
(2017) 09 UK CK 0019
In the Uttarakhand High Court
Case No : 2346 of 2017 (M of S)

Smt. Prabha Rani Seth

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 18-09-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 39 Rule 1](#), [Order 39 Rule 2](#)

Citation : (2017) 09 UK CK 0019

Hon'ble Judges : Sharad Kumar Sharma

Bench : Single Bench

Advocate : Sumita Kapil,? Dushyant Mainali,?Jayvardhan Kandpal

Final Decision : Dismissed

Judgement

1. Learned counsel for the petitioner, after arguing at a length seeks to withdraw the writ petition, subject to the following observations:

2. Primarily, the petitioner had filed the writ petition for the following reliefs:-

"(i) Issue a writ, order or direction in the nature of mandamus commanding the respondent nos. 3 to 7 and respondent no. 9 to enquire the matter properly and expeditiously and during pendency of the inquiry in the matter of the grabbing of the land of the petitioner, strictly maintain status quo on the land of the petitioner in Dehradun, the meets and bounds and details of which are explained in para 8 of the writ petition. (ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 8 to transfer the matter of grabbing of the land of the petitioner to the Special Investigation Team which is respondent no. 10, specially constituted for investigating land scam and land grabbing matters and to punish the responsible persons. (iii) Issue any other or further writ, order or direction which this Hon''ble Court may deem fit and proper in the circumstances of the case. (iv) To award the cost of the petition in favour of the petitioner."

3. Prior to filing of the writ petition, petitioner has already instituted a suit being Suit No. 163 of 2016 Smt. Prabha Rani Seth Vs. Praveen Chhetri, wherein she has sought a relief for cancellation of a sale deed dated 11.03.2010, which has been registered before the Sub-Registrar, Dehradun on 11.03.2010, itself.

4. The suit was in relation to the property as described at the foot of the plaint, for the purposes of brevity, a description of the property is given hereunder.

"All that land situated at Mauja Arcadia Grant Pargana Central Doon, District - Dehradun in Khata Khatauni No. 704 Khasara No. 2208 having a total area of 486.67 sq. mt. bounded and butted as under: East - Property of other side measuring 85.6 ft. West - 22 ft. wide road side measuring 85.6 ft. North - Left Property belonging to the seller side measuring 61.2 ft. South - Property of others side measuring 61.2 ft."

5. The suit in question though it was for the purposes of cancellation of the sale deed, it accompanied with it a temporary injunction application filed under Order 39 Rule 1 and 2 from restraining the defendants from making any construction over the said property.

6. Today, this writ petition is listed on an interlocutory application filed by the petitioner being CLMA No. 11987 of 2017, wherein, petitioner has sought a prayer that the status- quo order as passed by the Sub Divisional Magistrate on 24.07.2015 be implemented and to restrain the Sub Registrar from registering any flat said to have been constructed by the builders on the property in question. Once again the builders are not party to the petition.

7. To this application, this Court, prima facie, feels that no order could be passed at this stage. The reason being:-

(i) That this Court cannot be an Executing Court of the orders of the Sub Divisional Magistrate dated 24.07.2015.

(ii) The order passed by Sub Division Magistrate happens to be an order which has been passed on an administrative side and not while exercising any statutory powers.

(iii) The said order of status-quo as granted way back on 24.07.2015 was only for maintaining an interim status till the report was submitted by the Committee constituted thereunder. Since, the order has been passed by Sub Divisional Magistrate on the directions issued by the Minister, Finance, this Court restrain itself from granting relief (1) as prayed in the application or making any remark.

(iv) Furthermore, since the order was to subsist during the period of submission of report by the Committee, which according to the petitioner, is yet to be submitted.

(v) The second relief which has been sought for i.e. restraint against the Sub Registrar and Tehsildar not to register any sale deed is yet again a direction against an authority created under an act from performing their official duties,

which cannot be granted, for the reason being that the statute itself contemplates the forum for a person aggrieved against the registration of document by a Sub Registrar.

8. What has further revealed from the records that the petitioner herself, being aggrieved against the sale deed, has already filed a suit for cancellation of the sale deed being Suit No. 163 of 2016, which is pending consideration and the injunction application too has not yet been decided, various grants cannot be opened for redressal of same grievance.

9. One of the contention agitated by the petitioner is that on account of certain difficulties which she is facing due to non availability of proper Advocate on account of the influence being exercised by some of the Advocates, who are under the influence of the builders, she is unable to press her application filed under order under 39 Rule 1 and 2 in Suit No. 163 of 2016. Since, for considering the application under order 39 rule 1 and 2, there has yet to be an appreciation by the fact finding Court pertaining to inter se prima facie case, balance of conscience, irreparable injury, this Court cannot act as a substitute of a fact finding Court.

10. Hence, this Court grants the liberty to the petitioner, who is a plaintiff in Suit No. 163 of 2016, to file an appropriate application in the said suit pending before Civil Judge (Junior Division), Dehradun for expeditious disposal of her application under order 39 rule 1 and 2 and for that purpose, the Court will take into consideration her application independently which she will file for preponing the date looking to the exigency which she has expressed before this Court.

11. Her application under order 39 Rule 1 and 2, would be considered by the Court expeditiously preferably within a week, but not later thereafter.

12. Subject to the above observations, the writ petition is dismissed as withdrawn.

13. Let a certified copy of this order be supplied to learned counsel for the petitioner today itself on payment of usual charges.