prayer since such a relief would, ordinarily, not to be granted in proceedings under Article 226 of the Constitution of India. He has confined his submissions only to the first prayer, that petitioners be given police protection.

3. Facts, to the extent necessary, are that the petitioners claim that one Late Swami Sukhdevanand had executed a Will in favour of the first petitioner on 17.06.1963. After the death of the Swamiji, the first petitioner became the bhumidhar, and was in possession of the land on the basis of the will-deed; the first petitioner established a 'Prakritik Chikitsa and Yoga Kendra', and constructed a building; later on the said Society was registered under the Societies

Registration Act; the first petitioner is the founder President of the Society; and from the year 2017, one Shri Brijesh Chaturvedi was trying to interfere in the peaceful possession of the petitioners. The contents of the FIR, registered on the basis of the complaint lodged by the petitioners, alleges that the unofficial respondents had barged into the first petitioner's building; and had sought to outrage the modesty of the third petitioner.

4. The petitioners' case, as is stated in the writ affidavit, is that they had filed a suit, in O.S. No. 7 of 2017, seeking permanent injunction before the court of the Civil Judge (Junior Division), Kotdwar, Pauri Garhwal, to restrain the defendants from interfering with the peaceful possession of the subject property; after filing the said suit, the court below had issued notices to the defendants who had filed their objections; the civil court had passed an interim order of injunction restraining the defendants from interfering with the petitioners' peaceful possession of the subject land; the unofficial respondents had sought to interfere with their possession, and had filed an application to implead themselves in the Suit; the said application was allowed, and the contesting party was impleaded as a defendant; the petitioners' possession is proved by the tax notice received from the Nagar Panchayat; despite the order of injunction granted by the court below, the respondents-defendants were seeking to dispossess the petitioners; the report of the Tehsildar shows that the first petitioner is in possession of the land; and when the defendant Trust and the local police were trying to interfere with the petitioners' possession, petitioner no. 1 had approached the Chief Minister's Portal and had lodged a complaint on 24.04.2018; the petitioner's complaint was forwarded to the District Magistrate for necessary action; the complaint was also forwarded to the Senior Superintendent of Police, Pauri Garhwal who, by his letter dated 27.10.2018 addressed to the District Magistrate, Pauri Garhwal, refused to take action against the local police as well as the defendant trust; the Senior Superintendent of Police has recorded a finding in his letter dated 27.10.2018 that a criminal case is pending against petitioner no. 1 in which he was charge-sheeted; a charge-sheet was filed and the case is pending before the court, and the private respondents, despite having knowledge of the civil litigation between both the parties, have deliberately bypassed the same; and the petitioners' lives and property be protected against the unofficial respondents.

5. On the other hand, Shri Aditya Singh, learned counsel for the unofficial respondents, would deny these allegations, and would contend that the petitioners are seeking to knock away their property on the basis of a forged will; the unofficial respondents herein impleaded themselves in the suit filed by the petitioners, and have sought vacation of the interim order of injunction; the application seeking vacation of the interim order of injunction, is still pending consideration before the court below; they have also filed a suit for injunction restraining the respondents (petitioners in this writ petition) from interfering with their possession in the subject property; the said suit in O.S. No. 49 of 2017 is still pending before the Civil Court (Senior Division), Kotdwar; the Civil Judge

(Senior Division), Kotdwar had also granted an order of interim injunction on 01.10.2018; and the petitioners herein have been arrayed as defendants in the said suit, and as respondents in the IA seeking grant of an order of interim injunction.

6. The inter-se civil disputes, between the petitioners and the respondents, are not matters for examination in proceedings under Article 226 of the Constitution of India. What is, however, evident is that the petitioners herein had filed a Suit seeking permanent injunction, and an order of interim injunction was passed by the Court below, which order is still in force. Likewise an order of injunction has been granted by the Senior Civil Judge, Kotdwar in the respondent's favour restraining the petitioners from interfering with their possession over the very same subject property. Both the interim orders of injunction presuppose that the person, who has been granted injunction, is in possession of the property. The conflicting interim orders of injunctions, one in favour of the petitioners and the other in favour of the unofficial respondents, necessitate resolution at the earliest, as both of them cannot be in actual and exclusive possession of the subject property at the same time. However, as long the orders of interim injunction remain in force, neither party can take law into their own hands. Orders of Courts must be obeyed, till they are vacated or set aside.

7. In proceedings under Article 226 of the Constitution of India, we would, ordinarily, not undertake an assessment of the threat perception of the petitioners, or record a finding on the truth or otherwise of the allegations made in the complaint which resulted in an F.I.R. being registered on 17.11.2018, as these are all matters for the police officials to investigate in accordance with law. The petitioners' threat perception and their complaint that, despite an order of injunction being passed, the authorities are not looking into their complaint, and had glossed over it by referring to the charge sheet filed earlier against the first petitioner, would, however, necessitate examination in the present proceedings.

8. While the petitioners should have, ordinarily, approached the Civil court (which granted an interim order of injunction in their favour), and should have sought protection, from interference by the unofficial respondents, in such proceedings, even otherwise, the threat perception of the petitioners can be better examined by the police officials concerned, and not by this Court. A request for police protection to be provided cannot, however, be ignored on the ground that a charge sheet is filed, and is pending before the criminal court, against the petitioners herein. Merely because a criminal case has been registered would not justify police officials not providing police protection to individuals if there is a real threat to their lives.

9. We consider it appropriate, in such circumstances, to direct the Senior Superintendent of Police, Pauri Garhwal to make an assessment of the threat perception of the life of the petitioner and of his family members; and to pass an order, on the petitioners' representation seeking police protection, eschewing the fact that, on the complaint of the respondents, an FIR was registered against

petitioner no. 1, and after investigation a charge sheet has filed against him. The Senior Superintendent of Police shall pass orders on the petitioner's representation at the earliest, and, in any event, not later than one week from the date of receipt of a copy of this order. In case the S.S.P. is satisfied that there is a threat to the lives of petitioners, he shall provide them adequate police protection for a period of eight weeks thereafter. It is open to the petitioners, in the meanwhile, to approach the civil court, and seek an order of protection in O.S. No. 7 of 2017.

10. We make it clear that we have not expressed any opinion on the rival claims of the parties, or as to which of them was entitled to be granted an order of interim injunction by the courts below, as these are all matters to be examined by the respective civil courts. The writ petition is disposed of accordingly. However, in the circumstances, without costs.

11. Let a certified copy of this order be supplied within three days, on the payment of prescribed charges.