

Court No. - 65

Case :- MATTERS UNDER ARTICLE 227 No. - 4940 of 2020

Petitioner :- M/S Hazari Lal Shyam Lal Steels Private Ltd And Another

Respondent :- Kanpur Nagar Nigam, Through Commissioner Kanpur And 3 Others

Counsel for Petitioner :- Prateek Sinha

Counsel for Respondent :- Alok Mishra

Hon'ble Saumitra Dayal Singh,J.

Re: Civil Misc. Urgency Application Nil of 2020

1. The accompanying petition has been filed under Article 227 of the Constitution of India, during winter break.
2. Upon urgent mention made, the matter has been placed before me upon special bench constituted by Hon'ble The Chief Justice.
3. Accordingly, the application is **disposed of**.

Re: Order on Petition

4. Heard Sri Prateek Sinha, learned counsel for the petitioners and Sri Alok Mishra, learned counsel for the respondent no.1.
5. Grievance of the petitioners is that they are setting tenants in a building bearing municipal nos. 77/3 and 77/3A, Collie Bazaar, Kanpur Nagar. The petitioners along with similarly situated persons, who are tenants in other parts of the same building bearing municipal no. 77/3B and 77/3C, have been adversely affected by certain constructions that are being raised by respondent no.4 (builder) on the plot owned by respondent nos. 2 and 3. It is alleged that those constructions are being made in a

manner so as to weaken the constructions/tenements of the petitioners and other similarly situated persons. The said act is stated to be a result of collusion between the owners of the building in question and the builder. A large pit is stated to have dug up by the respondent no.4, which has caused damage to the tenements of the petitioners and other existing structures.

6. In such circumstances, Chandra Steels and Industries & 10 Ors, who are also tenants in same building, bearing municipal nos. 77/3B and 77/3C, instituted an injunction suit no. 1072/2020. The trial court, upon hearing the plaintiffs in that suit, has granted an *ex-parte* temporary injunction in favour of those plaintiffs, vide its order dated 5.12.2020. The said order is continuing.

7. Since the petitioners were similarly affected, they instituted suit no. 1173 of 2020 (M/s H.C. and Sons & Ors. Vs. Smt. Renu Jain & 3 Ors.). On other application for grant of temporary injunction, the petitioners were heard on 19.12.2020. They relied upon earlier orders passed by learned court below dated 5.12.2020 in O.S. 1072/2020 (Chandra Steels and Industries & 9 Ors Vs. GBP Constructions & 4 Ors.). Yet, without any difference of fact being noted, the learned court below has failed to grant *ex-parte* temporary injunction to the petitioners and posted the matter for 2.1.2021.

8. Thus, it has been submitted that the learned court below has failed to exercise it's jurisdiction and has completely erred in not protecting the petitioners, who are similarly situated to the plaintiffs in O.S. No. 1072/2020, in whose favour a temporary injunction order is already operating. They further alleged that emboldened by the

fact that the petitioners have not been protected, private respondent no.4 attempted to forcibly evict the petitioners and demolish their tenements. In that regard, it has been further emphasized that till date, there is no proceeding instituted under any law, either to seek eviction of the petitioners or to demolish their tenements.

9. In reply, Sri Mishra submits that Kanpur Nagar Nigam would only act in accordance with law and if at all any building is to be demolished, it may be done only upon the orders of the competent court or authority.

10. In view of such facts, no useful purpose would be served in keeping the present petition pending or calling for counter affidavit, at this stage, in view of the order that is proposed to be passed.

11. Having heard learned counsel for the parties, it appears that the petitioners claim parity of facts and circumstances with the plaintiffs in O.S. No. 1072/2020. For the purpose of grant of temporary injunction in their favour, the petitioners had undoubtedly relied on the temporary injunction order granted to the plaintiffs in O.S. No. 1072/2020. This much is recorded in the order dated 19.12.2020 itself. However, perusal of the impugned order does not bring out any consideration made by learned court below as to why the petitioners were found not entitled to equal protection with that granted to the plaintiffs in O.S. No. 1072/2020. Also, there is absolutely no consideration of why *ex-parte* temporary injunction has not been granted in their favour despite pleadings made of attempt to demolish their tenements and to evict them from their premises without adopting the process of law.

12. Since the next date fixed in the matter is 2.1.2021, it is expected that the learned court below shall apply its mind to the facts noted above as also all other relevant facts that are brought before it by the parties and shall pass appropriate orders giving reasons for the same on that date itself. Till 2.1.2021, the petitioners would have the same protection as has been granted to the plaintiffs in O.S. No. 1072/2020 wherein a temporary injunction order was passed on 5.12.2020. However, it is made clear that further protection, as prayed for by the petitioners, would depend on the orders that may be passed by learned court below on 2.1.2021, after hearing the parties before it.

13. With the aforesaid observations, the present petition is **disposed of**.

Order Date :- 24.12.2020
Prakhar