

Court No. - 6

Case :- WRIT - C No. - 9540 of 2023

Petitioner :- Jama Khan And 2 Others

Respondent :- Addl. Commissioner, Judicial Devi Patan Mandal, Gonda And Others

Counsel for Petitioner :- Pankaj Kumar Singh, Pankaj Kumar Singh, Ram Kushal Tiwari

Counsel for Respondent :- C.S.C., Pankaj Gupta

Hon'ble Rajnish Kumar, J.

1. Heard Sri Ram Kushal Tiwari, learned counsel for the petitioners, learned Standing Counsel and Sri Pankaj Gupta, learned counsel for the opposite party no.14.

2. Submission of learned counsel for the petitioners is that the sale deed in favour of the private respondents was executed on 04.10.1991 when the consolidation proceedings were going on in the village but the mutation was not applied before the consolidation authorities. It was applied only on 16.11.2015 and the registration of the sale deed was made on 07.12.2015, therefore the application for mutation moved by the private respondents was rightly considered and rejected by the Tehsildar Sadar, Bahraich by means of the order dated 07.04.2017. However, the appeal filed by the respondents has been allowed by means of the order dated 01.09.2018 and the matter has been remanded to the Tehsildar, Sadar Bahraich to decide afresh after affording opportunity of evidence and hearing holding that the application for mutation was rightly made and on the basis of unregistered sale deed, the application could not have been made. The revision filed by the petitioners has been dismissed without considering the grounds raised by the petitioners. Therefore the petitioners are constrained to approach this Court.

3. Having considered the submissions of learned counsel for the parties, I have gone through the records.

4. Admittedly, the sale deed was executed on 04.10.1991. However, on account of deficiency of stamp duty, the same was impounded and sent to

the Additional Collector Bahraich for appropriate proceedings and hearing, on which the order was passed on 05.08.2002 regarding deficiency of stamp duties. Thereafter, after completion of the stamp duty and the deposition of the registration fees, the sale deed was sent for registration, which was registered on 07.12.2015. Therefore the sale deed came into existence only on 07.12.2015 and accordingly the mutation can be allowed thereafter.

5. Admittedly, the notification under Section 52 of the Consolidation of Holdings Act was issued in the year 2007. Therefore this Court is of the view that the appellate court has rightly held that the mutation could not have been made prior to registration of the sale deed and it was rightly applied before the subordinate court after publication of the notification under Section 52 of the Consolidation of Holdings Act and allowed the appeal and remanded the matter for deciding the mutation case after affording opportunity of evidence and hearing to the parties. The revision has also rightly been dismissed in accordance with law. There is no illegality or error in the impugned orders, which may call for interference by this Court.

6. The petition is misconceived and lacks merit. It is, accordingly, **dismissed**. No order as to costs.

Order Date :- 1.11.2023

Akanksha