

Court No. - 6

Case :- WRIT - C No. - 1002814 of 2010

Petitioner :- Smt. Satya Wati Objection Filed

Respondent :- State Of U.P.Through Pramukh Sachiv Avas
Lko.And Ors.

Counsel for Petitioner :- K.C.Tripathi,Arun Kumar
Verma,Karunakar Srivastava,Rajesh Kumar Tripathi,Saurabh
Kumar Shukla

Counsel for Respondent :- C.S.C.,Jitendra Bahadur
Singh,Pankaj Patel,Vivek Tiwari

Hon'ble Alok Mathur,J.

1. Heard Shri Karunakar Srivastava, learned counsel for petitioner, learned Standing Counsel for the respondent nos. 1 to 4, Shri Jitendra Bahadur Singh, learned counsel for respondent no. 5 and perused the material available on record.

2. By means of the present writ petition, the petitioner has challenged impugned order dated 29.04.2010 passed by the State Government thereby rejecting the revision preferred by the petitioner against the order of the Prescribed Authority dated 05.02.2010 wherein application preferred by respondent no. 5 was allowed and the map which was previously sanctioned in favour of the petitioner has been cancelled and the order for demolition of the petitioner's house has been passed.

3. It has been submitted by learned counsel for petitioner that a plot measuring 35 X 47 feet was purchased by the petitioner from one Surendra Pal Singh by a registered sale deed and he was given possession of the said plot. On the said plot, which was given to the petitioner, the petitioner has moved an application for sanction of the map and the same was sanctioned by the Prescribed Authority on 14.07.1995. The petitioner constructed the house in accordance with sanctioned

map. It has been submitted that after nine years from the sanction of the map, respondent no. 5 moved an application for cancellation of the sanctioned map alleging that the petitioner had encroached upon the north portion of the plot purchased by her from Surendra Pal Singh vide sale deed dated 10.07.1992 and it was further alleged that it is on the basis of the forged receipt, which was produced by the petitioner before the Prescribed Authority that the map was got sanctioned. The Prescribed Authority was satisfied that the petitioner could not demonstrate that she had purchased the land from Surendra Pal Singh while on the other hand respondent no. 5 was able to demonstrate that she had purchased the land through a registered sale deed and accordingly found that there was infirmity in the previous sanction of the map in favour of the petitioner by means of the order dated 14.07.1995 and therefore, proceeded to cancel the said map.

4. The petitioner in the present writ petition while assailing the said order dated 29.04.2010 has submitted that she is in-fact the owner in possession of the said property, which has been acquired from Surendra Pal Singh, who is her brother-in-law. It has further been submitted that there was a family partition and on the basis of the said partition the plot measuring 35 X 47 feet fell into the share of the petitioner on which plot she is in possession and on the said plot the map was sanctioned and on this account has assailed the validity of the impugned order dated 29.04.2010 passed by the State Government as well as the order dated 05.02.2010 passed by the Prescribed Authority.

5. The learned counsel for respondents have raised a preliminary objection that the dispute in the present case pertains to the title and the same cannot be adjudicated in a writ petition. He submits that the proceedings under Section 10 of the Uttar Pradesh (Regulation of Building Operations) Act,

1958 are summary in nature and the title dispute of the nature as raised by the petitioner cannot be conclusively decided by the Prescribed Authority or in writ jurisdiction under Article 226 of the Constitution of India and can adequately be decided only by the civil court of the competent jurisdiction and accordingly the issue raised by the petitioner cannot be decided in the present writ petition.

6. Learned counsel for petitioner on the other hand has urged that the map was rightly sanctioned on 14.07.1995 and the ownership of the said plot was duly transferred by Surendra Pal Singh in favour of the petitioner and the same was demonstrated by producing the receipt before the trial court, and therefore submitted that cancelling of the map after an undue delay of nine years is clearly illegal and arbitrary.

