

Court No. - 21

Case :- WRIT - C No. - 41241 of 2023

Petitioner :- Babunandan And 2 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Ram Singh Yadav,Rohit Kumar Singh

Counsel for Respondent :- C.S.C,Suresh C. Dwivedi

Hon'ble Manoj Kumar Gupta,Acting Chief Justice
Hon'ble Donadi Ramesh,J.

1. The instant petition has been filed praying for a writ of mandamus directing respondent no.2 to award correct compensation to the petitioners in respect of Gata No. 819 area 0.1370 hectare, in accordance with the shares determined in partition suit.

2. The admitted facts are that the petitioners executed sale-deed dated 12.02.2018 in favour of U.P. Expressway Industrial Development Authority (respondent no.4) in respect of their shares. It was 1/4th for petitioner no.1 and 1/8th each for petitioner nos. 2 and 3. They obtained the sale consideration as per their share mentioned in the sale-deed. After execution of the sale-deed, the petitioners instituted a suit under Section 116 of U.P. Revenue Code, 2006 for partition against respondent nos. 5 and 6. It is pertinent to mention that respondent nos. 5 and 6 had also executed sale-deed in favour of respondent no.4 in respect of 1/2 share. The said suit has been decreed on 9.4.2021, whereby the shares of the petitioners as well as respondent nos. 5 and 6 has been varied. According to it, the petitioner no.1 will now have 1/3 share; petitioner nos. 2 and 3- 1/6 each (jointly 1/3 share) and respondent nos. 5 and 6, the remaining 1/3 share. The petitioners have, therefore, filed an application before District Magistrate to award compensation in

their favour as per the partition decree. The District Magistrate has also issued notice on 27.07.2023 to respondent nos. 5 and 6 on the basis of the application filed by the petitioners.

3. Sri M.C. Chaturvedi, learned Senior Counsel appearing on behalf of respondent no.4 contends that shares of petitioners was mentioned in the sale deed as per the information furnished by them. The sale consideration has also been paid in full accordingly. Now, the District Magistrate is left with no jurisdiction to enter into the controversy between the petitioners and respondent nos. 5 and 6 in relation to their respective share.

4. We find considerable force in the submission of learned counsel appearing on behalf of respondent no.4. After the petitioners and respondent nos. 5 and 6 had executed sale-deeds in favour of respondent no.4, it is highly doubtful that the partition suit instituted by them would be maintainable.

5. Be that as it may, in our considered opinion, in case there is any alteration in the share of the petitioners and other co-sharers, it is open to the petitioners to sue the co-sharers for recovery of any excess payment received by them from respondent no.4 at the time of obtaining sale-deed. However, since respondent no. 4 had paid full compensation/sale consideration to the vendees, it is not left with any obligation to recover any amount from other co-sharers and satisfy the claim of the petitioners herein. Accordingly, we refrain from issuing any direction as prayed for in the writ petition, but leave it open to the petitioners to sue their co-sharers for any excess payment received by them from respondent no.4 at the time of execution of sale-deeds.

6. The petition stands disposed of accordingly.

(Donadi Ramesh, J.)

(Manoj Kumar Gupta, ACJ.)

Order Date :- 30.11.2023

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