
(2016) 03 AHC CK 0132

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 12275 of 2016.

Smt. Beena Srivastava and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10 (2), Order 7 Rule 11, 9

Citation : (2016) 4 ADJ 711 : (2016) 163 AIC 953 : (2016) 3 AllWC 2607 :
(2016) 116 ALR 800 : (2016) 2 RJ 976

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J.;Yashwant Varma, J.

Bench : Division Bench

Advocate : Rakesh Pande and Anup Dhar Dubey, Advocates, for the Appellant;
C.S.C., Adya Prasad Tewari and Sheo Shankar Tripathi, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. This writ petition has been instituted under Article 226 of the Constitution for challenging the orders dated 27 January 2016, 6 February 2016 and 17 February 2016 passed by the Sub Divisional Magistrate, Sadar, District Gorakhpur and for a direction for the removal of a cordon placed on the disputed property through tin-sheets and for compensation of the petitioners for the illegal and arbitrary deprivation of property.

2. There is essentially a civil dispute between the petitioners on the one hand and the private respondents who are arrayed as respondents 11, 12, 13 and 14 to the writ proceedings. The land in question is situated in Mohallah Basharatpur, Pargana Haveli, Tehsil Sadar, District Gorakhpur. The petitioners instituted Original Suit No. 971 of 2014 for a permanent injunction and an interim injunction was granted on 12 January 2015. In the meantime, the Chief Secretary issued a direction on 12 November 2014 purportedly on an application submitted by the private respondents stating that in the event that the SDM had

conducted an inquiry, necessary steps be taken for handing over the possession of the land to the private respondents. A writ petition was filed before this Court inter alia by the petitioners (Writ C No. 511 of 2015) making a serious grievance in regard to the order which was passed by the Chief Secretary on 12 November 2014. A Division Bench of this Court by an order dated 19 January 2015 issued the following directions requiring the Chief Secretary to disclose the legal authority under which he could have issued such an order particularly when the parties were litigating their rights before the Civil Court:

"Let the Chief Secretary, Govt. of U.P. file his personal affidavit disclosing as to under which legal authority he can issue the order dated 12.11.2014 specifically in the circumstance when the parties are already litigating their rights before the competent civil court.

We may record that earlier in another matter it was brought to the notice of the Court that the State has issued an Government Order asking the district authorities not to intermingle in the disputes pertaining to rights over immovable property between two private parties if pending before the competent Court. It appears that the Chief Secretary is above the Government order so issued.

List on 04.2.2015.

Copy of this order be supplied to learned Standing Counsel day after tomorrow as per Rules of the Court."

3. Following the order of this Court, the Chief Secretary recalled his order dated 12 November 2014 on 3 February 2015 since parties were litigating their rights and remedies before the Civil Court. Since the Chief Secretary had withdrawn his earlier direction, the writ petition was dismissed as having been rendered infructuous on 10 March 2015.

4. The Trial Court allowed an application under Order 7, Rule 11 of the CPC, and held against the maintainability of the suit. This order was challenged in a first appeal before this Court. A Division Bench of this Court by a judgment and order dated 26 November 2015 partly allowed the appeal filed by the petitioners. The order of the Civil Judge (Senior Division) dated 18 September 2015 in Original Suit No. 971 of 2014 was modified by directing the Trial Court to return the plaint for presentation before the appropriate Court in accordance with the provisions of Order 7, Rule 10 (2) of the CPC. Instead of moving the Trial Court for return of the plaint, the petitioners filed a fresh Suit (OS No. 238 of 2016) before the Civil Judge (Junior Division), Gorakhpur. The Trial Court passed an order on 20 February 2016 rejecting the plaint on the ground that it was not maintainable. It is common ground that following the order passed by the Division Bench of this Court in the first appeal, the petitioners have moved an application before the Trial Court for return of the plaint which is now listed on 6 May 2016.

