

Court No. - 48

Case :- WRIT - B No. - 4000 of 2023

Petitioner :- Wajahat Husain And Another

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

Counsel for Petitioner :- S.M. Iqbal Hasan

Counsel for Respondent :- C.S.C.,Kripa Shanker Yadav,Manish Dev

Hon'ble Saurabh Shyam Shamsheery,J.

1. Heard Sri S.M. Iqbal Hasan, learned counsel for petitioners and Sri Manish Dev, learned counsel for respondent No.6.

2. Learned counsel for petitioners submits that impugned order was passed under mutation proceedings under U.P. Consolidation of Holdings Act, 1953 whereby on basis of a registered sale-deed, name of respondents were directed to be mutated.

3. Learned counsel for petitioners submits that sale-deed itself is under question in a civil proceeding. He further submits that in pursuance of impugned order, respondent may file proceeding to execute the same as well as there is likelihood that they will disturb the nature of land. He refers a judgment in case of **Smt. Kalawati Vs. Board of Revenue, 2022(4) ADJ 578** passed by co-ordinate Bench of this Court and placed reliance on its paragraph Nos.21 and 40 which are reproduced hereinafter:-

"21. The mutation proceedings being of a summary nature drawn on the basis of possession do not decide any question of title and the orders passed in such proceedings do not come in the way of a person in getting his rights adjudicated in a regular suit. It is for this reason that it has consistently been held that such petitions are not to be entertained in exercise of powers under Article 226 of the Constitution of India. The consistent legal position with regard to the nature of mutation proceedings, as has been held in the previous decisions, may be stated as follows :-

(i) mutation proceedings are summary in nature wherein title of the parties over the land involved is not decided;

(ii) mutation order or revenue entries are only for the fiscal purposes to enable the State to collect revenue from the person recorded;

(iii) they neither extinguish nor create title;

(iv) mutation in revenue records does not have any presumptive value on the title and no ownership is conferred on the basis of such entries;

(v) the order of mutation does not in any way effect the title of the parties over the land in dispute;

and

(vi) such orders or entries are not documents of title and are subject to decision of the competent court.

40. Having regard to the foregoing discussion the exceptions under which a writ petition may be entertained against orders passed in mutation proceedings would arise where :

(i) the order or proceedings are wholly without jurisdiction;

(ii) rights and title of the parties have already been decided by a competent court, and that has been varied in mutation proceedings;

(iii) mutation has been directed not on the basis of possession or on the basis of some title deed, but after entering into questions relating to entitlement to succeed the property, touching the merits of the rival claims;

(iv) rights have been created which are against provisions of any statute, or the entry itself confers a title by virtue of some statutory provision;

(v) the orders have been obtained on the basis of fraud or misrepresentation of facts, or by fabricating documents;

(vi) the order suffers from some patent jurisdictional error i.e. in cases where there is a lack of jurisdiction, excess of jurisdiction or abuse of jurisdiction;

(vii) there has been a violation of principles of natural justice."

4. Learned counsel for respondent No.6 submits that mutation proceedings does not create any title and since challenge to register sale-deed is still pending before Civil Court, wherein plaintiffs/petitioners have liberty for adjudication of interim prayer and there is no illegality in impugned order.

5. Heard counsel for parties and perused the record.

6. As referred above, name of respondents were directed to be mutated on basis of a register sale-deed and a civil suit is pending at instance of petitioners to set aside the said registered sale-deed. I do not find circumstances of present case falls within exception to interfere with impugned order.

7. The argument of learned counsel for petitioners is on basis of

apprehension which could be duly addressed in case he pursues for appropriate interim relief in civil proceeding.

8. It is directed that at the time of consideration of interim relief, the Civil Court will not get influenced by any finding given by authorities under proceedings undertaken under U.P. Consolidation of Holdings Act, 1953, which may have touched the merits of case.

9. In order to address apprehension of petitioners, the Civil Court is directed to decide the application/prayer for interim relief, pending in civil suit, expeditiously, if there is no legal impediment.

10. This writ petition is accordingly, **disposed of**.

Order Date :- 12.12.2023

P. Pandey