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**RESERVED ON 22.08.2024
DELIVERED ON 21.11.2024**

Neutral Citation No. - 2024:AHC:181577

Court No. - 83

Case :- MATTERS UNDER ARTICLE 227 No. - 9914 of 2023

Petitioner :- Lakshmi Narayan And 2 Others

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Ashutosh Mishra

Counsel for Respondent :- G.A.,Kashif Gilani,Rakesh Kumar Mishra

Hon'ble Ms. Nand Prabha Shukla,J.

Heard Sri Ashutosh Mishra, learned counsel for the petitioners, Sri Rajiv Kumar, Advocate holding brief of Sri Kashif Gilani, learned counsel for the respondent Nos. 5 and 7, Sri Rakesh Kumar Mishra, learned counsel for the respondent No. 6, Sri Suraj Singh, learned A.G.A. for the State of U.P. and perused the record.

The present writ petition under Article 227 of the Constitution of India has been filed with a prayer to set-aside the order dated 28.08.2023 (Anneuxre-1) passed by learned Additional Sessions Judge-I, Court No.1, Jaunpur in Criminal Revision No.167 of 2023 (Rajkumar and others vs. State of U.P. and others), arising out of Case No.4287 of 2022 under Section 145 Cr.P.C. during the pendency of this present petition.

Briefly, the dispute pertains to Plot No. 287 Ka situated at Village Belwa, Tehsil Mariahu, District-Jaunpur, which belongs to the petitioner No.1 Laxmi Narayan whose name was recorded in the CH Form 45 during the consolidation proceedings. The petitioner has been residing over the said plot after constructing a two storey house using the second floor for residential purpose and the first floor with a godown for running the shop.

On 08.05.2022, the respondent No. 6 Durga Prasad moved an application under Section 145 Cr.P.C. before the Sub-Divisional Magistrate, Tehsil Mariahu, District-Jaunpur alleging that there is apprehension of breach of peace as he owns a share in Plot No. 287 Ka and the petitioners were illegally occupying the said plot and the house constructed over it whereas the respondent Nos. 5 to 7 together owned half share in the said house.

Accordingly, a Police Report dated 21.05.2022 was sought from the concerned Police Station. According to the said report, the ground floor was occupied by the petitioners whereas the second floor was occupied by respondent Nos. 5 to 7. However, the respondent Nos. 5 to 7 have constructed a separate house and were residing there.

Accordingly, the Sub-Divisional Magistrate, Tehsil Mariahu, District-Jaunpur passed a preliminary order dated 01.06.2022 under Section 145(1) Cr.P.C. holding that there was apprehension of breach of peace over the disputed property and directed the parties to appear with their records claiming their title. After having gone through the reply and the objections raised by the parties, the Sub-Divisional Magistrate, concerned vide order dated 10.04.2023 directed the Naib Tehsildar concerned to submit a report after making a spot inspection. The Naib Tehsildar concerned alongwith the Lekhpal concerned submitted its report dated 13.04.2023 stating that the petitioners are in possession of the plot in dispute and currently residing with their family on the second floor of the house and running the shop on the first floor having a godown as well. The said report also stated that there was no apprehension of breach of peace over the said plot and Durga Prasad had no possession on that house.

Accordingly, the Sub Division Magistrate, Tehsil Mariahu, District-Jaunpur vide order dated 15.04.2023 had recalled the order dated 01.06.2022 and dropped the proceedings under Section 145 Cr.P.C. on the ground that as per the report of Naib Tehsildar concerned, the petitioners are in possession of the house constructed over Plot No. 287 Ka and there was no apprehension of breach of peace.

Aggrieved by the said order, the respondent Nos. 5 to 7 preferred a Criminal Revision No. 167 of 2023 challenging the order dated 15.04.2023 before the learned Additional Sessions Judge-I, Jaunpur. Accordingly, vide order dated 28.08.2023 the Revisional Court had set aside the order dated 15.04.2023 and remanded the matter to the Sub Divisional Magistrate, Tehsil Mariahu, District-Jaunpur for fresh consideration in respect to their possession alongwith the relevant records.

