

Court No. - 3

Case :- WRIT - C No. - 7887 of 2023

Petitioner :- Dinesh Kumar

Respondent :- District Magistrate Ambedkar Nagar Distt
Ambedkar Nagar And 3 Others

Counsel for Petitioner :- Pramod Kumar Pandey, Sanjay
Kumar Verma

Counsel for Respondent :- C.S.C., Girish Kumar Pandey

Hon'ble Vivek Chaudhary, J.

Hon'ble Manish Kumar, J.

Sri Girish Kumar Pandey, learned counsel for the respondent no. 4 has filed counter affidavit, which is taken on record.

Petitioner has approached this Court challenging the order dated 05.04.2023 passed by the Assistant Registrar, Ambedkar Nagar whereby he has required the Sub-Registrar, Akbarpur, Ambedkar Nagar that he shall not register the sale deed presented by the petitioner unless certificate of mental health and witness of his wife are not taken in the same.

Learned counsel for the petitioner submits that the said order itself notes that the order is being passed under the oral instructions of the minister of the same department. He further states that the said order is an ex-parte order without giving opportunity of hearing and beyond any provisions of law.

Learned Standing Counsel was asked to seek instructions in the matter and counter affidavit has also been filed by respondent no. 4 Smt. Kalawati, who claims to be wife of petitioner.

Learned counsel for the respondent no. 4 places reliance of Section 35 of the Registration Act, 1908 and states that as per Sub Section 3 thereof if any person executing the document appears to the registering official to be a minor, idiot or lunatic, he may deny execution or registration of such a document.

Such a power is vested in the Registering Authority. No direction can be given by any superior authority to the authority concerned to treat a person to be a minor, idiot or lunatic without even meeting with such a person. Further, no directions can be issued by any Minister while discretion is vested in a statutory authority, which he supposed to exercise as per the provisions of law, therefore, the impugned order dated

05.04.2023 is without jurisdiction.

In view of the aforesaid, the order dated 05.04.2023 is set aside.

Writ petition is allowed.

(Manish Kumar,J) (Vivek Chaudhary,J)

Order Date :- 27.10.2023

Ashish