
(2013) 01 AHC CK 0481
In the Allahabad High Court
Case No : C.M.W.P. No. 18721 of 2008

Shiv Hari

APPELLANT

Vs

D.M./Collector, Gautam Budh Nagar and Others

RESPONDENT

Date of Decision : 07-01-2013

Acts Referred:

Citation : (2013) 118 RD 794

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Advocate : Amar Jeet Singh, for the Appellant; M.K. Singh Sengar and M.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the petitioner and learned standing Counsel for respondents No. 1 to 4. Urmila Devi was recorded tenure holder of Plot No. 405, total area 11 bighas. On 26.12.2007 she sold 4 bighas of her land in Plot No. 405 to different persons including the petitioner who purchased 822 square meter of land. Plot No. 403 which is adjoining to Plot No. 405 belongs to Gaon Sabha. Urmila Devi had earlier filed O.S. No. 30 of 2002 against Ram Kishan Sharma, respondent No. 5 in this writ petition for injunction which was decreed on 11.5.2004 by Civil Judge (Junior Division), NOIDA, Ghaziabad and appeal was also dismissed on 22.8.2004. True copy of the judgment by the Trial Court is Annexure-3 to the writ petition in which it is mentioned that the case of the plaintiff was that towards north of her plot bearing No. 405, plot of Ram Kishan was situate and he wanted to open a wall/door in the petitioner's land.

2. In para-11 of the writ petition, it is mentioned that in spite of decree passed in the suit of 2002, Ram Kishan gave a complaint to the District Magistrate, Gautam Budh Nagar complaining that petitioner had encroached upon Gaon Sabha land by constructing a wall and blocked the passage of ingress and outgress. In para-16 of the writ petition, it is mentioned that the wall had been constructed

with the permission of S.D.M., Javar, District Gautam Budh Nagar by filing an application, copy of which is Annexure-VII to the writ petition. On the margin of the said application is the order of the S.D.M. dated 13.2.2008 mentioning that lekhpal had measured the land and order of the Civil Court must be enforced and no interference shall be made with the construction activity of the petitioner. The most illegal direction in the said order is to the effect in case some earlier order had been passed in the matter then the same should be considered as cancelled. The said order was utterly without jurisdiction. In the application itself, it was mentioned that land of Gaon Sabha might be involved. Accordingly, it was a case of demarcation. Without even issuing notice or hearing Gaon Sabha the said order was passed. Demarcation could be done only in proceedings u/s 41 of U.P. L.R. Act. Along with the application, copy of the judgment of the Civil Court was not annexed. In any case, judgment/decreed of the Civil Court can be executed only by the Civil Court. S.D.M. had absolutely no business to meddle. The said order was passed only and only to favour the petitioner. During argument learned Counsel for the petitioner stated that after order of the S.D.M. dated 13.2.2008 petitioner constructed the boundary wall under the supervision of police authorities.

3. In paragraphs-12 to 15 of the writ petition, it is mentioned that on the application of respondent No. 5, S.D.M. was directed by the District Magistrate to make inspection and remove the encroachment. S.D.M., Javar thereupon directed Naib Tehsildar on 17.3.2008 to comply with the order of the D.M. Application of respondent No. 5 dated 12.3.2008 and order of D.M. of the said date and of S.D.M. dated 17.3.2008 are Annexure-V to the writ petition. In the said application, respondent No. 5 stated that his house was in Plot No. 401. In para-13 of the writ petition, it is mentioned that Naib Tehsildar inspected the spot and demolished the wall of the petitioner of about 8 feet. Through this writ petition, prayer for quashing the order dated 12.3.2008 passed by the D.M. and 17.3.2008 passed by the S.D.M. has been sought. As S.D.M. had no authority to pass the earlier order dated 13.2.2008 hence act done pursuant thereto was liable to be undone. In the suit of 2002, Gaon Sabha was not party. The boundary dispute between Gaon Sabha of plot No. 403 and petitioner's land which is part of plot No. 405 can be decided only u/s 28 of U.P. Land Revenue Act. Accordingly, I do not find any error in the impugned orders. Writ Petition is dismissed. Petitioner is at liberty to initiate proceedings u/s 28 of U.P. Land Revenue Act impleading Gaon Sabha and respondent No. 5. After proper demarcation petitioner would be entitled to raise boundary wall on his own land.