Court No. - 51

Case :- WRIT - C No. - 32592 of 2023

Petitioner :- M/S Dkd Ikjot United Pvt Ltd
Respondent :- State Of U.P. And 8 Others
Counsel for Petitioner :- Shiv Shankar Pd Gupta,Girijesh Kumar Gupta
Counsel for Respondent :- C.S.C.,Sunil Kumar Singh

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. Shiv Shankar Pd Gupta assisted by Mr. Girijesh Kumar Gupta, Counsel for the petitioner, Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents and Mr. Sunil Kumar Singh, Counsel for respondent no.5, Gram Sabha.

2. The instant petition has been filed for following relief:-

> ***" A writ or direction in the nature of certiorari quashing the impugned order dated 11.10.2022 passed by respondent no.2 on a misc. application of respondent no.6 dated 16.9.2022 against a judicial order dated 4.1.2013 passed by Upziladhikari Hapur to the writ petition."***

3. This Court has entertained the matter on 22.9.2023 and passed the following order:-

> ***"1. Heard Mr. Shiv Shankar Prasad Gupta/Girijesh Kumar Gupta, learned counsel for the petitioner, Sri Abhishek Shukla, learned Addl. C.S.C. for the state-respondents and Sri Sunil Kumar Singh, learned counsel for the respondent-gaon sabha.***
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> ***2. Counsel for the petitioner submitted that respondent no.7 was the recorded tenure holder of the plot in dispute, proceeding under Sections 33/39 of the U.P. Land Revenue Act was initiated in respect to plot in dispute against respondent no.7 which was concluded in favour of respondent no.7. The submission further is that revision filed against the order is pending before the Board of Revenue. It is further submitted that miscellaneous proceeding has been initiated and under the impugned order, it has been held that the sale deed executed by respondent no.7 in favour of the petitioner is void. It is also submitted that in the miscellaneous proceeding, the sale deed cannot be held to be void. It is also submitted that the proceeding under Sections 33/39 of the U.P. Land Revenue Act is pending in the form of revision before the revisional court, as such, there is no occasion for initiation of the miscellaneous proceeding. He further placed the order dated 21.7.2023 in Writ C No.19315/2023 in which similar controversy has been entertained by this Court and an interim protection has been granted.***
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> ***3. On the other hand, Mr. Abhishek Shukla, learned Addl. C.S.C. for***

the state-respondents submitted that the writ petition against the impugned proceeding is not maintainable as only inquiry is under process and recommendation has been made against the authority concerned for initiating the proceeding.

4. Learned Addl. C.S.C. is granted 10 days' time to obtain instruction in the matter specifically on the point as to how in the miscellaneous proceeding, the sale deed is held to be void.

5. Put up this matter as fresh on 9.10.2023.

6. Till the next date of listing, no coercive measures shall be taken by the authorities in respect to plot in question."

4. In compliance of the order dated 22.9.2023, instruction dated 10.10.2023 has been placed before the Court which is taken on record.

5. Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents submitted that in respect to the State land, the forgery has been committed, as such, impugned order has been passed for declaring the sale deed as well as initiation of criminal proceeding against the person concerned. He further submitted that First Information Report under Sections 420, 467, 468, 471 and 121 has been registered against the person concerned in respect to the forgery committed by the authorities. He submitted that no interference is required in the matter and writ petition is liable to be dismissed.

6. In reply, Counsel for the petitioner submitted that sale deed cannot be held to be void in the miscellaneous proceeding or in any inquiry in administrative side. He further submitted that private dispute cannot be adjudicated in the administrative side. He submitted that similar controversy has already been entertained and the interim protection has been granted in Writ C No. 19315 of 2023. He further placed reliance upon the judgment of this Court passed in Writ C No. 1625 of 2004, Vijai Vs. State of U.P. and Others and Writ C No. 20102 of 2022, Vijay Kumar Varma Vs. U.P. Avas Evam Vikas Parishad Thru Chairman/ H.C. and 3 Others in order to demonstrate that private dispute cannot be settled in administrative side.

7. I have considered the arguments advanced by learned Counsel for the parties and perused the records.

8. There is no dispute about the fact that sale deed has been executed in respect to the plot in dispute in favour of the petitioner.

9. It is settled principle of law that sale deed, will deed or gift deed etc. cannot be cancelled in the administrative side or on the basis of miscellaneous application filed by the parties.

10. Division Bench of this Court in the case of Vijai (Supra) has held as under in Paragraph Nos. 25, 26 and 27 of the judgment:-

"25. From the aforesaid conspectus of the fact, it is evident that the situation of law and order that has arisen on the spot due to the dispute involving immovable property belonging to private individuals could have been easily avoided, had the respondent authorities observed restrained and guided themselves by the orders passed by this Court as well as the Government Orders.

26. In our Constitution, there is clear separation of judicial and executive powers. The civil disputes are to be decided by the Civil Court and unsuccessful litigant has a right to file an appeal. The Administrative Officials cannot enter into any such dispute in exercise of the power conferred on them under the provisions of Cr.P.C. and the Revenue Code to fill in the gap and pass executive orders which explicitly belongs to the realms of Civil Court or the revenue court respectively. The due process of law has to be followed in all respect and the executive authorities are not supposed to usurp the the power bestowed on the civil / revenue courts as it would not only be exercise of excessive jurisdiction not permissible under law but would also lead to overlapping jurisdiction which is against the tenets of the basic structure of our Constitution.

27. The present case is a glaring example of encroaching and over reaching the realm of the Civil Court on the part of the respondent-authorities. Although the respondent no. 2 has taken a stand that he was not aware of the pendency of the civil appeal, but the action of the respondent no. 2 even after submission of the reports by the revenue officials does not seem convincing to this Court from any angle. The authorities concerned ought not to have exercised administrative power for entering into the disputed property and issue order for delivery of possession etc against one or the other party. This primarily should be left to the competent court of civil jurisdiction."

11. Considering the ratio of law laid down by Division Bench of this Court, the impugned order dated 11.10.2022 passed by respondent no.2 on the misc. application dated 16.9.2022 declaring the petitioner's sale deed as void is liable to be set aside and the same is hereby set aside.

12. Writ petition stands **allowed** to the extant indicated above.

Order Date :- 12.10.2023
Vandana Y.

Digitally signed by :-
VANDANA YADAV
High Court of Judicature at Allahabad