

Court No. - 51

Case :- WRIT - C No. - 32760 of 2023

Petitioner :- Vijayee Singh And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Sunil Kumar Pandey, Himanshu Pandey

Counsel for Respondent :- C.S.C., Bhupendra Kumar Tripathi, Trivikram Singh

Hon'ble Chandra Kumar Rai, J.

1. Heard Sri Himanshu Pandey, learned counsel for the petitioners, Sri Abhishek Shukla, learned Addl. C.S.C. for the state-respondents, Sri Bhupendra Kumar Tripathi, learned counsel for the respondent-gaon sabha and Sri Sanjeev Singh assisted by Sri Trivikram Singh, learned counsel appearing for intervenor-Yogesh Kumar Singh.

2. The instant writ petition has been filed for mandamus, commanding respondent no.3- Sub Divisional Officer, Sadar, Chandauli to complete the required exercise as required under Rules 100 and 101 of the U.P. Revenue Code Rules, 2016 for passing appropriate orders for exchange of plot no.2, area 0.202 hect., plot no.5, area 0.056 hect of village Dhrauli with the *bhoomidhari* plot of the petitioners as well as for mandamus, directing the respondent nos. 2 & 3 to pass appropriate order for exchange initiated at the instance of the petitioners, in accordance with law.

3. Learned counsel for the petitioners submitted that exchange of Public Utility Land is permissible if it is in the interest of applicant or public as provided under U.P. Revenue Code, 2006 and rules framed there under but authorities are sitting tight over the matter. He further submitted that due to act of the authorities the future of 1600 student is at stake. He further submitted that the earlier writ petitions filed on behalf of the petitioners, which are pending before this Court, relate to different cause of action. He further submitted that one writ petition filed on behalf of the petitioners before this Court being Writ C No.13662/2022 relates to proceeding under Section 67 of the U.P. Revenue Code, 2006 and the other writ petition being Writ C No.67057/2012 filed on behalf of the petitioners is also pending before the Division Bench of this Court which relates to repatriation of recognition of the institution in question. He also submitted that the relief claimed in the instant writ petition is with respect to the proceeding for exchange as

provided under Section 101 of the U.P. Revenue Code, 2006, read with rules 101 & 102 of U.P. Revenue Code Rules, 2016 as such, petitioners are entitled to the relief claimed in the instant writ petition.

4. Sri Abhishek Shukla, learned Addl. C.S.C. for the state-respondents, on the basis of instruction dated 16.11.2023, submitted that on the basis of the application of the petitioner, Case No.T20231418010105121 has been registered and the report has been called for in the matter. He further submitted that the proceeding for exchange shall be decided in accordance with law.

5. Mr. Sanjeev Singh, learned counsel appearing for the intervenor submitted that the petitioners are misusing the process of law by initiating repeated proceeding before the Court. He submitted that the earlier application for exchange filed by the petitioners, was rejected, as such, the fresh application cannot be entertained. He also submitted that the Division Bench of this Court has already considering the matter at the instance of the petitioners, as such, the petitioners are not entitled to any relief in the matter and the writ petition is liable to be dismissed. He further placed the order passed by the Division Bench as well as that of the Single Judge order passed in the proceeding under Section 67 of the U.P. Revenue Code, 2006 in support of his argument.

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

7. There is no dispute about the fact that the petitioners have already filed two writ petitions that are in respect to different cause of actions. The prayer made in the instant writ petition is in respect to the disposal of exchange proceeding as provided under Section 101 of the U.P. Revenue Code, 2006.

8. The instruction dated 16.11.2023 submitted by the State demonstrates that now the proceeding under Section 101 of the U.P. Revenue Code, 2006 has been registered on the basis of the application filed by the petitioners being Case No.T20231418010105121. The perusal of instruction dated 16.11.2023 will be relevant which is as under:-

"मा० उच्च न्यायालय इलाहाबाद व्यवहार प्रकीर्ण याचिका सं० 32760 सन्2023

विजयी सिंह एवं अन्य बनाम राज्य उ०प्र० एवं चार अन्य में लिखित अनुदेश द्वारा

प्रत्यर्थी सं० 3 निम्नवत है-

1. यह कि मा० उच्च न्यायालय के समक्ष याची ने इस अनुतोष का मांग किया है कि उ०प्र० राजस्व संहिता के नियम 100 व 101 अन्तर्गत याची की भूमिधरी भूमि आ०नं० 633 रकबा 0.202 हे० व आ०नं० 760 रकबा 0.0560 हे० स्थित ग्राम धरौली परगना मझवार तहसील व जिला चन्दौली का आ०नं० 2 रकबा 0.7290 हे० बाल क्रिड़ा केन्द्र में से 0.202 हे० तथा आ०नं० 5 रकबा 0.833 हे० में से 0.0560 हे० से विनिमय नियमानुसार कराये जाने हेतु प्रत्यर्थी सं० 3 को परमादेश के माध्यम से निर्देशित किया जाये।

