

Court No. - 19

Case :- MATTERS UNDER ARTICLE 227 No. - 4198 of 2024

Petitioner :- Rajendra Singh

Respondent :- State Of U.P. Thru. Collector District Faizabad /
Ayodhya And 36 Others

Counsel for Petitioner :- Sudeep Kumar, Abhinav Kumar
Mathur, Avdhesh Kumar Pandey

Counsel for Respondent :- C.S.C., Mohan Singh

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Sudeep Kumar, the learned counsel for the petitioner, Sri Gopal Krishna Pathak, the learned Additional Chief Standing Counsel representing the opposite parties no. 1, 3 & 4 and Sri Rajeev Narayan Pandey, the learned counsel for the opposite party no. 2.

2. Keeping in view the relief prayed and the order proposed to be passed, issuance of notice to the private opposite parties is dispensed with.

3. By means of the instant petition filed under Article 227 of the Constitution of India, the petitioner has challenged validity of order dated 04.10.2023 passed by the Judge Small Causes Court, Faizabad in Regular Suit No. 145 of 1989 In re: Rajai Lal Tungnath Singh & Ors. v. State of U.P. & Ors. as well as the judgment and order dated 03.08.2024 passed by the District Judge, Faizabad in Misc. Civil Appeal No. 47 of 2024 In re: Rajendra Singh v. State of U.P. & Ors.

4. The learned counsel for the petitioner has submitted that an order of temporary injunction was passed by the learned Civil Judge, Faizabad on 20.03.1990 in Regular Suit No.145 of 1989 wherein it is recorded that the defendants had not put in

appearance and, therefore, they could not be heard. After recording satisfaction regarding existence of prima facie case, balance of convenience and irreparable loss and injury, the Civil Judge passed an injunction order restraining the defendants from interfering in ownership and possession of the plaintiffs in the property in dispute.

5. The learned counsel for the petitioner further submitted that the suit was filed on 12.04.1989, summons of the suit and notices on the application for temporary injunctions were issued to the defendants and it was only thereafter, that the injunction order dated 20.03.1990 was passed. His submission is that the temporary injunction order was not an ad interim temporary injunction order passed ex parte and it was an order passed after giving due opportunity of hearing to the defendants and the application for temporary injunction was disposed of finally by the aforesaid order.

6. Upon disobedience of the injunction order, an application under Order 39 Rule 2A was passed by the petitioner, against which the defendants filed objections and thereafter an order dated 04.10.2023 was passed on the said application wherein the trial court recorded that a perusal of Commission Report and a photograph produced by the plaintiff indicates that an old building constructed with Lakhori bricks exist, on the land in dispute, which is in possession of the plaintiff. The Civil Judge directed the Station House Officer, Pura Kalandar to ensure that no defendant makes any interference in the ownership and possession of the plaintiff and in case any construction activity is taken by any of the defendants, he should be restrained by the Station House Officer.

7. The State has filed an application for recall of the order dated 20.03.1990 on 15.12.2021, which has been allowed by the

impugnd order dated 03.08.2024.

8. The submission of the learned counsel for the petitioner is that the application under Order 39 Rule 1 and 2 CPC stands decided finally by means of an order dated 20.03.1990. No application under Order 39 Rule 4 CPC was filed by any of the defendants for vacation of the stay order and as per the learned counsel for the petitioner, no occasion arose for filing any such application. In these circumstances, the learned trial court had no jurisdiction to entertain an application for recall of temporary injunction order dated 20.03.1990 and to proceed to decide the injunction application afresh when the application stood disposed of by means of the order dated 20.03.1990.

9. On the basis of written instructions provided by the District Magistrate, Adyodhya, the learned Additional Chief Standing Counsel has stated that the State authorities do not intend to interfere in possession of the petitioner except in accordance with law and the State is interested in expeditious disposal of the suit.

10. The learned Additional Chief Standing Counsel could not dispute the fact that the application for temporary injunction stood decided finally by means of an order dated 20.03.1990 and no application under Order 39 Rule 4 CPC was filed by any of the defendants.

11. Accordingly, the petition is **allowed**. The impugned order dated 04.10.2023 passed by the Judge Small Causes Court, Ayodhya in R.S. No. 145 of 1989 rejecting the application for temporary injunction-paper no. 6C-2, which had already been decided by means of an order dated 20.03.1990, and the judgment and order dated 03.08.2024 passed by the learned District Judge, Faizabad in Misc. Appeal No. 47 of 2024 affirming the aforesaid order, are set aside and the temporary

injunction order dated 20.03.1990 passed by the trial court in R.S. No. 145 of 1989 is restored.

12. As the suit is pending since the year 1989, a direction is issued to the learned Judge Small Causes Court, Ayodhya to proceed with the suit R.S. No. 145 of 1984 without granting any unnecessary adjournments to any of the parties.

Order Date :- 5.9.2024

Pradeep/-