

Court No. - 51

Case :- WRIT - C No. - 41952 of 2023

Petitioner :- Mobin

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

Counsel for Petitioner :- Gautam,Nafees Ahmad

Counsel for Respondent :- C.S.C,Kaushal Kishore Mani

Hon'ble Chandra Kumar Rai,J.

1. Heard learned counsel for the petitioner, Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents and Mr. Kaushal Kishore Mani, learned counsel for the respondent- Gram Panchayat.

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

i. to issue a writ, order or direction in the nature of certiorari for quashing the impugned judgment and order dated 7.11.2023 passed by the Collector, Saharanpur in Case No.4954 of 2023, Computerized Case No.D20239600004954 (Mobin vs. Government of U.P. etc.), under Section 212 (2) of U.P. Revenue Code, 2006 (Annexure No.1 to the writ petition). And the proceedings in the Case No.T201909600501774 (Shah Alam etc. vs. Niyaz Ahmed), under Section 34/35 of U.P. Revenue Code, 2006 be remain stayed during pendency of instant writ petition.

ii. issue a writ, order or direction in the nature of mandamus directing the respondent no.5 to transfer the Case No.01774 of 2019, Computerized Case No.T201909600501774 (Shah Alam etc. vs. Niyaz Ahmed) under Section 34/35 of U.P. Revenue Code, 2006 from the Court of Nayab Tahsildar, Rampur Maniharan to any other competent Court."

3. Learned counsel for the petitioner submitted that the petitioner is claiming right on the basis of succession and the contesting respondents are claiming right on the basis of Will-deed dated 28.4.2018 alleged to be executed by the recorded tenure holder. He further submitted that recorded tenure holder was the father of the petitioner as well as respondent nos.2 & 3. He next submitted that the petitioner and respondent nos.2 & 3 are real brothers. He next submitted that on the basis of Pa Ka-11, the name of all the sons as well as widow of the tenure holder were recorded but on the basis of Will-deed alleged to be executed by the recorded tenure holder/ father of the petitioner / respondent nos.2 & 3, the name of contesting respondents have been recorded. He also submitted that on the application of the petitioner, the ex-parte order of mutation has been recalled and matter has been restored to its original number for decision afresh before Tahsildar. He further submitted that the application filed by the petitioner for re-examination of the witnesses of the Will has been rejected vide order dated 7.7.2023. He further submitted that suit for cancellation of the alleged Will-deed in question has been filed on behalf of the petitioner being Suit No.71 of 2023, which is pending before the Civil Court. He further submitted that the petitioner has applied to transfer the pending mutation case on the ground setup in the transfer application but the same has been illegally rejected vide order dated 7.11.2023, hence this writ petition on behalf of the petitioner.

4. Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents and Mr. Kaushal Kishore Mani, learned counsel for the respondent- Gram Panchayat

submitted that the civil suit for cancellation of the Will-deed in question at the instance of the petitioner is pending before the civil Court. They further submitted that the mutation matter is still pending before the Court concerned. They further submitted that the transfer application has been filed at the instance of the petitioner in order to linger on the proceedings. They next submitted that no ground for transferring the case is made out in view of the averment made in the transfer application as well as finding recorded under the impugned order dated 7.11.2023.

5. I have considered the argument advanced by learned counsel for the parties and perused the records.

6. There is no dispute about the fact that the mutation case on the basis of Will-deed alleged to be executed in favour of private respondents is pending before the Tahsildar concerned. There is also no dispute about the fact that the civil suit filed at the instance of the petitioner being Civil Suit No.71 of 2019 is pending before the civil Court. There is also no dispute about the fact that the transfer application filed by the petitioner to transfer the pending mutation case has been dismissed by the Court concerned.

7. In view of the pendency of the mutation proceeding under Section 34 of U.P. Revenue Code, 2006 before the Court of Nayab Tahsildar as well as the impugned order dated 7.11.2023 passed by the Collector by which the transfer application filed by the petitioner for transferring the pending mutation case has been rejected recording finding that no ground for transferring the mutation case is made out, no interference is required in the matter.

8. The writ petition is misconceived and ***dismissed accordingly.***

Order Date :- 6.12.2023
Rameez