Learned counsel for the petitioners contended that the impugned order dated 28.08.2023 is highly illegal and arbitrary as there was no apprehension of breach of peace. It has also been contended that the

learned Revisional Court did not consider the fact that the petitioners are the owners of the disputed plot and the house constructed over it and their names were already existed in CH Form 45 vide order dated 07.09.1972 under Section 9A(2) of the U.P. Consolidation of Holding Act. The said order was never challenged during the consolidation proceedings. Once the consolidation proceedings came to an end and notification under Section 52 of the Consolidation of Holding Act, was issued, the said entry in the name of Petitioner No.1 became final. In order to circumvent the consolidation process, the respondents had initiated the proceedings under Section 145 Cr.P.C. As per section 49 of the U.P. Consolidation of the Holding Act, there is a bar on any civil or revenue proceedings. Even the report of the Naib Tehsildar concerned shows that on both the floors of the house situated over Plot No.287 Ka, the petitioner No.1 Lakshmi Narayan is having the possession. It has been further emphasised that the parties are closely related to each other as the father of the respondent Nos. 5 to 7 was the brother of the petitioner No. 1 and could seek the remedy by instituting a suit for the partition of their share. The Police in its report dated 21.05.2022 has acted in bias by stating that the private respondents are residing in one of the floor. After the compromise, the respondents have settled separately.

Per contra, learned counsel for the respondent Nos. 4 to 7 have asserted that they reside on the first floor of the constructed house over the disputed plot and own half of the share over the disputed property.

Thus, from the perusal of the records, it transpires that impugned proceedings under section 145 Cr.P.C. have been initiated by the respondents on the basis of biased Police Report dated 21.05.2022. The spot inspection report dated 13.04.2022 of the Naib Tehsildar concerned and the Lekhpal concerned shows that the petitioners are in possession over the disputed plot as well as the house constructed over it. The preliminary order dated 01.06.2022 passed by the Sub Divisional Magistrate Tehsil Mariahu, District-Jaunpur under Section 145(1) Cr.P.C., was passed without application of mind.

During the course of arguments, it has been informed by the learned counsel for the petitioners that after the proceedings under Section 145 Cr.P.C. was initiated by the respondent Nos. 5 to 7, they instituted an Original Suit No. 1262 of 2023 on 15.09.2023 before the

Civil Judge (Junior Division), Jaunpur seeking permanent injunction against the petitioners on the ground that the property in dispute is the property of their grandfather and half of its share belongs to the respondent Nos. 5 to 7.

Vide order dated 18.09.2023, the Civil Judge (Junior Division), Jaunpur has passed the following order on the Application 6C moved by the respondents:

"प्रार्थना पत्र 6 ग मय शपथ पत्र 7 ग पर वादी के विद्वान अधिवक्ता को एकपक्षीय रूप से सुना एवं पत्रावली का अवलोकन किया।

प्रस्तुत प्रकरण आबादी/भवन निजाई के शाश्वत व्यादेश के अनुतोष हेतु दाखिल किया गया है तथा प्रार्थनापत्र 6 ग के माध्यम से प्रश्नगत आबादी पर अन्तरिम व्यादेश का अनुतोष चाहा गया है। वादी की ओर से स्वत्व एवं अध्यासन के सम्बन्ध में कोई अभिलेख दाखिल नहीं किया गया है और न ही मौके की अवस्थिति के सम्बन्ध में कोई प्रपत्र दाखिल नहीं किया गया है। अतः बिना विपक्षी को सुने एवं बिना मौके की आख्या आये प्रथम दृष्टया एक पक्षीय अन्तरिम व्यादेश जारी किये जाने का आधार पर्याप्त नहीं है। अतः विपक्षी को वास्ते आपत्ति निस्तारण 6 ग दिनांक 17.10.2023 नियत कर नोटिस जारी हो। पैरवी उभयप्रकार से अन्दर सप्ताह हो।"

In support of his contention learned counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court in **Amresh Tiwari vs. Lalta Prasad Dubey and another, (2002) 4 SCC 440**, wherein the Apex Court held that:

"The SDM was right in discontinuing the proceedings under Section 145. It is not in every case where a civil suit is filed. Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil court would be binding on the Magistrate."

Thus, considering the report of the Naib Tehsildar concerned and the Lekhpal concerned dated 13.04.2023 regarding the possession of the petitioners and the entry in CH Form 45 vide order dated 07.09.1972, it can be fairly concluded that the petitioners are in peaceful possession of Plot No. 287 Ka and the two story house constructed over it and there is no apprehension of the breach of peace. The Original Suit No. 1262 of 2023 filed by the respondents is pending decision between the parties.

After analysing the aforesaid facts and circumstances and the submissions advanced by the parties, the order dated 28.08.2023 (Anneuxre-1) passed by the learned Additional Sessions Judge-I, Court No.1, Jaunpur in Criminal Revision No.167 of 2023 (Rajkumar and others vs. State of U.P. and others), arising out of Case No.4287 of 2022, under Section 145 Cr.P.C. is hereby set-aside, affirming the order dated 15.04.2023 passed by the Sub Divisional Magistrate, Tehsil Mariahu, District-Jaunpur.

Accordingly, the writ petition is **allowed**.

Order Date :- 21.11.2024

Monika