2. यह कि उक्त याचिका में मा० उच्च न्यायालय इलाहाबाद द्वारा आदेश दिनांक 05.10.2023 ई० व दिनांक 03.11.2023 ई० के माध्यम से प्रकरण के सम्बन्ध में लिखित अनुदेश चाहा गया है।

3. यह कि याची द्वारा अपनी उपरोक्त याचिका में पुर्व में धारा 161 यू०पी० जेड० ए० के अन्तर्गत विनिमय हेतु दिए गए प्रार्थना पत्र का विवरण दिया गया है जिसके सम्बन्ध में यह सादर कथन है कि याची द्वारा दिया गया उक्त प्रार्थना पत्र दिनांक 02.06.2012 ई० को निक्षेपित किया जा चुका है जिसके विरुद्ध याची ने कोई नियमानुसार पुर्नस्थापना पत्र प्रस्तुत नहीं किया ऐसी स्थिती में याची द्वारा पुर्व में प्रस्तुत विनिमय आवेदन पत्र अन्तर्गत धारा 161 यू०पी० जेड०ए० पर कोई कार्यवाही नहीं हो सकी।

4. यह कि याची पुनः मा० उच्च न्यायालय इलाहाबाद के समक्ष 32760 सन्2023 विजयी सिंह एवं अन्य बनाम राज्य उ०प्र० एवं चार अन्य प्रस्तुत किया है तथा याची ने याचिका प्रस्तुत करने के उपरान्त अपनी भूमिधरी आ०नं० 760 मि० रकबा 0.0458 हे० का आ०नं० 2 मि० रकबा 0.329 हे० बाल क्रिड़ा केन्द्र व आ०नं० 5

मि० रकबा 0.156 हे० कृषि फार्म कुल दो गाटा रकबा 0.485 हे० से विनिमय अन्तर्गत धारा 101 उ०प्र० राज्य संहिता किये जाने हेतु दिनांक 09.10.2023 ई० को प्रार्थना पत्र प्रस्तुत किया है जिसकी छायाप्रति संलग्न है।

5. यह कि विनिमय आवेदन प्राप्त करने के उपरान्त वाद सं० 5121/2023 कम्प्यूटरीकृत वाद सं० T20231418010105121 पंजीकृत करने के उपरान्त मूल्यांकन व स्थिति के सम्बन्ध में नियम 102 उ०प्र० राजस्व संहिता नियमावली के अन्तर्गत बाजार मूल्य का आगणन कराने के लिए तहसीलदार सदर चन्दौली से आख्या आहूत की गई है तथा नियम 102(1) उ०प्र० राजस्व संहिता नियमावली के अन्तर्गत ग्राम पंचायत धरौली को आ०नं० 2 बाल क्रिडा केन्द्र के विनिमय के बाबत कारण बताओ नोटिस जारी की गई है तथा आ०नं० 5 कृषि फार्म के विनिमय के सम्बन्ध में जिला उपनिदेशक कृषि को कारण बताओ नोटिस जारी कर दी गई है। दोनों कारण बताओ नोटिस की छायाप्रति संलग्न है।

6. यह कि बाजार मूल्य का आगणन व कारण बताओ नोटिस का उत्तर प्राप्त होने के बाद नियमानुसार अग्रिम कार्यवाही सम्पादित कर दी जायेगी।

7. यह कि न्यायहित में मा० उच्च न्यायालय इलाहाबाद से सादर अनुरोध है कि उपरोक्त तथ्यों पर कृपा पूर्वक विचार करते हुए याचिका का निस्तारण अन्तिम रूप से करने की महती कृपा की जाय।

संलग्नक- यथोक्त

उपजिलाधिकारी

सदर चन्दौली।"

9. In view of the registration of the exchange proceedings in respect to the plot in question over which the institution is situated and more than 1600 student are getting education, the same should be decided according to the provisions contained under the

U.P. Revenue Code and the Rules framed thereunder.

10. So far as earlier proceeding for exchange are concern there is no adjudication of the exchange proceeding by the court on merit inspite of the order passed by this court in earlier writ petition as such the instant Case No. T20231418010105121 which has been registered before respondent no.4 is to be decided on merit in accordance with law.

11. Considering the entire facts and circumstances of the case, without expressing any opinion on the merits of the case, this petition is disposed of with the direction to respondent no.4-Sub Divisional Officer, Tehsil Sadar, District Chandauli to decide Case No.T20231418010105121,under section 161 of U.P. Revenue Code, 2006 as expeditiously as possible, preferably within a period of 3 months, from the date of production of a certified copy of this order before the authority concerned, after affording proper opportunity of hearing to the parties concerned, in accordance with law.

Order Date :- 29.11.2023

C.Prakash