

Court No. - 51

Case :- WRIT - C No. - 32466 of 2023

Petitioner :- Smt Kulwant Kaur

Respondent :- State Of U.P. And 11 Others

Counsel for Petitioner :- Anil Kumar Mishra

Counsel for Respondent :- C.S.C.,Sunil Kumar Singh

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. Anil Kumar Mishra, learned counsel for the petitioner, Mr. Abhinav Ojha, learned standing counsel and Mr. Sunil Kumar Singh, learned counsel for respondent no.5-gaon sabha.

2. Brief facts of the case are that khasra no.480, area 0.9510 hect. situated at Village Gajupura, Pargana Hastinapur, District Meerut was allotted in favour of one Jangir Singh, son of Daleep Singh for agricultural purpose. According to petitioner Jangir Singh, son of Daleep Singh had transferred the aforementioned khasra no.480 in favour of the petitioner's husband by way of registered sale deed dated 12.4.2007 and since the execution of sale deed dated 12.4.2007, petitioner's husband Nirmal Singh came in possession over the same. On the basis of aforementioned sale deed dated 12.4.2007, mutation proceeding was initiated on behalf of the petitioner's husband Nirmal Singh. During pendency of the proceeding, petitioner's husband Nirmal Singh expired. The contesting respondents have also initiated the proceeding for mutation on the basis of succession in respect to the holdings of deceased Jangir Singh. The Tehsildar (Judicial), Mawana, District Meerut vide order dated 30.10.2009 ordered to record the name of the contesting respondent in respect to the holding of Jangir Singh. Respondent no.7/Jasbeer Kaur claimed that sale deed has been executed in her favour on 8.7.2008 by successor of Jangir Singh accordingly two set of claim were setup before the Court under Section 34 of U.P. Revenue Act, 1901 and the Tehsildar by order dated 13.10.2013 rejected the mutation

application of petitioner filed on the basis of Sale-deed of 12.4.2007 and allowed the mutation application of contesting respondent no.7/Jasbeer Kaur filed on the basis of sale deed of 8.7.2009. Against the order dated 3.10.2013, an appeal under Section 35(2) of the U.P. Revenue Code, 2006 was filed by the petitioner which was decided vide order dated 20.7.2019, setting aside the order of the Tehsildar dated 3.10.2013 and remanded the matter back before the Tehsildar to pass fresh order, after affording proper opportunity of hearing to the parties. In pursuance of the appellate order dated 20.7.2019, the Tehsildar has passed fresh order dated 21.4.2022, allowing the claim of mutation set up by contesting respondent and rejecting the claim of the petitioner as held by earlier order of Tehsildar dated 3.10.2013. The petitioner challenged the order of the Tehsildar dated 21.4.2022 by way of appeal which was dismissed vide order dated 22.8.2023. Hence, this writ petition on behalf of the petitioner, challenging the impugned order dated 22.8.2023, passed by the S.D.O. in appeal and order dated 21.4.2022, passed by the Tehsildar in Mutation Case No.5248.

3. Counsel for the petitioner submitted that the Tehsildar has illegally passed the order for recording the name of the contesting respondent, without considering the case of the petitioner in accordance with law. He further submitted that the Tehsildar has failed to consider that the recorded tenure holder has already executed the sale deed in favour of the petitioner's husband, as such, the claim set up by the contesting respondent, cannot be accepted. He also submitted that the civil suit is pending between the petitioner and the contesting respondent in respect to the property in dispute, as such, the mutation order passed by the Tehsildar is illegal. He also submitted that the sale deed alleged to be executed in favour of the contesting respondent cannot be relied upon in view of the earlier sale deed executed in favour of the petitioner. He also submitted that the impugned order be set aside and the claim of the petitioner should be examined afresh in accordance with law.

4. On the other hand learned standing counsel and the counsel for the gaon sabha submitted that the impugned orders have been passed in the summary proceeding on the basis of sale deed executed in favour of the contesting respondent, as such, no interference is required in the matter. They further submitted that the petitioner has stated in paragraph no.19 of the writ petition that civil suit is pending between the petitioner and the contesting respondent in which Amin's report has already been submitted, as such petitioner should avail the proper remedy in the pending suit rather the writ petition before this Court, challenging the impugned orders passed in the summary proceeding. They submitted that 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 the Tehsildar, after considering each and every aspect of the case, has maintained the earlier order dated 3.10.2013, passed on the basis of the sale deed in favour of the contesting respondent and the case of the petitioner on the basis of the sale deed dated 12.4.2007 was rejected as vendor was not found alive on 12.4.2007.

