

Neutral Citation No. - 2023:AHC-LKO:72435

Court No. - 18

Case :- WRIT - B No. - 992 of 2023

Petitioner :- Dinesh Kumar

Respondent :- Board Of Revenue, U.P., Lko. Thru Judicial Member And Others

Counsel for Petitioner :- Ajaiy Kumar Mishra, Kapil Dev Chaubey

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Lavania, J.

Heard.

In view of the order proposed to be passed by this Court, notice to the private-respondent(s) is dispensed with.

By means of the present petition, petitioner has assailed the orders dated 14.03.2023 and 14.08.2019 passed by the opposite party No.1-Board of Revenue, Lucknow, U.P. and opposite party No.2-Tehsildar, Gola Gokaran Nath, District-Kheri, respectively.

Vide order dated 14.08.2019 the opposite party No.2 decided the mutation case, after considering the submissions made by the learned counsel for the parties and material available on record.

The order dated 14.08.2019 reflects that an Advocate engaged by the petitioner was heard by the opposite party No.2 and another Advocate sought time to file some evidence, however, he was not present in the Court, at relevant time and accordingly, revenue court of opposite party No.2 proceeded to decide the case on merits and after, considering the sale deed as also report regarding possession of Lekhpal, passed the order

dated 14.08.2019. The fact remains that before the opposite party No.2, learned counsel for the petitioner appeared and placed the case of the petitioner. The relevant portion of the order dated 14.08.2019 reads as under:-

"वादी के विद्वान अधिवक्ता द्वारा लिखित बहस दाखिल की गयी आपत्तिकर्ता के विद्वान अधिवक्ता द्वारा मौखिक बहस प्रस्तुत की गयी। तत्पश्चात आपत्तिकर्ता के दूसरे अधिवक्ता द्वारा एक प्रार्थनापत्र साक्ष्य का मौका दिये जाने के सम्बंध में प्रस्तुत किया गया। लेकिन द्वारा न्यायालय में उपस्थित न होने के कारण उनके विरुद्ध एकपक्षीय कार्यावही की गयी। पत्रावली में संलग्न उद्धरण खतौनी से स्पष्ट है कि विक्रीत भूमि विक्रेता के नाम दर्ज है। जिसे विक्रय करने का पूर्ण अधिकार प्राप्त है। विक्रीत भूमि पर क्रेता का कब्जा है जैसा की लेखपाल की आख्या से स्पष्ट होता है। धार 34 एक सरसरी प्रक्रिया है जिसमें स्वत्व का नहीं बल्कि की मालगुजारी का निर्धारण किया जाता है। यदि सीविल न्यायालय से विक्रीत गाटा के सम्बंध में कोई आदेश पारित किया जाता है। तो इस न्यायालय पर भी प्रभावी होगा आपत्तिकर्ता की आपत्ति बलहीन एवं निराधार है जो निरस्त किये जाने योग्य है जो कि निरस्त की जाती है। तथा वादी के पक्ष में नमान्तरण किया जाना उचित प्रतीत होता है।"

After the aforesaid order dated 14.08.2019, quoted above, an application for restoration dated 06.09.2019 was preferred by the petitioner, which was allowed vide order dated 29.10.2020 by the opposite party No.2.

Challenging the order dated 29.10.2020 passed by the opposite party No.2, the opposite party No.3-Salik Ram preferred the revision under Section 210 of U.P. Revenue Code, 2006 (in short "Code of 2006"), registered as Case No.REV/1616/2020/Lakhimpur Kheri, Computerized Case No.R20201043001616, before the opposite party No.1 and the same was allowed vide order dated 14.03.2023 after taking note of the fact that the learned counsel for the petitioner was

heard by opposite party No.2 and thereafter, the opposite party No.2 passed the order dated 14.08.2019.

It appears that considering the settled view that final order on merits passed after hearing the parties cannot be recalled, the opposite party No.1 passed the order dated 14.03.2023. The revisional Court also observed that the petitioner is having remedy to file an appeal under Section 35(2) of the Code of 2006.

It is also relevant to take note of the fact that the petitioner has already approached the Civil Court for declaration of sale deed executed by him in favour of opposite party No.4, as null and void.

Considering the aforesaid as also that by means of the present petition, petitioner challenges the order(s) passed in the mutation proceedings and the fact that mutation proceedings are summary in nature and they do not decide any right or title between the parties; rather they are drawn only for fiscal purposes as also that petitioner is having remedy to file an appeal under Section 35(2) of Code of 2006, this Court is not inclined to entertain present petition. It is accordingly **dismissed** with liberty to petitioner to approach appellate authority for redressal of his grievance.

Order Date :- 3.11.2023

Vinay/-