

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 7475 of 2023

Petitioner :- Smt. Gurbachan Kaur And Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Deptt. Of Home Lko. And Others

Counsel for Petitioner :- Rishad Murtaza, Neeraj Kumar Rai

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Narendra Kumar Johari, J.

1. Heard Sri Rishad Murtaza, learned counsel for the petitioners, learned A.G.A. for the State and Sri Hemant Kumar Mishra, Advocate, who has filed power and also a short counter affidavit on behalf of the respondent no.19, which are taken on record.

2. This petition has been filed with the following prayers:-

"i) to issue a writ, order or direction of or in the nature of mandamus commanding the opposite parties nos.1 to 10 to protect the life, liberty and property of the petitioners and members of family;

ii) to issue a writ, order or direction of or in the nature of mandamus commanding the opposite party nos.1 to 7 to direct the opposite party nos.8, 9 and 10 to restrain themselves from interference in peaceful living of the petitioners in their property and also not to facilitate grabbing of the same by opposite party no.13 with the help of private opposite parties and his associates;

iii) to issue a writ, order or direction of or in nature of mandamus by directing the opposite parties/competent authority for registration of the First Information Report on the application sent on 23.11.2022 to them as per the mandate of the Hon'ble Supreme Court in the case of Lalita Kumari Vs. State of U.P. and others reported in 2014 (2) SCC 1, and investigate the case in free and fair manner.

iv) to issue a writ, order or direction of or in the nature of mandamus commanding the opposite party nos.1, 2 and 3 to conduct a high-level enquiry against the police officers, who are involved in facilitating illegal grabbing of the properties in the present case;

v) to issue a writ, order or direction of or in the nature of mandamus commanding the opposite parties to ensure operation and implementation of order dated 17.01.2023, passed by the Learned Additional Civil Judge (Junior Division), Room No.12, Gonda in Regular Suit No.148 of 2023 (Gurbachan Kaur Vs. Kulwant Kaur and others) in context of the property House No.112, Mohalla Bhagat Singh Nagar, Post, Pargana, Tahsil & Police Station-Kotwali Mankapur, Gonda;"

3. It has been submitted by learned counsel for the petitioners that the petitioner no.1 is 88 years old lady and the petitioner nos.2 and 3 are her sons, who are also Senior Citizens and more than 60 years of age and residing in House No.112 (31A), Mohalla Bhagat Singh Nagar, Post, Pargana, Tehsil Mankapur, District Gonda. They had a private dispute with the respondent no.19 and 20 and had filed a Civil Suit on the basis of a registered Will deed made out in favour of the petitioners by Gurubachan Singh. The nephew of the petitioner no.1 Late Gurdeep Singh and his wife Smt. Kulwant Kaur, the respondent no.19 had lost all their property and business in Allahabad city during the riots of 1984 and being relative of Late Gurdeep Singh, he had permitted them to live in the house and supported them financially and also got constructed five shops for them to conduct the business. Due to greed and at the behest of some unscrupulous elements and corrupt employees of the Nagar Panchayat Mankapur, the husband of the respondent no.19 Late Gurdeep Singh has got his name mutated on the said five shops. They also applied for mutation of the house in their favour.

4. The petitioner no.1 also filed a Civil Suit for permanent injunction when one respondent no.19 tried to grab the entire property i.e. House no.12 in Civil Suit No.148 of 2023: *Gurubachan Kaur Vs. Smt. Kulwant Kaur and another*. The trial Court has been pleased to grant the interim injunction on 17.01.2023 and the next date fixed in the matter is 06.12.2023. The respondent no.19 with the help of a sitting member of Parliament, who is respondent no.13 and his henchman barged into the house of the petitioner no.1 and told her that respondent no.13 wants the vacation of the

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Gurudwara and the house by the petitioners. When the petitioners tried to contact the Police Station Kotwali Mankapur, Police refused to interfere under the influence of the respondent no.13. The petitioners thereafter approached the office of the Hon'ble Chief Minister through Jan Sunwai Portal. However, because of the sitting Member of Parliament giving protection to the respondent no.19, the house of the petitioner and the Gurudwara were again tried to be taken over with the help of Sri Arun Kumar Rai, Inspector, Crime Branch, respondent no.12. On 15.09.2023, Sri Arun Kumar Rai, Inspector, Crime Branch, the respondent no.12 along with other police personnel came to the house and started threatening the petitioners to vacate the house and the Gurudwara and also told them to come to the Police Station Kotwali Mankapur. The aforesaid incident has been recorded in the CCTV cameras installed in the house. On 16.09.2023 at around 12:30 p.m. the respondent no.19 along with 45 to 50 persons who were henchman of the respondent no.13 barged into the house of the petitioners and broke the lock on the gate as well as CCTV cameras and forcibly took possession over a portion of the house. They have beaten the petitioner no.2 and looted mobile phone and cash. They misbehaved with the lady member of the family including the petitioner no.1. The daughter-in-law of the petitioner no.1 called the Police Station by dialing 112 but instead of immediate help, Police came after one hour by which time the henchman of the respondent no.13 had left the house.

