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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

SABUNA DEVI — Appellant

Vs.

JHINKAN AND OTHERS — Respondent

(Before : Pradeep Kant, J and Shri Narayan Shukla, J)

Special Appeal No.114 of 2008

Decided on : 25-02-2008

- Constitution of India, 1950 - Article 226
- High Court Rules, 1952 - Chapter 8 Rule 5

A. Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1 & 2 — Injunctions — Temporary Injunction — Power of High Court to issue directions/injunctions in writ petition when suit is pending before trial court — High Court cannot finally dispose of a writ petition and issue adverse directions/injunctions against a party (restraining construction) without issuing notice to that party and affording an opportunity of hearing, even if the High Court is convinced about the alleged ongoing activities. (Paras 4, 5, 8, 9)

B. Writ Petition — Principles of Natural Justice — Audi alteram partem — Necessity of Notice and Hearing — A writ petition seeking relief against a private party cannot be finally disposed of, nor can an interim injunction be granted, without issuing notice to the affected party and providing an opportunity to be heard. While an ex parte interim order may be considered if justified, final disposal without notice is impermissible. (Paras 5, 8, 9)

C. Judicial Review — Special Appeal — Scope of Interference — High Court order passed without notice to affected party — An order passed by a Single Judge of the High Court in a writ petition, which disposes of the petition and

grants an injunction against a party without issuing notice to them, cannot be sustained and is liable to be set aside in a special appeal. (Paras 9, 10)

D. Procedural Fairness — Pending Suit — Disposal of Injunction Application — Direction to Trial Court — Setting aside a High Court's order that was passed without notice does not absolve the trial court from its duty to consider and dispose of a pending application for temporary injunction within the time frame initially directed by the Single Judge. (Para 10)

JUDGMENT

1. Parties are served.
2. Heard learned counsel for the appellant as well as counsel for the respondents No.1 to 3 Sri Om Prakash Mishra.
3. Objection filed on behalf of respondent Nos.1 to 3 is taken on record.
4. This special appeal arises out of an order, passed by learned Single Judge dated 12.2.2008, who while issuing directions to the trial Court to dispose of the application for temporary injunction on 19.2.2008 and if not possible on the date fixed, latest by 15th March 2008, also restrained the appellant from making any construction and also directed for maintaining the status quo as existed on the date of passing of the order at 11 a.m.
5. Grievance of the appellant is that though the relief was asked for against her in the aforesaid writ petition in a matter where a suit for permanent injunction was filed by respondent Nos.1 to 3 in which they had moved an application for temporary injunction wherein temporary injunction was not granted and further date was fixed but the learned single Judge even without issuing any notice to the appellant and without affording opportunity of hearing, not only finally disposed of the writ petition but also granted interim injunction which otherwise was not granted to the respondents by the learned trial Court.
6. Sri O.P. Mishra appearing for the respondents says that since it was a case where the learned Single Judge was convinced about the alleged constructions being raised by the appellant, therefore, such an order was rightly passed by learned Single Judge.
7. Sri S.C. Kasish, learned counsel for the appellant says that apart from the aforesaid illegality in the order the opposite party No.3 also concealed the fact that as a matter of fact, Samudayik Swastha Kendra was being constructed there and not any individual property of the appellant was allowed to be constructed.
8. The nature of construction is not the subject matter of consideration in the present special appeal. It has to be looked into by the trial Court, if any such plea is raised. We are

satisfied that in case order is to be passed, restraining the appellant from raising construction or for that matter any adverse order is to be passed in a writ petition or in any proceeding in the High Court, the writ petition cannot be disposed of finally without issuing notice to the affected party. In such a situation, it is always open to the Court to issue notice to the concerned party and pass ex parte interim order, if satisfied and if such a case is made out and if the parties are served and petition is ripe for hearing, the petition can be disposed of, but without issuing notice to the affected private party, the petition cannot be disposed of finally giving direction against the interest of such party.

9. We, therefore, find that the impugned order passed by the learned Single Judge cannot be sustained want of notice to the appellant, who was impleaded as an opposite party in the writ petition and against whom, in effect, the relief was claimed.

10. The special appeal is allowed. The order, passed by the learned Single Judge is set aside. We may, however, clarify that setting aside the order passed by the learned Single Judge does not mean that the learned trial Court shall not consider the application for temporary injunction but he shall dispose of the same within the time provided by the learned Single Judge. We are informed that the matter is listed today before the trial Court and we expect that the same shall be disposed of in accordance with the time schedule given and the case shall not be unnecessarily adjourned.

(Appeal allowed)