

Court No. - 51

Case :- WRIT - C No. - 26086 of 2023

Petitioner :- Smt. Bano

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Sushil Kumar Tewari

Counsel for Respondent :- C.S.C.

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. Sushil Kumar Tewari, learned counsel for the petitioner and Mr. Amit Kumar Srivastava, learned Standing Counsel for the State-respondents.

2. Learned counsel for the petitioner submitted that the Tahsildar has illegally ordered for mutation of the name of respondent no.5 on the basis of registered sale deed. He further submitted that the order has been illegally maintained in appeal and revision by the appellate Court as well as revisional Court. He further submitted that the civil Suit for cancellation of sale deed and permanent injunction filed by the petitioner being Suit No.187 of 2017 has been dismissed by the Additional Civil Judge, Junior Division vide judgment and decree dated 21.10.2021 but appeal filed against the judgment and decree of trial Court is pending before the appellate Court/ District Judge, Moradabad being Civil Appeal No.237 of 2021, as such, the impugned order be set aside and mutation matter be examined afresh.

3. On the other hand, Mr. Amit Kumar Srivastava, learned Standing Counsel for the State-respondents submitted that the civil Suit filed by the petitioner has already been dismissed, as such, there is no question of reconsideration of mutation matter afresh. He further submitted that the civil appeal filed by the petitioner is pending, as such, petitioner should press his civil appeal in accordance with law and no interference is required against the orders passed in the mutation proceeding.

4. I have considered the argument advanced by learned counsel for the parties and perused the records.

5. There is no dispute about the fact that the proceeding under Section 34 of U.P. Revenue Code, 2006 has been decided in favour of respondent no.5 on the basis of

registered sale deed. There is also no dispute about the fact that the registered sale deed has not been cancelled at all rather civil suit for cancellation of sale deed filed by the petitioner has been dismissed but civil appeal filed by the petitioner against the judgment and decree of the trial Court in respect to the suit for cancellation of sale deed is pending before the civil Court.

6. In view of the order passed by the Tahsildar concerned recording the name of respondent no.5 on the basis of registered sale deed which has not been cancelled at all rather civil appeal is pending, as such, no interference is required in the matter against the orders impugned passed by the Tahsildar/ Sub-Divisional Officer/ Additional Commissioner in the proceeding under Section 34/35 of U.P. Revenue Code, 2006.

7. The writ petition is ***dismissed***. Needless to say that the order passed in the mutation proceeding shall be subject to the adjudication of dispute by the Civil Court, which is pending before the District Judge being Appeal No.237 of 2021 and orders passed in the mutation proceedings will not come in the way of petitioner to establish her claim in accordance with law before civil Court.

Order Date :- 17.10.2023
Rameez