

Court No. - 18

Case :- WRIT - C No. - 10228 of 2023

Petitioner :- Durgesh Kumar Soni

Respondent :- Addl. Commissioner (Administration),
Lucknow Division, Lucknow And Others

Counsel for Petitioner :- Phool Chandra Mishra, Poorendu
Mishra, Saurabh Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Shree Prakash Singh, J.

1. Heard Sri Phool Chandra Mishra, learned counsel for the petitioner, Sri Hemant Pandey, learned standing counsel for the State and perused the record.

2. By means of the present petition, the petitioner has assailed the order dated 06.09.2021 passed by the Additional Commissioner, (Administration), Lucknow Division, Lucknow in Revision No. 0667 of 2019 (Durgesh Kumar Soni verses Ashok Kumar Aggarwal and other) and the order dated 25.03.2023 passed by Naib Tehsildar, Gosaiganj, Mohanlalganj, Lucknow in Mutation Case No. RST/0116 of 2021 (Durgesh Kumar Soni vs. Ashok Kumar Aggarwal).

3. The contention of learned counsel for the petitioner is that after the order of Mutation dated 20.02.2023 in favour of the petitioner, behind the back of the petitioner, the same authority entertained the recall application and has passed an interim order whereas, no notice was issued to him. He further added that the Additional Commissioner has also passed the order on 06.09.2021 recalling his own order, which is impermissible as per the settled proposition of law.

4. He added that both the orders are against the settled proposition of law and therefore, the orders passed by

Additional Commissioner as well as the Naib Tehsildar, Mohanlal Ganj dated 25.03.2023 may be set aside.

5. Learned standing counsel for the State has opposed the contentions aforesaid and submits that in fact the order dated 25.03.2023 has rightly been passed as a recall was moved by the private respondent no. 3 namely, Ashok Kumar Aggarwal before the Naib Tehsildar with the prayer that the property in question, was purchased by him in the year 1997 and the petitioner is subsequent purchaser therefore, the order dated 25.03.2023 was passed wherein, the order passed 20.02.2023 was stayed and thus, there is no any ambiguity or unlawfulness in the same.

6. Having heard learned counsel for the parties and after perusal of material placed on record, it transpires that the dispute arose when the mutation with respect to the Gata No. 294 situated at village- Martharmu, Tehsil- Mohanlalganj was entered into in the revenue record in the name of the petitioner and claim was raised by the opposite party no. 3 namely, Ashok Kumar Aggarwal, while moving recall application in Case No. RST/0116 of 2021 and the earlier order passed by the Naib Tehsildar, dated 20.02.2023 was stayed.

7. When this Court examines the aforesaid matter on question of law and facts, it transpires that the mutation was done on 20.02.2023 in favour of the petitioner though, it was claimed by opposite party no. 3 by way of a recall application that in the year 1997, he had purchased the same land and as per the contention in the recall application this fact was concealed by the petitioner before the Naib Tehsildar at the time of moving of the mutation application and therefore, Naib Tehsildar passed the order on 25.03.2023 while staying the effect and operation of the order dated 20.02.2023.

8. This Court has noticed the fact that since there is rival claimed of the parties that they have not been heard as the opposite party no. 3 was not heard at the time of mutation and the present petitioner was not heard when the order dated 25.03.2023 was passed and therefore, this Court feels it appropriate to provide opportunity of hearing to all the parties concerned as to reach to the ends of interest of justice.

9. Consequently, the impugned orders dated 06.09.2021 and 25.03.2023 are hereby set aside.

10. Resultantly, the matter is remitted back to the Naib Tehsildar, Gosaiganj, Tehsil- Mohanlalganj, Lucknow and he is directed to decide the matter of Mutation after affording opportunity of hearing to the present petitioner as well as the respondent no. 3 and the concerned parties if any, within a period of two months, from the date of certified copy of this order is produced before him, in accordance with law.

11. It is clarified that nothing has been observed by this Court, so far as the merit of the case is concerned.

12. With the aforesaid observations, instant petition is hereby **allowed.**

Order Date :- 8.12.2023
Mayank