

Nagar Nigam Vs. Gorakhpur Development Authority and ors.

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Court : Allahabad

Decided On : Jul-23-2004

Reported in : 2004(4)AWC3236

Judge : S.N. Srivastava, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 39, Rule 3

Appeal No. : C.M.W.P. No. 26088 of 2004

Appellant : Nagar Nigam

Respondent : Gorakhpur Development Authority and ors.

Advocate for Def. : Manish Goyal, Adv.

Advocate for Pet/Ap. : Satish Mandhyan, Adv.

Judgement :

S.N. Srivastava, J.

1. Impugned herein is the order dated 16.6.2004, passed by the District Judge, Gorakhpur in Civil Revision No. 128 of 2004 by which parties were directed to maintain present position till the' date fixed (11.7.2004) for disposal of injunction application.

2. From a perusal of the record, it transpires that O.S. No. 292 of 2004 was instituted by the plaintiff respondents for the relief of permanent injunction to restrain the defendants from interfering with the possession of the plaintiffs over the property described in the plaint map by letters Ka, Kha, Ga, Gha, Cha. The boundaries of the property have also been enumerated in the plaint. It would further transpire that trial court, i.e.. Civil Judge (S.D.) Gorakhpur on 16.6.2004, merely issued notices to the opposite parties fixing 11.7.2004 for disposal of injunction application and aggrieved by the order, a revision was preferred the same day before the District Judge who passed the order impugned herein. It is in the above backdrop that the present petition has been instituted for the relief.

3. The learned counsel appearing for the petitioner assailed the order canvassing that on a careful consideration of the materials brought on record, the trial court opined not to grant ad interim injunction sans opportunity of hearing to the defendants and therefore, merely issued notices to the opposite parties but the revisional court without observing in compliance the mandatory requirements of Order XXXIX, proviso to Rule 3, proceeded to pass order of injunction without recording any reasons. The learned counsel further canvassed that the order having been passed in utter disregard of mandatory provisions of Order XXXIX, proviso to Rule 3, is manifestly erroneous in law and is liable to be quashed. The learned counsel lastly submitted that no revision lay as there was no order passed by the trial court rejecting application for injunction and merely notices had been issued Per contra, learned counsel appearing for opposite parties tried to prop up the Impugned order contending that reasons in Justification of the order have to be gleaned from the memo of revision itself, which clearly vouched for extreme urgency of passing injunction in the matter. He further contended that the order was rightly passed considering the facts and circumstances and situational urgency and no interference is, therefore, called for in the matter. The learned counsel for the respondents also canvassed that once an application is moved praying for interim injunction attended with a statement of certain exigencies, refusal to pass any order of injunction and merely directing to issue notices, would amount to refusal to pass order at that stage and as such the said order could be challenged by the superior court.

4. I have carefully and studiously gone through the materials on record and considered the arguments made across the Bar.
5. It bears no dispute that though in the present case, supplementary - affidavit, supplementary counter-affidavit and various affidavits bringing on record various other documents in support of its case by the plaintiff had been filed and notwithstanding all these materials before it, the trial court merely preferred to issue notices fixing a date for disposal of injunction matter. In this connection, it may be observed that grant or refusal of injunction was in the discretion of the trial court. No doubt, the discretion to be exercised by the trial court should not be arbitrary and should be a judicial one to be exercised in accordance with reason and on sound judicial principles. From a perusal of the order passed by the trial court, it is explicit that the trial court, upon a careful consideration of the entire materials before it, was of the view- that it would not be in the interest of justice to pass any order of injunction without hearing the other side. It is not the case that the trial court acted either illegally or without material irregularity in not granting temporary injunction and the notices were issued pending disposal of application for interim injunction. In the circumstances, I refrain from expressing any opinion on merits, regard being had to the fact that on the question of injunction the plaintiffs are yet to prove their case on the aspects of a prima facie case, balance of convenience and irreparable injury and feel called to dispose of the petition limiting myself to the periphery of arguments advanced across the bar without in any way touching on the merits of the case.
6. Coming to the impugned order, I have searched the entire order for reasons and it is obvious that the order impugned herein does not bespeak any reason in vindication of granting injunction nor the order mentions whether the revisional court was satisfied that the plaintiff had any prima facie case to justify the grant of temporary injunction or that the balance of convenience required it. It is also explicit from the record and also from the arguments made across the bar that the revisional court proceeded to pass the ad interim injunction in the matter without observing in compliance the provisions contained in Order XXXIX, proviso to Rule 3 and in case It was at all felt imperative, the Court ought to have recorded reasons for its opinion that the object of granting the injunction would be defeated

by delay. The argument of the learned counsel that the situational urgency was pressing and in view of extreme urgency, there was no need to record reasons and reasons at all could be gleaned from the memo of revision, cannot be countenanced considering that the proviso to Rule 3 of Order XXXIX which clearly envisage that : 'where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay.....'. It brooks no dispute that order of injunction passed without complying with the requirements of proviso to Rule 3 of Order XXXIX, C.P.C. and also without recording reasons for its opinion that the object of granting injunction would be frustrated by delay, is not maintainable in law and therefore, considering that no reasons have been assigned by the District Judge to prop up and sustain its order, I am of the view that the impugned order is rendered unsustainable and liable to be quashed.

7. Lastly, it has been urged by the learned counsel for the opposite parties that today, i.e.. 23.7.2004 is the date fixed before the trial court in the matter of ad-interim injunction. The learned counsel for the petitioner also expressed agreement that the trial court be directed to decide the injunction application, of course, subject to giving opportunity of hearing. Coming to the next submission of the learned counsel that no revision lay before the District Judge, in the perspective of the facts and circumstances, I am of the firm view that not passing any order and merely directing notices to be issued at that stage vis-a-vis the application for interim injunction in which exigencies for grant of injunction were pressed into service before the trial court by the plaintiff, refusal to grant injunction and merely directing to issue notices would amount to refusal to pass order granting injunction at that stage and it would thus justify preferring of appeal /revision by the plaintiff before the District Judge. Since injunction matter is still pending before the trial court, I do not propose to enter upon merits of the case.

8. Upon over-all consideration of the facts and circumstances and arguments advanced across the bar, writ petition succeeds and is allowed and the impugned order dated 16.6.2004 is quashed and the matter is relegated to the trial court attended with the direction that it would decide the application for injunction

expeditiously preferably within two weeks from the date of production of a certified copy of this order, of course, subject to observing the rule of affording opportunity of hearing to the parties and in case it be felt necessary, permit the parties to file fresh pleading/affidavits as the case may be. It is further directed that parties shall fully cooperate with the trial court to enable disposal of injunction application within the stipulated period and would not seek unnecessary and avoidable adjournments.

9. The learned counsel for the respondents prayed for protective order against the onslaught of the petitioner on the construction of the petitioner. Considering the facts and circumstances, it is directed that till the injunction matter is decided by the trial court, the parties shall not demolish the residential building of the respondents. Let a certified copy of this order be issued within 3 days on payment of usual charges.

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