

Court No. - 52

Case :- WRIT - C No. - 40451 of 2022

Petitioner :- Lalji Prasad

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Mahabir Yadav, Sanjay Singh Gaharwar

Counsel for Respondent :- C.S.C., Anuj Bajpai, Avinash Chandra Srivastava, Jay Prakash Singh, Sanjay Kumar Mishra

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Mahabir Yadav, learned counsel for petitioner and learned Standing counsel for State respondents.

2. Present petition has been filed seeking following reliefs:

"(i) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 28.9.2022 passed by respondent no. 2 in revision no. 2021 of 2016 (Lalji Prasad vs. Kanhaiya Lal Sharma and others), order dated 15.9.2016 passed by respondent no. 3 in appeal no. 09 of 2015-16 (Lalji Prasad vs. Narayan Sharma and others) and order dated 12.4.2016 passed by respondent no. 4 in case no. 122 of 2015-16 (Lalji Prasad vs. Radha Kishan) filed under Section 54 of Land Reforms Act and further seeking direction to direct the revenue authority to mutate the name of petitioner over Khasra no. 353M. area 1.769 hectare on the basis of sale deed dated 5.11.1988 executed by one Radha Kishan son of Gopal Prasad, situated in Mauza Dangauli Khadar, Tehsil Mant, District Mathura."

3. Brief facts of the case is that one Radha Kishan son of Gopal Prasad, resident of village Pattharpura, Vrindavan, Tehsil and District Mathura executed sale deed on dated 09.11.1988 of arazi gata no. 353M area 4.37, 1/8 acre in favour of petitioner in accordance with rules and given possession to the petitioner since 05.11.1988. There were several litigation pending in respect of aforesaid arazi in several courts as well as this Hon'ble Court and when that was decided on 12.1.2012, petitioner moved mutation application before competent authority on 10.4.2012. One Narayan Sharma son of Radha Kishan submitted his objection before respondent no. 4 and stated therein that the sale deed dated 5.11.1988 was forged and was executed in year 1988 and was produced after death of his father due to malafide intention.

4. Respondent no. 4 after hearing the parties dismissed the mutation case of petitioner vide order dated 12.4.2016 by

recording the finding that petitioner should seek declaration of title and also directed to record the name of legal heirs of Radha Kishan over plot in question. Being aggrieved with the order dated 12.4.2016 petitioner preferred appeal before respondent no. 3 on the ground that he moved mutation in the year 2012 due to pendency of writ petition before this Hon'ble Court with respect to the plot in question but respondent no. 3 dismissed the appeal vide order 15.9.2016. Being aggrieved with order dated 15.9.2016, petitioner preferred revision before respondent no. 2 who also did not consider the grounds of petitioner and rejected the revision vide order dated 28.9.2022.

5. The arguments raised by learned counsel for petitioner that the authority who has been assigned the duty for proceedings with the mutation if preferred by transferee has given legal advice in the instant matter which shall be in gross violation of the principles laid down in the statutory provisions provided under U.P. Revenue Code, 2006. The vital aspect with regard to the essence of the pendency of the matter pertains to the plot number mentioned in the registered sale deed has been inadvertently left at the time of discussion of the rival submission extended by the parties in mutation proceeding decided on dated 12.04.2016.

6. Learned counsel for petitioner submitted that the petitioner is already in possession which is existing for last more than 35 years and the mutation proceedings cannot be held to be invalid only on the essence of the limitation, whereas the clause has already been mentioned in the registered sale deed itself with regard to proceedings for mutation that is only after settlement of the matters pending before the High Court.

7. Per contra, learned Standing counsel vehemently opposed the prayer as made in the petition and rebutted the stand taken up by learned counsel for the petitioner and supported the order dated 12.04.2016, by way of elaborating their arguments that the respondent no. 4 discussed each and every arguments raised by learned counsel for the petitioner in detail and thereafter decided the same which does not contain any infirmity or illegality and as such the writ petition is liable to be dismissed.

8. After careful scrutiny of the initial order dated 12.04.2016 passed by respondent no. 4, it is crystal clear that the detailed submission has already been recorded but the finding has been given by the respondent no. 4 only in one para just before the order by way of deciding the same that the petitioner may prefer for claim of their rights by way of seeking declaration of title in his

favour rather to proceed for mutation, meaning thereby the competent authority i.e. respondent no. 4 has not decided the mutation application on merits and the same has not been denied of their essence of the registered sale deed but the same has been decided only on the ground of their own presumption that the petitioner has to seek declaration of his title which is not permissible in the eye of law and the same is contrary to the provisions of Section 33, 34 and 35 of U.P. Revenue Code, 2006.

9. In view of the aforementioned facts and circumstances, order dated 28.9.2022, 15.9.2016 and 12.4.2016 passed by respondent no. 2, 3 and 4 respectively are hereby set aside. Matter is remitted back to respondent no. 4 for deciding afresh after affording due opportunity of hearing to all the parties.

10. Writ petition stands ***allowed*** accordingly.

Order Date :- 16.10.2023

Shaswat