
(2011) 02 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 73522 of 2010

Tavrej Ahmad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 3 ADJ 678 : (2012) 1 AWC 322 : (2011) 1 UPLBEC 645

Hon'ble Judges : S.R Mehrotra, J;Pankaj Mittal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The present Writ Petition has been by the Petitioner making the following prayers:

(a) to issue a writ, order or direction in the nature of Mandamus commanding the Respondent Nos. 1 to 5 to restrain the Respondent Nos. 6 and 7 from construction of Road/Khadanja from the middle of House and Baithka;

(b) to issue a writ, order or direction in the nature of Mandamus commanding the Respondent Nos. 6/7 not to interfere in the peaceful possession of the Petitioner upon the land in dispute;

(c) to issue any other writ, order or direction which this Hon"ble Court may deem fit and proper under the circumstances of the case;

(d) to award the cost of the Writ Petition to the Petitioner.

2. It is, inter alia, averred in the Writ Petition that the Respondent No. 7 won in the last election of the Pradhan of the Village in question; and that the Petitioner and his family members did not support the Respondent No. 7 in the said election and they supported the defeated candidate, and due to the said reason, the Respondent No. 7 and his family members kept enmity with the Petitioner and his family, and after winning the election, the Respondent Nos. 6 and 7 are

constructing Road/Khadanja through the middle of the House and Baithka of the Petitioner; and that the Local Police and Tehsil Authorities are helping in illegal Acts of the Respondent Nos. 6 and 7; and that the Petitioner made a representation on 3.11.2010 before the Additional District Magistrate (Finance & Revenue), Azamgarh bringing the said fact to the notice of the Additional District Magistrate (Finance & Revenue), Azamgarh, whereupon the Additional District Magistrate (Finance & Revenue), Azamgarh directed the Respondent Nos. 3,4 and 5 to do the needful and stop the encroachment upon the land of the Petitioner, but no action has been taken by the Respondent-authorities; and that the father of the Petitioner made a representation on 29.11.2010 to the Respondent No. 2 in regard to the illegal Acts of the Respondent Nos. 6 and 7 and the Respondent Nos. 3 to 5 but till date no action has been taken; and that the land upon which the Respondent Nos. 6 and 7 are constructing Road/Khadanja, is situated just in the middle of the house and Baithka of the Petitioner.

3. It is not in dispute between the parties that the land in question is plot No. 442.

Counter-affidavits have been filed on behalf of various Respondents.

4. In the Counter-affidavit filed on behalf of the Respondent Nos. 1,3 and 4, it is inter alia, stated that that over Plot No. 442, the houses of the Petitioner and the Respondent No. 7 are in existence; and that the Khadanja is passing through the said Plot No. 442 and has been in existence for the last 10 years; and that the Khadanja goes up to the house of the Respondent No. 7; and that both on Northern and Southern sides of the Khadanja, the house of the Petitioner was situated; and that the Khadanja which was already in existence was damaged by the Petitioner a year ago resulting in inconvenience in passing through the Khadanja; and that the Respondent Nos. 6 and 7 are taking action for constructing Khadanja.

5. In the Counter-affidavit filed on behalf of the Respondent Nos. 2 and 5, it is inter alia, stated that the local police was not cooperating in any illegal activity of the Respondent No. 7; and that the Road/Khadanja passing through the middle of the Abadi of Gram- Sabba Tevnga was already in existence; and that the house and Baithka of the Petitioner was situated on either side of the said Road/Khadanja; and that the Petitioner removed bricks of the said Khadanja, and raised height by collecting earth; and that the Road was the property of the Gram Sabha.

6. In the Counter-affidavit filed on behalf of the Respondent No. 6, it is, inter alia, stated that the Respondent No. 7 and his family members are the Pradhan of the village in question for the last 35 years; and that the Road/Khadanja is in existence on the spot since prior to 1965; and that the Road/Khadanja which was in existence over Plot No. 442 since prior to 1965 is being used by the entire village; and that the Petitioner had made the same inconvenient to be used by the entire village on account whereof, necessary action was taken for making the

same convenient to be used by the entire village.

7. In the Counter-affidavit filed on behalf of the Respondent No. 7, it is, inter alia, stated that both the Petitioner and the Respondent No. 7 are joint owners of Plot No. 442 and the disputed Road/Khadanja which was situated in the said Plot No. 442 was also the joint property of the Petitioner and the Respondent No. 7; and that one-half of the said Plot No. 442 was the property of the Respondent No. 7 purchased from Mohd. Farooque, Grand-father of the Petitioner in the year 1961, and the Road/Khadanja was in existence since then, and the other half of the said Plot No. 442 was in possession and ownership of the Petitioner and his family, and the Gram-Sabha has no concern with the same.

8. Rejoinder-affidavits on behalf of the Petitioner have been filed in reply to the aforesaid counter-affidavits.

9. In the rejoinder-affidavits, the Petitioner has, inter alia, stated that there was no Road/Khadanja in the land in dispute previously, and it is being constructed by the Respondent No. 7 after winning the election of the Pradhan.

10. From the above narration of the averments made in the Writ Petition, the Counter-affidavits, and the Rejoinder Affidavits, it is apparent that factual controversy is involved in the present case. Disputed questions of fact will have to be decided for deciding the controversy involved in the present case.

11. Oral and Documentary evidence will have to be led by the parties in support of their respective cases so that the disputed questions of fact can be resolved. Such exercise cannot appropriately be gone into in the Writ Petition under Article 226 of the Constitution of India. It is open to the Petitioner to take recourse to appropriate remedy before the appropriate forum where disputed questions of fact can be resolved after taking oral and documentary evidence as may be led by the parties.

12. In view of the above, we dismiss the Writ Petition without prejudice to the right of the Petitioner for taking recourse to appropriate remedy before the appropriate forum for redressal of his grievance.

13. It is made clear that this Court has not adjudicated upon the case of the Petitioner on merits.