

Court No. - 51

Case :- WRIT - C No. - 39289 of 2023

Petitioner :- Jitendra

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Anil Kumar Tiwari,Rahul Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Chandra Kumar Rai,J.

1. The instant petition has been filed for the following reliefs:-

(i) Issue a writ, order or direction in the nature of certiorari quashing the order dated 14.2.2023 passed by respondent no.2, order dated 11.9.2020 passed by respondent no.3 and order dated 18.10.2017 passed by respondent no.2.

(ii) Issue such other and further writ order or direction as this Hon'ble Court may deem, fit and proper under the facts and circumstances of the case protecting the interest of the petitioners."

2. Brief facts of the case are that Gajendra Kumar, Rajendra Kumar sons of Vijai Pal Sharma and Smt. Chanrakanta wife of Vijai Pal Sharma executed a registered sale deed in respect of their entire share on 7.11.2003 with regard to plot No. 156 area 0.519 hectare in favour of respondent nos. 5 to 7. Respondent nos. 5 to 7 applied for mutation on the basis of sale deed executed on 7.11.2003 which was allowed on 10.2.2004. Petitioner's father filed application against the order dated 10.2.2004 passed in the mutation case filed by respondent nos. 5 to 7. Tehsildar vide subsequent order dated 18.10.2017 maintained the earlier order dated 10.2.2004. Appeal filed by petitioner against the order dated 18.10.2017 was dismissed by Sub Divisional Officer vide order dated 11.9.2020. Revision filed by petitioner against the appellate order dated 11.9.2020 has also been dismissed vide order dated 14.2.2023 hence this writ petition challenging the impugned orders dated 18.10.2017, 11.9.2020 and 14.2.2023 passed in the summary proceeding for mutation.

3. Petitioner has pleaded in the instant petition that sale deed was executed against the provision of law, as such, mutation order passed by the Tehsildar was illegal. It is further mentioned in the writ petition that petitioner challenged the order passed by Tehsildar in appeal under Section 207 of the U.P. Revenue Code, 2006 but the same has been dismissed in arbitrary manner and the revision filed against the appellate order has also been dismissed vide order dated 14.2.2023 without considering the case of the

petitioner. The ground taken in the writ petition is that transfer was made in contravention of the provision contained under Section 168-A of U.P.Z.A. and L.R. Act, as such, the transaction was void in view of the provisions contained under Section 168-A of U.P.Z.A. and L.R. Act.

4. On the other hand, learned Standing Counsel for the State-respondents submitted that writ petition arises out of mutation proceeding which are summary in nature, as such, writ petition is liable to be dismissed.

5. I have considered the averment made in the writ petition as well as the document annexed along with the writ petition.

6. There is no dispute about the fact that Tehsildar has passed the mutation order under Section 34 of U.P. Land Revenue Act in favour of respondent nos. 5 to 7 on the basis of registered sale deed executed on 7.11.2003. There is also no dispute about the fact that order of Tehsildar has been maintained in appeal and revision.

7. In order to appreciate the controversy, the finding of fact recorded by Tehsildar while passing the order dated 18.10.2017 will be relevant for perusal which is as under:-

"पक्षकारों के विद्वान अधिवक्ताओं की तर्कपूर्ण सुनी गयी बहस एवं लिखित बहस का अवलोकन किया गया। पत्रावली के अवलोकन से विदित है कि खाता सं० **210** खसरा सं० **256** रकवा **0.865** का बकदर अपना सम्पूर्ण हिस्सा **0.519** हे० का विक्रय गजेन्द्र कुमार व राजेन्द्र कुमार पुत्रगण विजयपाल शर्मा व चन्द्रकान्ता पत्नी स्व० विजयपाल शर्मा निवासी ग्राम भाईपुर ब्रह्मनान द्वारा क्रेता सुभाषचन्द्र शर्मा **1/2** भाग व राजेश कुमार शर्मा **1/4** भाग व नानकचन्द शर्मा **1/4** भाग पुत्रगण खचेडामल शर्मा निवासी भाईपुर ब्रह्मनान के पक्ष में दिनांक **7.11.03** को किया गया है। आपत्तिकर्ता सह खातेदार है जिसका मुख्य उद्देश्य विविध प्रार्थना पत्रों के माध्यम से वाद को लम्बित रखने का है। विक्रेता गजेन्द्र कुमार आदि द्वारा अपने बकदर भाग का विक्रय किया गया है। आपत्तिकर्ता के हिस्से पर कोई प्रतिकूल प्रभाव नहीं है। और न ही विक्रय पत्र दिनांक **7.11.2003** से किसी सक्षम न्यायालय द्वारा निष्प्रभावी घोषित किया गया है। बैनामा दिनांक **7.11.2003** अपने प्रभाव में है जिसके आधार पर दिनांक **10.2.04** को नामान्तरण के आदेश पारित कर दिये गये थे। नामान्तरण की प्रक्रिया में बैनामा सर्वोच्च दस्तावेज है। ऐसी स्थिति में बैनामा दिनांक **7.11.2003** के आधार पर पारित आदेश दिनांक **10.2.04** बहाल किये जाने योग्य है।

आदेश

भूमि खाता सं० **210** खसरा सं० **256** रकवा **0.865** का बकदर अपना सम्पूर्ण हिस्सा **0.519** हे० पर नामान्तरण के पूर्व पारित आदेश दिनांक **10.2.04** की पुष्टि की जाती है। यदि वाद में कोई स्थगन आदेश है तो निरस्त समझे जाय। तदनुसार परवाना अमल दरामद निर्गत हो। पत्रावली वाद पूर्ति दाखिल दफ्तर हो।"

8. The perusal of the finding of fact reveals that sale deed was executed on 7.11.2003 in accordance with law and the mutation order was accordingly passed on 10.2.2004 on the basis of sale deed executed on 7.11.2003 which has not been cancelled by any Court of law. The order passed by Tehsildar was maintained in appeal and revision in accordance with law.

9. Considering the finding of fact recorded by the Tehsildar as maintained in appeal and revision, no interference is required. Writ petition is accordingly **dismissed**.

Order Date :- 1.12.2023

Vandana Y.