

Court No. - 51

Case :- WRIT - C No. - 36933 of 2023

Petitioner :- Randhir Singh

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

Counsel for Petitioner :- Ramendra Asthana

Counsel for Respondent :- C.S.C

Hon'ble Chandra Kumar Rai,J.

1.Heard Mr. Ramendra Asthana, learned counsel for the petitioner, and Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents.

2. Brief facts of the case are that a sale-deed was alleged to be executed on 6.6.2017 by petitioner in favour of respondent no.5 in respect to Plot No. 1804 area 0.2430 hectare situated in Village- Kotia, Tehsil- Bindaki, District- Fatehpur accordingly a Case No.1310 of 2017 Computerized Case No.T2017022543021310 under Section 35 of U.P. Revenue Code, 2006 was registered before respondent no.4/Tehsildar on the basis of report submitted by Revenue Inspector. Petitioner filed his objection in the aforementioned case denying the execution of sale-deed dated 6.6.2017 mainly on the ground that respondent no.5 got the sale-deed executed from petitioners in his drunken state of mind as well as stating that the land in dispute was mortgaged with the bank as such sale deed is hit by Sections 10, 10A & 10B of U.P. Agricultural Credit Act, 1973. The respondent no.4/Tehsildar vide order dated 27.12.2018 rejected the objection filed by petitioner and ordered to record the name of respondent no.5 on the basis of sale

deed dated 6.6.2017 in respect to plot in dispute. Petitioner challenged the order dated 27.12.2018 passed by respondent no.4/Tehsildar through appeal under Section 207 of U.P. Revenue Code, 2006 which was dismissed by respondent no.3/Upzila Adhikari, Bindki vide order dated 31.3.2023. Petitioner challenged the orders dated 31.3.2023 as well as 27.12.2018 through revision under Section 210 of U.P. Revenue Code, 2006 before respondent no.2/Commissioner which was dismissed vide order dated 7.7.2023 hence this writ petition on behalf of petitioner for following relief:-

"(i) issue a writ order or direction in the nature of certiorari quashing the impugned judgment and orders dated 07.07.2023 (contained in Annexure No.8 to the writ petition) passed by the Commissioner, Prayagraj Mandal, Prayagraj/ the respondent No.2, dismissing Revision registered as Case No.601 of 2023, computerized Case No.C 202302000000601 (Randhir Singh Vs. Dharampal Singh) 31.03.2023 (Contained in Annexure No.6 to the writ petition) passed by the Up-Ziladhikari, Bindaki, District-Fatehpur/ respondent No.3 dismissing Appeal registered as Case No.03127 of 2019 computerized Case No. T201902250203127, (Randhir Singh Vs. Dharampal) under Section 207 of U.P. Revenue Code and 27.12.2018 (contained in Annexure No.4 to the writ petition) passed by the Tehsildar (Judicial) Bindaki, District-Fatehpur/ respondent No.4 passing order for recording name of Dharampal/ respondent No.5 over the land in dispute i.e. area of 0.2430 hectare out of the total area of 0.9050 hectare of the plot No.1804 of Khata No.272 of 1419-1425 Fasli, Khatauni of the Pargana/Mauza Kotia, Pargana, Kotia Gunner, Tehsil-Bindaki District-Fatehpur on the basis of Sale deed dated 06.06.2017 as Sankramaneeya Bhumidhar co-tenure holder after expunging the name of the petitioner in Case No.1310/2017 computerized Case No.T2017022543021310, Dharampal Vs. Randhir Singh, under Section 35 of U.P. Revenue Code, 2006."

3. Learned counsel for the petitioner submitted that mutation order dated 27.12.2018 passed by the Tehsildar (Judicial) Tehsil-Bindaki, District-Fatehpur was illegal as the sale deed was barred by the provisions contained under Section 10 of U.P. Agricultural Credit Act, 1973. He further submitted that Tehsildar (Judicial) Tehsil-Bindaki, District-Fatehpur has failed to examine the provisions of law and passed the order for mutation. He further submitted that mutation order has been maintained in appeal as well as revision in arbitrary manner. He further submitted that Civil Suit No. 434 of 2017 for cancellation of aforesaid sale deed dated 6.6.2017 is pending before the civil court as such Tehsildar can not pass the order of mutation. He further submitted that impugned orders passed by Tehsildar/ Sub Divisional Officer/ Additional Commissioner be set aside the matter be send back before Tehsildar to decide the proceeding a fresh considering the provisions contained under Section 10, 10A and 10B of U.P. Agricultural Credit Act, 1973.

4. On the other hand, Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents submitted that petitioner has already filed a civil suit for cancellation of the alleged sale deed as such petitioner should avail remedy in the pending civil suit and no interference is required against the impugned orders passed in mutation proceeding. He further submitted that in view of judgment passed in case of ***Smt. Kalawati Vs. Board of Revenue and Others, reported in (2022) 155 R.D. 169*** writ petition arises out of mutation proceeding is not maintainable except in certain circumstances.

5. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

6. There is no dispute about the fact that Tehsildar (Judicial) Tehsil-Bindaki, District-Fatehpur has passed the order of mutation dated 27.12.2018 on the basis of sale deed executed on 6.6.2017. There is also no dispute about the fact that order of Tehsildar has been maintained in appeal and revision.

7. The perusal of the order passed by the Tehsildar dated 27.12.2018 will be relevant for perusal, which is as under:

"आदेश पत्रक

न्यायालय: तहसीलदार, न्यायिक
मण्डल: प्रयागराज, जनपद: फतेहपुर, तहसील: बिन्दकी
वाद संख्या:-1310/2017
कंप्यूटरिकृत वाद संख्या:-T2017022543021310
धर्मपाल बनाम रणधीर सिंह
अंतर्गत धारा:- 35, अधिनियम:- उत्तर प्रदेश राजस्व संहिता-2006

निर्णय

पत्रा० पर उभय पक्षों के विद्वान अधिवक्ताओं के विचारों को सुना गया तथा पत्रा० पर उपलब्ध समस्त साक्ष्यों का अवलोकन किया गया। तर्क सुनने एवं उपलब्ध साक्ष्यों के अवलोकनोपरान्त मैं इस निष्कर्ष पर पहुंचा कि विक्रय पत्र दिनांक 06.06.17 पंजीकृत विलेख है। विक्रेता द्वारा गाटा संख्या 1804/0.9050 हे० का कुछ अंश का विक्रय किया गया है तथा विक्रेता रणधीर सिंह की सम्पूर्ण भूमि बंधक है। विक्रेता रणधीर सिंह द्वारा ग्रामीण आवास हेतु ऋण मुब० 100000/- प्राप्त किया गया है जिसकी भरपाई विक्रेता की अन्य भूमि से की जा सकती है जैसा कि मा० उच्च न्यायालय इलाहाबाद में योजित सिविल प्रकीर्ण रिट याचिका संख्या 97/2001 रफीकुन्निसा बनाम कलेक्टर/जिला मजिस्ट्रेट, देवरिया एवं अन्य में उल्लेख किया गया है कि बंधक कर्ता द्वारा भूमि का विक्रय-विक्रय की गयी भूमि के अधीन-विक्रय के पश्चात बन्धकदार के नामान्तरण के सम्बन्ध में आक्षेप अधिकार नहीं है। वादी की ओर से नामान्तरण हेतु साक्ष्य पूर्ण है। विक्रेता/आपत्तिकर्ता द्वारा विक्रीत भूमि का प्रतिफल सबरजिस्ट्रार के समक्ष प्राप्त कर लिया गया है। इससे स्पष्ट होता है कि विक्रेता द्वारा जो भी आपत्ति दाखिल की गयी है वह लोभ लालच बस दाखिल की गयी जिसे किसी भी दशा में माने जाने योग्य नहीं है। अतः आपत्तिकर्ता/विक्रेता की ओर से दाखिल आपत्ति बलहीन होने के कारण निरस्त किये जाने एवं विक्रय पत्र के आधार पर नामान्तरण स्वीकार किये जाने योग्य है।

आदेश

उपरोक्त विवेचना के अनुसार आपत्तिकर्ता/विक्रेता द्वारा दाखिल आपत्ति निरस्त की जाती है एवं आदेश दिया जाता है कि ग्राम कोटिया II पर० को० गुनीर तह० बिन्दकी की खतौनी

1419 से 1424 फ० के खाता संख्या 272 के गाटा संख्या 1804/0.9050 हे० में से 0.2430 हे० से विक्रेता रणधीर सिंह उर्फ रनधीर सिंह पुत्र सीताराम सिंह नि० मयारामखेड़ा मजरे कोटिया पर० को० गुनीर तह० बिन्दकी का नाम खारिज करके क्रेता धर्मपाल पुत्र स्व० सीताराम नि० नन्दीपुर पर० को० गुनीर तह० बिन्दकी का नाम बैनामा दिनांक 06.06.17 अंकन रुपया मुब० 280000/- के आधार पर बतौर सं० भूमि० समस्त भारो सहित सहखातेदार के रूप में अंकित हो पत्रा० बाद अमल दरामद दा० द० हो।

(देवेन्द्र प्रताप सिंह)
तहसीलदार न्यायिक बिन्दकी"

8. Perusal of the order passed by the Tehsildar (Judicial) Tehsil-Bindaki, District-Fatehpur demonstrate that the mutation order has been passed in accordance with law which has been maintained in appeal and revision also.

9. It is also material that civil suit No.434 of 2017 filed by petitioner in respect to the alleged sale deed executed on 6.6.2017 is pending before the Court of Civil Judge (Junior Division), Fatehpur.

10. Considering the pendency of the civil suit as well as other facts and circumstances of the case no interference is required in the matter. **The writ petition is disposed of finally** with the observation that order passed in the mutation proceeding shall not come in the way of petitioner to establish his claim in accordance with law in the pending civil suit No.434 of 2017.

Order Date :- 9.11.2023
PS*