

Court No. - 6

Case :- WRIT - C No. - 35762 of 2023

Petitioner :- Shalini Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Dinesh Kumar Singh

Counsel for Respondent :- C.S.C.,Praveen Kumar Giri

Hon'ble Mrs. Manju Rani Chauhan,J.

Heard. Mr. Dinesh Kumar Singh, learned counsel for the petitioner, Mr. Praveen Kumar Giri, learned counsel for respondent no.2 and learned Standing Counsel for the State-respondents.

This writ petition has been filed by the petitioner with the following prayer :-

"I. Issue a writ, order or direction in the nature of mandamus directing the respondents to expeditiously decide the Nagar Nigam Appeal No.48 of 2023 (Shalini Singh Vs. Nagar Nigam Varanasi and others) within a short time bound period as may be determined by this Hon'ble Court under the facts and circumstances of the case.

II. Issue a suitable writ, order or direction that till the disposal of misc. appeal the effect and operation of the order dated 23.09.2023 passed by Additional Municipal Commissioner/Zonal Officer Varanasi may kept in abeyance and/or the parties may be directed to maintain status-quo.

..... "

Learned counsel for the petitioner submits that Arazi No.798/1, measuring an areas of 800 sq. feet was purchased by the petitioner from one Shiv, son of Katwaru by means of sale-deed dated 05.10.2015. Accordingly, the name of the petitioner was recorded in the revenue records on 23.02.2016 after following the proper procedure as required under the law. He further submits that after lapse of nearly six years the contesting respondent-Pushpa Devi who had already filed the objections in the mutation case filed by the petitioner, moved an application on which notices were issued and the petitioner filed an objection on 26.11.2022 on which the order-impugned dated 23.09.2023 has been passed cancelling the house number of the petitioner. Aggrieved by the aforesaid order, the petitioner has preferred an appeal being Nagar Nigam Appeal No.48 of 2023 (Shalini Singh vs. Nagar Nigam Varanasi and others) which has been admitted by the concerned court but no stay has been granted.

Learned counsel for the petitioner submits that once after hearing the contesting respondent-Pushpa Devi, the name of the petitioner has already been mutated in the revenue records way back in the year 2016. The order impugned so passed is without jurisdiction as title of the property in question cannot be decided. He further submits that the contesting respondent has tried to create confusion about the property as purchased by the petitioner which is Arazi No.798/1 with that of Arazi No.797/1 and Arazi No.598/1 which is claiming to be property of the contesting respondent. Learned counsel for the petitioner places reliance upon a judgment of Apex Court in the case of **Mool Chand Yadav and Ors. vs. Raza Buland Sugar Company Limited, Rampur and Ors.** reported in **1983 (9) ALR 93** submits that once the appeal is admitted, interim order should have been granted in favour of the petitioner as the operation of an order having serious civil consequences should be stayed during the pendency of an appeal or revision as the courts cannot permit a swinging pendulum continuously during pendency of appeal or revision. Therefore, the effect and operation of the impugned order may liable to stayed.

Learned Standing Counsel as well as learned counsel for respondent no.2 could not dispute the aforesaid fact.

I have very carefully examined the submissions made by the learned counsel for the parties and perused the impugned order as well as the other materials brought on record.

This Court feels that during pendency of the appeal, effect and operation of an order having civil consequences, as in the present case wherein the respondent has tried to create third party interest by selling the property in question, has to be kept in abeyance.

Considering the facts and circumstances of the case, without expressing any opinion on the merits of the case, this writ petition is finally **disposed of** with a direction to the concerned court below/appellate authority to decide the appeal of the petitioner, after giving opportunity of hearing to all the parties including the petitioner as well as respondent no.4, by a reasoned and speaking order, in accordance with law, preferably, within a period of **four months** from the production of certified copy of this order, if there is no other legal impediment.

Till decision on the appeal by the court below, the parties shall maintain status quo.

Order Date :- 9.11.2023/Kalp Nath Singh