

Court No. - 51

Case :- WRIT - C No. - 24090 of 2023

Petitioner :- Smt. Laung Shree

Respondent :- State Of U.P. Through Principal Secretary Revenue Govt. Of Up And 12 Others

Counsel for Petitioner :- Dwijendra Prasad

Counsel for Respondent :- C.S.C., Ravindra Singh

Hon'ble Chandra Kumar Rai, J.

1. Heard Sri Dwijendra Prasad, learned counsel for the petitioner, Sri Mridul Kumar, learned standing counsel for the state respondents, Sri Ravindra Singh, learned counsel for respondent no.5 and Sri Rajesh Tripathi, learned counsel for respondent no.14/Railway.

2. Brief facts of the case are that Sardar Singh, was the recorded tenure holder of the plot in dispute who had three sons, namely, Babu Ram, Jyoti Prasad and Har Prasad as well as his wife Smt. Sarbati Devi. Petitioner-Smt. Laung Shree is the widow of Har Prasad. After death of Smt. Sarbati Devi, widow of Sardar Singh, name of Ram Gopal and Vipin Kumar, sons of Babu Ram were ordered to be recorded vide order dated 5.3.2012 in the revenue records on the basis of will deed dated 8.8.1988. An application for restoration was filed at the instance of the petitioner against the order dated 5.3.2012 for recording her name also in place of Sarwati Devi. The Tehsildar has allowed the restoration application, restoring the case to its original number. The Tehsildar vide order dated 2.2.2016 rejected the objection of the petitioner dated 10.10.2013, setting aside the order dated 21.1.2013 and maintained the earlier order dated 5.3.2012. Against the order dated 2.2.2016, passed by Tehsildar, appeal filed by the petitioner was dismissed by the S.D.O. vide order dated 13.11.2017. Revision filed by the petitioner against the order of the S.D.O., was also dismissed by the Additional Commissioner (Administration), Agra Division, Agra vide order dated 21.6.2023, hence, this writ petition.

3. Counsel for the petitioner submitted that petitioner is the widow of one of the sons of the deceased recorded tenure holder Sardar Singh. It is further submitted that the petitioner is entitled to be recorded in the revenue records in place of Sarbati Devi but the Tehsildar has illegally ordered to record the name of Vipin Kumar and Others on the basis of will deed dated 8.8.1988. He also submitted that objection filed by the petitioner has been illegally rejected and the order has been maintained in the appeal and the revision. He further placed the revenue entries in support of his argument in order to demonstrate that petitioner is entitled to be recorded on the basis of succession but the Tehsildar has illegally rejected the objection of the

petitioner. He also submitted that the impugned order be set aside and the matter be remitted back before the Tehsildar for considering the petitioner's case in accordance with law.

4. On the other hand, learned counsel for the respective respondents submitted that the writ petition arises out of mutation proceeding, as such, same is not maintainable in view of the law laid down by this Court in **Smt. Kalawati Vs. Board of Revenue and Others**, reported in **(2022) 155 R.D. 169**. They further submitted that the finding of fact has been recorded by the Tehsildar while rejecting the objection of the petitioner which cannot be interfered with in exercise of jurisdiction under Article 226 of the Constitution of India. They also submitted that no interference is required in the matter and the writ petition is liable to be dismissed.

5. I have considered the arguments advanced by learned counsel for the parties and perused the records.

6. There is no dispute about the fact that Sardar Singh was recorded tenure holder and Sarbati Devi is the widow who was recorded later on after death of Sardar Singh. With respect to succession of Sarbati Devi, the objection filed by the petitioner has been rejected by the Tehsildar vide order dated 2.2.2016. The finding of fact recorded by the Tehsildar dated 2.2.2016 is relevant for perusal which is quoted hereunder:-

“मैंने उभय पक्ष के विद्वान अधिवक्तागण की विद्वता पूर्ण बहस सुनी एवं पत्रावली का गहन अनुशीलन किया जिससे मैं इस निष्कर्ष पर पहुंचा हूँ कि वाद ग्रस्त भूमि श्री सरदार सिंह की संक्रमणीय भूमि थी जिसकी पंजीकृत वसीयत उनके द्वारा अपनी पत्नी श्रीमती सरवती देवी के हक में निष्पादित कर दी और यह भी लिखा कि श्रीमती सरवती देवी की मृत्यु के बाद वाद ग्रस्त भूमि के मालिक उनके नातीगण रामगोपाल आदि होंगे। चूँकि लौंगश्री के पति हरप्रसाद की मृत्यु वसीयतकर्ता श्री सरदार सिंह के जीवनकाल में ही हो गई थी और वसीयत में श्री सरदार सिंह द्वारा लौंग श्री को कोई अधिकार प्रश्नगत आराजी में नहीं दिये थे इसलिए आपत्तिया श्रीमती लौंग श्री को प्रश्नगत वाद में आपत्ति करने को कोई अधिकार नहीं है। अतः आपत्ति लौंग श्री दिनांक 10.10.13 तदनुसार निरस्त होने योग्य है।

आदेश

अतः आपत्ति लौंग श्री दिनांक 10.10.13 तदनुसार निरस्त की जाती है और आदेश दिनांक 21.01.13 निरस्त कर आदेश दिनांक 05.03.2012 बहाल किया जाता है। तदनुसार अभिलेखों में अंकन किया जाये। बाद आवश्यक कार्यवाही पत्रावली दाखिल दफतर हो।

ह०अ०
तहसीलदार सदर
फिरोजाबाद

आज दिनांक 2.02.16 को यह आदेश खुले न्यायालय में हस्ताक्षरित दिनांकित व उद्धोषित किया गया।

ह०अ० दिनांक 02.02.16
तहसीलदार सदर
फिरोजाबाद”

7. The appellate and the revisional court have also maintained the order of the Tehsildar dated 2.2.2016 in appeal and revision.

8. Considering the entire facts and circumstances as well as the finding of

fact recorded by Tehsildar, no interference is required by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

9. The writ petition is dismissed.

10. Needless to say that the orders passed in the mutation proceedings will not come in the way of the petitioner to establish her claim, in accordance with law, before the regular court by way of a suit for declaration/cancellation.

Order Date :- 17.10.2023

C.Prakash