

Neutral Citation No:- 2023:AHC:236691

Court No. 51

Reserved on: 2.12.2023

Delivered on: 14.12.2023

WRIT – C No. - 25901 of 2023

Petitioner :-	Rishabh Anand Singh
Respondent :-	State of U.P. & Others
Counsel for Petitioner:-	Mr. Awadhesh Kumar Malviya
Counsel for Respondent :-	Mr. Abhishek Shukla, Addl. C.S.C., Mr. Rishi Kant Rai

Hon'ble Chandra Kumar Rai,J.

1. Heard Sri Awadhesh Kumar Malviya, learned counsel for the petitioner, Sri Rishi Kant Rai, learned counsel for respondent no.-4/Smt. Urmila Singh and Sri Abhishek Shukla, leaned Addl. C.S.C. for the state-respondents.

2. Brief facts of the case are that plot no.60, area 0.019 hect. Situated in village Chandanwaha, Tehsil Sadar, District Ghazipur is recorded in the name of petitioner in the revenue records vide order dated 13.10.2022. The particular of the order recording the name of the petitioner over the plot in dispute is mentioned in the remark coloumn of khatauni of 1429-1434 fasli which is annexed as Annexure No.1 to the writ petition. Against the order dated 19.1.2011, passed by the Tehsildar recording certain tenure holders over the plot in dispute, an appeal was filed by one Mahendra Pratap Singh which was allowed vide order dated 16.9.2021. The order dated 16.9.2021, allowing the appeal filed by Mahendra Pratap Singh has attained finality. The plot in dispute belongs to one Ram Sunder Singh who sold the same to Smt. Chinta Singh. Three sets of mutation

proceedings have been initiated before the Tehsildar, one set of dispute was set up by respondent no.4/Smt. Urmila Singh, 2nd set of claim was set up by Smt. Ratnawati Devi and 3rd set of claim was set by Smt. Geeta Devi. The Tehsildar vide order dated 3.6.2011 rejected the claim of respondent no.4/Smt. Urmila Singh and accepted the claim of Smt. Chinta Singh based on the sale deed dated 7.9.2007 executed by Ram Sunder Singh. Smt. Chinta Singh had executed a gift deed in favour of her grandson, i.e. petitioner (Rishabh Anand Singh) on 26.8.2022. On the basis of the gift deed, the petitioner has been recorded in the revenue records and petitioner is stated to be in physical possession over the plot in dispute. The order dated 18.7.2003 has been passed by respondent no.3/S.D.O., Sadar, Ghazipur, restraining the petitioner from making any interference from the possession of other side in respect to plot no.60, area 0.019 hect. Hence this writ petition with the following reliefs:-

“(a) To, issue a writ, order of direction in the nature of certiorari quashing the order impugned dated 18.07.2023 passed by the respondent no.3 (Annexure-6 to the writ petition.

(b) To, issue a writ, order or direction in the nature of mandamus directing the respondents not to disturb the peaceful possession of the petitioner in any manner.”

3. This Court vide order dated 4.8.2023 directed the learned standing counsel to seek instruction in the matter as well as directed the parties to maintain status quo till the next date fixed in the matter.

4. Learned standing counsel placed the instruction dated 9.9.2023 before the Court, accordingly, the Court has passed an order dated 31.10.2023, directing the counsel for the petitioner to file reply to the instruction placed before the Court.

5. Counsel for the petitioner filed a supplementary affidavit dated 8.11.2023 in reply to the facts mentioned in the instruction dated 9.9.2023.

6. Counsel for the petitioner submitted that petitioner is recorded tenure holder of the plot in dispute on the basis of gift deed dated 26.8.2022 as well as petitioner is in physical possession over the plot in dispute, as such, administrative authorities have no jurisdiction to pass any type of injunction against the petitioner. He further submitted that the claim of respondent no.4/Smt. Urmila Singh has been rejected by the Tehsildar in the proceeding under Section 34 of the U.P. Land Revenue Act, as such, the administrative authority cannot pass any type of injunction order in favour of respondent no.4. He also submitted that the impugned report/order dated 18.7.2023 has been passed against the ratio of law laid down by this Court in **Vijai vs. State of U.P., reported in 2022 SCC Online Ald. 548**. He also submitted that one Civil Suit No.419/2023 has been filed on behalf of the petitioner, impleading respondent no.4/Smt. Urmila Singh as defendant for injunction, restraining the defendant from interfering with the possession of the petitioner in any manner. He submitted that the copy of the plaint of the civil suit is annexed as Annexure No.S.A.-1 to the supplementary affidavit dated 8.11.2023.