5. The cause of these proceedings has arisen from an order which was passed initially on 27 January 2016 by the SDM. After the Chief Secretary had recalled

his earlier directions which had been issued on 12 November 2014, following the intervention of this Court on 19 January 2015 requiring the Chief Secretary to disclose the legal authority under which he had issued an order when parties were litigating their rights, the SDM issued an order on 27 January 2016. The SDM recorded that the private respondents having deposited the requisite amount, steps be taken for deputing the police force in order to enable the private respondents to develop their property. Subsequently on 6 February 2016, the SDM passed a further order directing the presence of the police force on 9 February 2016 at 8.30 am in order to enable the private respondents to obtain possession of the disputed property purportedly on the ground that the demarcation had been carried out in the meantime. The grievance of the petitioners is that they had no notice of any demarcation. On 17 February 2016, the SDM recorded a direction to the Superintendent of Police requiring the presence of the police force on 18 February 2016 at the site.

6. The basic grievance of the petitioners is that as a result of the orders which have been passed by the SDM on 27 January, 6 February and 17 February 2016, the Police Authorities have intervened in a private civil dispute between the petitioners on the one hand and the private respondents on the other and have dispossessed the petitioners unlawfully and without a judicial decree, direction or order.

7. This submission is sought to be contested on the part of the private respondents who assert that the petitioners have not been able to secure any interim order in either Original Suit No. 971 of 2014 or Original Suit No. 238 of 2016. The learned Standing Counsel has placed on the record his instructions which seems to indicate that the Police Authorities were directed to intervene by the SDM apprehending a breach of peace.

8. The record before the Court indicates that in Original Suit No. 971 of 2014, the civil dispute between the petitioners on the one hand and the private respondents on the other was the subject matter of an interlocutory proceeding. The suit was dismissed on an application under Order 7, Rule 11 of the CPC on the ground of maintainability. The order of the Trial Court was modified in a first appeal by directing the return of the plaint in order to be presented before the proper Court. The Chief Secretary had initially intervened in the matter evidently at the behest of the private respondents by issuing a direction on 12 November 2014 in regard to the possession of the land. This action of the Chief Secretary was in serious question before the Division Bench in the writ proceedings in which the Chief Secretary was called upon to disclose the authority under which he had intervened when the parties were litigating their rights before the Civil Court. Following the order of the Division Bench dated 19 January 2015, the Chief Secretary withdrew his earlier order on 3 February 2015. Thereafter what the record indicates is that it was the SDM who was induced to issue several directions on 27 January 2016, 6 February 2016 and 17 February 2016. The SDM, as indeed the Police Authority, would have no jurisdiction to determine a

disputed claim of a civil nature. Their duty is to maintain law and order and to preserve the peace. No action was initiated in the present case under Section 145 of the Code of Criminal Procedure, 1973. The orders which have been passed by the SDM leave no manner of doubt that the purpose and intent of the orders was to secure the possession of the private respondents. The SDM has stated that upon the requisite amount being deposited, the police force should be requisitioned at the site to secure that object. If the private respondents were apprehending any unlawful deprivation of their alleged rights by the petitioners, they were not without remedy. Instead of seeking their own remedies before the competent Civil Court, the convenient expedient was followed by moving the SDM for intervening in the matter. This action of the SDM cannot be countenanced since it essentially involves a recourse to the District Administration for resolving a dispute of a civil nature which had engaged the attention of the Civil Court. Adjudication of civil disputes is the function of Courts. The district administration cannot arrogate this power to itself. The police authorities cannot resolve disputed issues of rights and civil disputes. It would be destructive of the rule of law to permit them to do so.

9. In the circumstances, we are of the view that the course which was taken to by the SDM in his three orders was patently unlawful and that the orders would accordingly have to be quashed and set aside.

10. We accordingly set aside the orders of the SDM dated 27 January 2016, 6 February 2016 and 17 February 2016. In consequence, the position as it obtained immediately before the passing of the orders of the SDM, shall continue to govern subject to either of the parties seeking recourse to their rights and remedies before the competent forum. We clarify that we have not expressed any opinion whatsoever of a final or conclusive nature on the respective rights and entitlement of the parties since we are of the view that it should form the subject matter of a proceeding before the competent forum at the behest of any of the parties aggrieved. In these proceedings, we are concerned with the issue as to whether the SDM was entitled to have the power to decide a civil dispute in the manner which he has done. It has been found that the action was in excess of jurisdiction. We quash and set aside the directions of the SDM. We however leave the parties to pursue their respective rights and remedies before the competent forum.

11. The petition is accordingly disposed of. There shall be no order as to costs.