

Court No. - 34

Case :- WRIT - C No. - 10451 of 2024

Petitioner :- Maya Devi

Respondent :- State of U.P. and others

Counsel for Petitioner :- Om Shiv, Yogendra Singh Kushwaha

Counsel for Respondent :- C.S.C.

Hon'ble J.J. Munir, J.

1. Case called on. No one appears on behalf of the petitioner. Ms. Monika Arya, learned Additional Chief Standing Counsel is present on behalf of the respondent Nos. 1 to 5.
2. With assistance of the learned Additional Chief Standing Counsel, this Court has gone through the writ petition.
3. The petitioner has filed this petition seeking a direction to the respondent authorities, that is to say, the State of U.P. through the Principal Secretary, the District Magistrate, Kanpur Nagar, the Sub Divisional Magistrate, Ghatampur, Kanpur Nagar, the Police Commissioner, Kanpur Nagar and the S.H.O., Police Station Ghatampur, Kanpur Nagar to recover possession of Gata No.11B admeasuring 0.7460 hectare, Khata No. 00230, situate in Village Guchchupur, Pargana and Tehsil Ghatampur, District Kanpur Nagar. There is a further direction sought in the nature of *mandamus*, directing the respondent authority to take strict action against respondent No.6 and his associates in accordance with law.
4. The respondent No.6 is a man going by the name Vir Bahadur Singh. The petitioner's case is that she is a housewife. Her husband is a Head Constable with the Provincial Armed Constabulary, posted at Lucknow. The sixth respondent is owner of the land

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bearing Khata No. 00230, Gata No. 11B, admeasuring 0.7460 hectare situate as last mentioned. Out of the said land, the petitioner purchased an area of 109 sq. mtrs. through a registered sale-deed dated 15.02.2021, executed by respondent No.6. Her name has also been mutated in the revenue records.

5. It is the petitioner's case that she went to take possession on 21.05.2022 but the sixth respondent and his associates obstructed her from doing so. She complained in the matter to the Sub Divisional Magistrate on 24.05.2022, submitting a representation, but to no avail. She has lodged a First Information Report with the Police giving rise to Crime No. 419 of 2022 under Sections 147, 323, 504, 506 I.P.C. and Section 3(1)(d) of S.C./S.T. Act, Police Station- Ghatampur, District Commissionerate Kanpur Nagar.

6. The petitioner's husband also addressed a representation against the vandalism of respondent No.6 to the Commandant, 35th Battalion P.A.C., Manahangar, Lucknow, on the foot of which, the Commandant sent a D.O. letter dated 18.07.2022 to the respondent No.4, the Commissioner of Police, Kanpur Nagar, but nothing happened. The petitioner's complains that no action has been taken by the respondent authorities. She has, therefore, applied for a *mandamus* to direct the Authorities, who are the respondents here, to deliver possession of the land that she has purchased out of plot No.11B.

7. The first relief is inaccurate in its description but what the petitioner seeks is to recover possession of the part of that land that she has purchased through a registered sale-deed from the sixth respondent. She has also sought a *mandamus* directing the respondent authorities to take strict action against the sixth respondent already mentioned.

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8. A wholesome reading of the petitioner's cause set out in the writ petition shows a progressively eroding faith of citizens in the Judge of the district exercising civil jurisdiction. The petitioner's case before the Court is nothing more than a cause of action for a suit to recover possession and a permanent prohibitory injunction. Instead of instituting a suit before the Court of ordinary original civil jurisdiction where the property is situate, the petitioner has approached every possible authority, who has nothing to do with the matter to seek relief, including invoking our jurisdiction. She has approached the Sub-Divisional Magistrate, who has no power to grant relief on an application of the kind which the petitioner seeks. The petitioner has also approached the Police, who may probe the criminal angle and bring the offender to book, but can be of little assistance in recovering possession of the petitioner's land that she has purchased through a registered sale-deed.

9. The petitioner's husband has written a letter to his Commandant thinking that since he commands a battalion of the Provincial Armed Constabulary, he will be able to help his Constable. A Commandant of the P.A.C. has no business to entertain a complaint of this kind and, in fact, he should not have written a letter to the Commissioner of Police. The Commissioner of Police too cannot do anything to recover possession of immovable property. It is to be done by the Judge exercising ordinary original civil jurisdiction and nobody else. There is a determined reluctance, a kind of annoyance and contempt in the minds of citizens towards the jurisdiction of the ordinary Civil Courts and part of it is based on pessimism and cynicism that no relief can be had from the Court of civil jurisdiction.

10. A relief which can be granted by the Court of civil jurisdiction ought to be granted by it. The jurisdiction of the Civil

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Court is of the widest amplitude and nobody else ought to trench upon it. Merely because a citizen finds it inconvenient is no answer to take resort to other proceedings. It is also not open to a citizen to express his indignation towards the process of the civil law by approaching other irrelevant and incompetent fora such as the Police, the Revenue Authorities or if even this Court in the exercise of our extra-ordinary jurisdiction under Article 226 of the Constitution. It is no part of our business in the exercise of our jurisdiction under Article 226 of the Constitution virtually to entertain suits for possession.

11. In the passing it may be mentioned that the second relief which the petitioner has sought in terms of a direction to the Authorities to take strict action against respondent No.6 in accordance with law is only a cosmetic variation for a permanent prohibitory injunction she wants against the sixth respondent not to interfere with her possession in the property once it is recovered. It is an insidious way of asking the same relief.

12. This Court must remark that though this kind of an attitude of citizens showing indignation to the Civil Court's jurisdiction has no place in the law and cannot be accepted, howsoever strong the sentiment may be, it is equally true that the process of the Civil Court has become lethargic due to some factors that are seminal. One of them is the widely prevailing strikes in Courts which spare little time for judicial work. The other is the eroding sense of routine and work culture amongst the Members of the Bar in the District Courts, where hours of sitting may be seen to be indifferent and not according to the Court's time prescribed.

13. There is still another factor which cannot be lost sight of. Often Judges in the District Courts, who move to pass decisive

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orders granting well deserved relief to one party or refusing it, face the peril of complaints made against them on the administrative side of the Court. They also face transfer application on hideous and absurd allegations of bias, without the slightest fear in the minds of those who make them about consequences. It is difficult for a Judge in the Civil Court to exercise his jurisdiction freely, if he constantly works not just aware of the professional routine of having his orders overturned by a superior Court, but the personal peril of harm to his career, if he were to pass orders of effective consequence which his conscience says he must. These factors put together have indeed made the Civil Court a place of somewhat non-promising resort for a litigant who requires quick relief against a situation that threatens him in the face.

14. Be that as it may, the realities of the situation apart, this Court cannot usurp the jurisdiction of the Civil Court merely because the petitioner has chosen not to resort to it, for a substantial part on account of her indignation or wrong legal advice, and in some measure, on account of genuine difficulties that the course of a litigation in the Civil Court is hedged with.

15. In the totality of circumstances, this Court cannot entertain this writ petition. It must be, and is, therefore, **dismissed as not maintainable.**

16. However, it is clarified that this order will not prevent the petitioner from availing such remedy, as advised.

Order Date :- 8.4.2024

Vijay

(J.J. Munir, J.)