7. I have heard learned counsel for the parties and perused the record.

8. It is noticed that even according to the claim made by the petitioner, the plot existing in village Lahariya, Pargana & Tehsil Orai, District Jalaun in plot no. 297 and 298 was transferred to the petitioner by Surendra Pal Singh, the brother-in-law and only an acknowledgement of transfer was produced before the map sanctioning authority. It is on the basis of the said acknowledgment of transfer that the petitioner's claims the ownership of the said plot. The respondent no. 5, on the other hand, has also purchased a plot measuring 25 X 50 feet by means of a registered sale deed on 17.07.1992 and on the basis of the said sale deed stakes his claim of ownership of the said plot. The dispute is that portion of both the plots are overlapping with each other and consequently have resulted in the present dispute. The Prescribed Authority has gone into record to determine the title of the respective parties and has

found that it is respondent no. 5 has obtained the said land by a registered sale deed and has a better claim to title and consequently on this account has cancelled the previous order passed in favour of the petitioner and cancelled the map sanctioned to her.

9. The petitioner in the present case on the contrary submits that she has rightly obtained the said land from Surendra Pal Singh and the order passed by the Prescribed Authority is perverse and deserves to be set aside.

10. From the aforesaid, it is clear that the petitioner is stacking her claim on the basis of the receipt obtained from Surendra Pal Singh while on the other hand the respondent no. 5 stakes claim of ownership on the basis of the registered sale deed dated 17.07.1992. From the above, it is abundantly clear that the dispute in the present case is a title dispute between the petitioner and respondent no. 5 and such order passed by the authorities in summary proceedings are subject to determination by the civil court in regular suit.

11. In the aforesaid circumstances, with the consistent view of this Court that in summary proceedings the issue pertaining to the title cannot be decided nor the same can be adjudicated by this Court in exercise of power under Article 227/227 of the Constitution of India.

12. The observations of the co-ordinate Bench are hereunder:-

In the case of **Mahesh Kumar Juneja and Ors. Vs. Addl. Commissioner Judicial, Moradabad Division and Ors.** 2020 (3) ADJ 104 reiterated the same view and held as under;

"16. The settled legal position that entries in revenue records do not confer any title has been considered and discussed in a recent judgment of this Court in Harish Chandra Vs. Union of India & Ors.13.

17. In view of the foregoing discussion, it may be restated that ordinarily orders passed by mutation courts are not to be interfered in writ jurisdiction as they are in summary proceedings, and as such subject to a

regular suit.

18. The mutation proceedings being of a summary nature drawn on the basis of possession do not decide any question of title and the orders passed in such proceedings do not come in the way of a person in getting his rights adjudicated in a regular suit. In view thereof this Court has consistently held that such petitions are not to be entertained in exercise of powers under Article 226 of the Constitution of India."

13. In **Harish Chandra Vs. Union of India & Ors. 2019 (5) ADJ 212** Division Bench of this Court while dealing with an issue in regard to the land acquisition proceedings had the occasion to discuss the matter relating to revenue records and held as under;

"37. This Court may also take into consideration that it is settled law that the revenue records do not confer title and even if the entries in the revenue record of rights carry value that by itself would not confer any title upon the person claiming on the basis of the same.

38. The Supreme Court in Guru Amarjit Singh Vs. Rattan Chand & Ors.3 held that entry in Jamabandi (revenue records) are not proof of title, and it was stated as follows:-

"2. ...It is settled law that entries in the Jamabandi are not proof of title. They are only statements for revenue purpose. It is for the parties to establish the relationship or title to the property unless there is unequivocal admission..."

14. Apex Court in case of **Union of India (UOI) & Ors. Vs. Vasavi Co-op. Housing Society Ltd. & Ors. MANU/SC/0001/2014** while dealing with the entries of the revenue records relying upon the earlier judgments of the Apex Court, held that revenue records are not the document of title and the same cannot be basis for declaration of title. Relevant paragraph no. 17 is extracted here as under;

"17. This Court in several Judgments has held that the revenue records does not confer title. In Corporation of the City of Bangalore v. M. Papaiah and another (1989) 3 SCC 612 held that "it is firmly established that revenue records are not documents of title, and the question of interpretation of document not being a document of title is not a question of law." In Guru Amarjit Singh v. Rattan Chand and others (1993) 4 SCC 349 this Court has held that "that the entries in jamabandi are not proof of title". In State of Himachal Pradesh v. Keshav Ram and others (1996) 11 SCC 257 this Court held that "the entries in the revenue papers, by no stretch of imagination can form the basis for declaration of title in favour of the plaintiff."