7. On the other hand, Mr. Rishi Kant Rai, learned counsel appearing for respondent no.4/Smt. Urmila Singh submitted that respondent no.4 is claiming right from one Smt. Tripti Singh in whose favour a decree under Section 229-B of the U.P. Z.A. & L.R. Act was passed on 2.5.2009. He further submitted that by the impugned order no injunction has been granted rather on the application filed by respondent no.4/Smt. Urmila Singh, the matter was enquired into and a report was submitted that the opposite parties may not interfere in the possession of Smt. Urmila Singh unless either there is any evidence or order in favour of opposite parties. He submitted that the civil suit which was been filed on 31.7.2023, was not in existence on 18.7.2023, as such, there is no illegality in considering the application of respondent no.3 by the S.D.M., Sadar, Ghazipur. He further submitted that no interference is required against the report/order dated dated 18.7.2023 and petitioner can press his pending Suit No.419/2023 in accordance with law.

8. Mr. Abhishek Shukla, learned Addl. C.S.C. for the state-respondents, on the basis of the instruction dated 9.9.2023, submitted that petitioner was interfering in the possession of respondent no.4, as such, in order to maintain law and order, report/order dated 8.7.2023 was passed. He further submitted that respondent no.4 was raising construction on the basis of sale deed executed in her favour, as such, the report/order dated 18.7.2023 was passed in the interest of justice in order to maintain peace on spot. He further submitted that mutation proceedings are pending before the Tehsildar, as such, no interference is required in the matter.

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

10. There is no dispute about the fact that mutation proceeding under Sections 34/35 of the U.P. Revenue Code, 2006, at the instance of the respondent no.4 is pending before the Tehsildar. There is also no dispute about the fact that one civil suit for injunction, filed by the petitioner on 31.7.2023, is pending before the civil court in which no injunction order is operating. There is also no dispute about the fact that the civil suit has been instituted by petitioner after passing of the report/order dated 18.7.2023 but the mutation dispute was already pending before the court concerned, before passing of the report/order dated 18.7.2023.

11. From the evidence on record, it is very much established that some disputes are pending before the court having summary jurisdiction under Sections 34/35 of the U.P. Revenue Code, 2006 and one civil suit for injunction is pending before the civil court in respect to the plot in dispute. The Division Bench of this Court in *Vijai* (supra) has held that there should not be administrative interference with respect to the private dispute between the parties regarding which the disputes are pending before the civil court. Paragraph nos. 28 to 33 rendered in *Vijai* (supra) will be relevant for perusal which are as under:-

“28.The very issuance of advisory by the Government of UP dated 3.8.2022 vide No. 1291/EK-2022/9-RA-9 pursuant to the Government order dated 16.10.2015 is evident of the fact that even the Government of UP is not oblivious to the exercise of excessive administrative

powers by the execution in civil dispute relating to immovable properties between private individuals. It is high time that the said advisory acts like yet another reminder to all the executive authorities to desist from taking any action in a dispute relating to immovable properties of private persons and especially when the matter is pending in a civil court as in the present case.

29. Having noted the effort of the Government of UP in issuing the aforesaid advisory, this Court further expects that the Government should also prescribe consequential effect against the erring officers and provide for remedial steps by framing high level committee of senior officers at the Government level, which should include the Revenue Secretary so that not only accountability can be fixed but a redressal forum be available to the victims and this Court is not flooded with similar kinds of litigations in future.

30. For all above reasons, we are inclined to allow this writ petition. This court without expressing any view on the merits of the dispute pending before the competent courts and in the peculiar facts and circumstances of the present case directs the District Magistrate, Ghazipur and the SDM, Tehsil - Kasimabad, District - Ghazipur to ensure that the parties are restored possession as was existed prior to 11.6.2022 in order to bring them to their original position. Needless to say that such arrangement shall be subject to the out come of the civil appeal and other litigations pending between the petitioner and respondent no. 7. We clarify that we have not expressed anything on the merit of the contention of the parties, which may be permissible to the parties as per law and as such we did not find any

reason to issue notice to respondent no. 7 before passing this order.

31. Further, before parting with this judgment, this Court issues strict warning to the respondent no. 2 the officer posted as the District Magistrate, Ghazipur for trying to mislead this Court, to refrain from repeating any such mistake in future. We call upon the departmental head to issue a Warning to the District Magistrate, Ghazipur to be kept in his service record. A Warning be also issued to all such erring officials, to be circulated widely, so that they shall desist from repeating such acts in future and that any such repetitive act must entail disciplinary action against them as per the Rules.

32. With the aforesaid observations and directions, the writ petition stands disposed of.

33. No order as to cost.”

12. Considering the ratio of law laid down in *Vijai* (supra) as well as the pendency of the mutation proceeding as well as the civil disputes, the impugned report/order dated 18.7.2023 cannot be sustained in the eye of law.

13. The impugned report/order dated 18.7.2023 is hereby set aside. **The writ petition stands allowed** with the observation that the parties can file appropriate application in the pending proceeding, in accordance with law, for redressal of their grievance, rather approaching the administrative authorities for any type of relief in the matter.

Order Date :- 14.12.2023
C.Prakash

(Chandra Kumar Rai, J.)