7. The relevant portion of the finding of fact recorded by the Tehsildar dated 21.4.2022 are as follows:-

आदेश पत्रक

न्यायालय: तहसीलदार, न्यायिक

मण्डल-मेरठ, जनपद-मेरठ, तहसील-मवाना

वाद संख्या-RST/1001/2007-2008

कम्प्यूटरीकृतवाद संख्या-T201911520305248

निर्मल सिंह बनम जंगीर सिंह

अन्तर्गत धारा-34, अधिनियम:- उ०प्र० भू०-राजस्व अधिनियम, 1901

निर्णय

मैंने उभय पक्षों के विद्वान अधिवक्तागण की बहस सुनी गई तथा पत्रावली पर उपलब्ध समस्त साक्ष्यों आदि का भली-भांति परिशीलन किया गया जिसके उपरान्त मैं इस निष्कर्ष पर पहुंचा हूं कि वाद पत्रावली में क्रेती जसवीर कौर की ओर से जो तथ्य/साक्ष्य प्रस्तुत किये गये हैं वे पोषणीय होने के कारण स्वीकार किये जाने योग्य हैं, जबकि कुलवन्त कौर के पति निर्मल सिंह के पक्ष में निष्पादित कथित विक्रय पत्र संदिग्ध प्रतीत होता है जो स्वीकार किये जाने योग्य नहीं है। जबकि जसवीर कौर के पक्ष में निष्पादित विक्रय पत्र दिनांक 08.07.2009 के आधार पर प्रस्तुत दा०-खा० की रिपोर्ट स्वीकार किये जाने योग्य है। इसलिए कुलवन्त कौर के पक्ष में प्रस्तुत नामान्तरण रिपोर्ट निर्मल सिंह बनाम जगीर सिंह खारिज की जाती है। तथा इनके द्वारा प्रस्तुत सभी आपत्तियां भी खारिज की जाती है। तथा प्रार्थना पत्र दिनांक 12.04.2022 तथा 20.04.2022 भी पोषणीय न होने के कारण निरस्त किये जाते हैं। तथा जसवीर कौर के विरुद्ध पारित एक पक्षीय आदेश दिनांक 03.03.2022 भी खारिज किया जाता है। तथा वाद में निम्नवत आदेश पारित किया जाता है-

आदेश

ग्राम गजपुरा पर० हस्तिनापुर तह० मवाना की वर्तमान खतौनी की खाता सं० 00076 की गाटा संख्या 480 रकबा 0.9510 हे० ल० 16.80 रु० के सम्पूर्ण अंश पर पारित पूर्व नामान्तरण के आदेश दि० 03.10.2013 की पुष्टि कर जाती है। तथा इस आदेश के क्रम में, क्रेती जसवीर कौर पत्नी स्व० बलदेव सिंह नि० आर-154, ग्रेटर कैलाश, पार्ट-1 नई दिल्ली का नाम जो खतौनी के कालम -2 में दर्ज है, यथावत रखा जाता है। पत्रावली वाद परवाना अमल दरामद जारी होकर दा० द० हो।
दिनांक 21.04.2022

राम चन्द्र

तहसीलदार न्यायिक

तह० मवाना

21.04.22

the S.D.O. vide order dated 22.8.2023.

9. It is also material that petitioner has stated in paragraph no.19 of the writ petition that civil suit between the petitioner and the contesting respondent are pending in the civil court in respect to the property in dispute although nature of suit has not been mentioned in Paragraph No.19 of the writ petition.

10. In view of the finding of fact recorded by the Tehsildar as well as the pendency of the civil suit between the parties in respect to the property in dispute, no interference is required in the matter.

11. The writ petition is dismissed.

12. Needless to say, the order passed in the mutation proceeding, shall not come in the way of the petitioner to establish her claim in accordance with law before the regular court.

Order Date :- 26.10.2023
C.Prakash/RPD