5. The petitioners contacted the Superintendent of Police, who had directed the Station House Officer Sudheer Kumar Singh to help the petitioners but Sudheer Kumar Singh instead of helping the petitioners, had started doing panchayat and questioned the order passed by the Civil Court. From the conduct of the Station House Officer Sudheer Kumar Singh, the petitioners apprehend that the petitioner nos.2 and 3 would be arrested by any point of time and the house which belongs to the Late husband of the petitioner no.1 and which he has willed to his widow and sons shall be taken over by the respondent nos. 13 to 19.

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6. It has been submitted by learned counsel for the petitioners that petitioners are under mortal fear of being eliminated and, therefore, this petition has been filed with the aforesaid prayers.

7. Learned counsel for the petitioners has relied upon the pleadings in the supplementary affidavit including the photographs taken from the CCTV footage on 15.09.2023. Several allegations have been made in the Supplementary affidavit specifically against the police personnel. Also the judgment rendered by a Division Bench on 16.04.2014 of this Court in Writ-C No.21415 of 2014: *Irshad Vs. State of U.P. and others*, where it has been observed that Police officers cannot be allowed to take law into their own hands and resort to extra judicial methods to coerce the petitioner. It is not open to the Police Authorities to arrogate to themselves powers which are not conferred upon them by law. Such coercive methods would be violative of the rule of the law. Since the Suit with regard to the property in question was pending, the Division Bench has observed that a Police Officer would have no justification whatsoever to exercise those powers which are to be exercised by the Civil Court on an adjudication of the fact between the litigating parties.

8. Learned A.G.A. has produced before this Court written instructions dated 26.09.2023 sent by the Superintendent of Police Gonda, wherein it has been submitted that an enquiry was got conducted initially in the matter by the Circle Officer Mankapur and in the said enquiry it has come out that Sudheer Kumar Singh, Station House Officer and Arun Kumar Rai, Inspector, Crime Branch, have helped the private respondents and had entered into the house of the petitioners on 15.09.2023 without informing or taking permission of any competent officer. As a result of Sudheer Kumar Singh and Arun Kumar Rai interfering in the matter, the morale of the anti-social element was boosted and they again invaded the house on 16.09.2023 and broke the CCTV cameras and lock on the main gate and also committed offence as mentioned by the petitioner no.1 in her application to the Superintendent of Police Gonda and to the

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State Government. Even after dialing the Police Helpline No.112, the Police did not go to the spot in question to help the petitioners for more than an hour. The preliminary enquiry has been instituted with the Additional Superintendent of Police Gonda as Inquiry Officer against the responsible Police personnel i.e. Sudheer Kumar Singh and Arun Kumar Rai and others.

9. Sri Hemant Kumar Mishra, learned counsel for the respondent no.19, has referred to the contents of the counter affidavit to say that the respondent no.19 has a right over the House No.113 and she has not claimed any possession over House No.112. He has tried to make submissions on the merits of the Civil Suit which is pending before the Court concerned. It has also been submitted that one of the sons of the petitioner no.1 has also challenged the will deed allegedly executed by Gurubachan Singh in favour of the petitioner nos.1, 2 & 3.

10. It has also been submitted by learned counsel for the respondent no.19 that respondent no.19 is living alone in India and her son is settled abroad. The daughter of the respondent no.19 is residing in Kanpur, and, therefore, the petitioners who are much stronger financially have harassed the respondent no.19.

11. This Court having perused the instructions sent by the Superintendent of Police Gonda is of the opinion that since the Superintendent of Police himself is, *prima facie*, convinced of the complicity of Sudheer Kumar Singh, Station House Officer, and Arun Kumar Rai, Inspector, Crime Branch, he shall ensure that such Police personnel are posted outside the District Gonda immediately. He shall send a report regarding the incident to the Director General of Police, who shall ensure the posting of both the Inspectors as aforesaid outside the District Gonda preferably in a far off District till such time that preliminary fact finding enquiry is completed against them, so that they may not influence the witnesses.

12. Issue notice to respondent Nos.11, 12, 13, 14, 15, 16, 17, 18 and 20.

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13. Steps to be taken within a week.

14. Each of the respondents is granted time to file counter affidavit.

15. List this case on 18.10.2023.

16. In the meantime, petitioners are directed to approach the Court concerned for lodging of the F.I.R. against the persons involved in the incident that occurred on 15.09.2023 and 16.09.2023 at their House No.112 (31A), Mohalla Bhagat Singh Nagar, Post, Pargana, Tehsil Mankapur, District Gonda.

Order Date :- 27.9.2023

Rahul