15. In a recent judgment in case of **Bhimabai Mahadeo Kambekar (D) through L.R. Vs. Arthur Import and Export**

Company & Ors. MANU/SC/0112/2019, decided on 31.01.2019, Apex Court held that mutation of a land in revenue records does not create or extinguish the title over the land nor it has any presumptive value on the title. Relevant paragraph nos. 8 and 9 are extracted here as under;

"8. This Court has consistently held that mutation of a land in the revenue records does not create or extinguish the title over such land nor it has any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. (See Sawarni (Smt.) vs. Inder Kaur, (1996) 6 SCC 223, Balwant Singh & Anr. Vs. Daulat Singh(dead) by L.Rs. & Ors., (1997) 7 SCC 137 and Narasamma & Ors. vs. State of Karnataka & Ors., (2009) 5 SCC 591).

9. The High Court while dismissing the writ petition placed reliance on the aforementioned law laid down by this Court and we find no good ground to differ with the reasoning and the conclusion arrived at by the High Court. It is just and proper calling for no interference."

16. In a recent judgment, Apex Court in the case of **Jitendra Singh vs. The State of Madhya Pradesh & Ors., Special Leave Petition (C) No.13146 of 2021** decided on 6th September, 2021 has held as under :

"6. Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter. 6.1 In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only "fiscal purpose", i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faquddin v. Tajuddin (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70.

7. In view of the above settled proposition of law laid down by this Court, it cannot be said that the High Court has committed any error in setting aside the order passed by the revenue authorities directing to mutate the name of the petitioner herein in the revenue records on the basis of the alleged will dated 5 20.05.1998 and relegating the petitioner to approach the appropriate court to crystalise his rights on the basis of the alleged

will dated 20.05.1998. We are in complete agreement with the view taken by the High Court."

17. This Court has also considered another judgment of the coordinate Bench of this Court in the case of **Smt. Hadisul Nisha Vs. Additional Commissioner (Judicial)**, AIR Online 2021 All 2060, where the Hon'ble Judge of this Court has carved out certain exceptions for entertaining a writ petition arising out of mutation proceedings. In order to entertain present writ petition it was to be demonstrated by the petitioner that mutation has been directed not on the basis of possession or simply on the basis of some title deed, but after entering into a debate of entitlement to succeed the property, touching into the merits of the rival claims.

18. In light of the above, the writ petition and the prayer made by the petitioner would not be maintainable before this Court and accordingly the petitioner is relegated to the civil court. He is granted a liberty to file a civil suit to stake his claim of ownership to the disputed plot. At this stage, learned counsel for the petitioner submits that he may be given liberty to file a suit in next three weeks. In case such a suit is filed along with an application under Order 39, Rule 1 and 2 of the Code of Civil Procedure, the same shall be decided expeditiously within a period of two months thereafter, in case there is no legal impediment.

19. It is noticed that this Court had protected the petitioner during the pendency of the present writ petition and stayed the order dated 29.04.2010 passed by the State Government in Revision No. 11 of 2010. Accordingly, considering that the petitioner was protected during the pendency of the present writ petition, the said protection is extended till appropriate orders are passed in the suit proceedings and till decision of the application under Order 39, Rule 1 and 2 of the Code of Civil

Procedure is passed.

20. It is made clear that in case the petitioner does not file a suit within next three weeks, the protection granted to the petitioner shall not be available to him.

21. In light of the above, this petition is dismissed.

(Alok Mathur, J.)

Order Date :- 5.3.2024

Virendra