

Court No. - 37

Case :- WRIT - C No. - 29313 of 2024

Petitioner :- Vishram Singh

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Hari Bans Singh

Counsel for Respondent :- Achal Singh,C.S.C.,Rajesh Kumar

Hon'ble Syed Qamar Hasan Rizvi,J.

1. Heard Sri Hari Bans Singh, learned counsel for the petitioner; Sri Anshul Nigam, learned Standing Counsel appearing for the State-respondent nos.1 to 3; Sri Achal Singh, learned counsel for the Gaon Sabha-respondent no.4 and Sri Rajesh Kumar, learned counsel for the respondent no.5.

2. By means of the present writ petition, the petitioner has challenged the order dated 05.08.2024 passed by the Commissioner, Chitrakoot Dham Mandal, Banda (respondent no.2) in Case No. 1588 of 2023 (Ram Bharose Singh versus Vishram Singh) under Section 210 of U.P. Revenue Code, 2006 and the order dated 20.09.2022 passed by the Tehsildar, Tehsil- Pailani, District- Banda (respondent no.3) in Case No. 1288 of 2021 (Ram Bharose Singh Parihar versus Vishram Singh) under Section 35 of the U.P. Revenue Code, 2006.

3. Submission of the learned counsel for the petitioner is that the petitioner executed a sale deed in favour of the respondent no.5 on 17.08.2021. The said sale deed was registered on 17.08.2021. The submission of the learned counsel for the petitioner is that although the sale deed was got registered but the amount of consideration shown in the sale deed was not paid to the petitioner and as such the sale deed has been rendered a void document.

4. The case of the petitioner is that on 17.12.2021, the petitioner filed a suit bearing O.S. No.663 of 2021 before the Court of learned Civil Judge (Junior Division), Banda, inter alia, praying for declaration of the sale deed as null and void. The said

suit is still pending for adjudication before the competent Civil Court. Further, it has been stated by the learned counsel for the petitioner that after the execution of the said sale deed in respect of the property in question, the respondent no.5 moved an application for mutation before the Tehsildar, Tehsil- Pailani, District- Banda, under Section 35 of the U.P. Revenue Code, 2006 which was registered as Case No.1228 of 2021. In the said mutation case, the petitioner appeared before the court concerned and filed a detailed objection, inter alia, stating that the mutation application is not maintainable as the sale deed dated 17.08.2021, for want of non-payment of the amount of consideration is a void document, as such the respondent no.5 is not entitled to get his name mutated in the revenue records and the said application for mutation is liable to be rejected.

5. It has been submitted by the learned counsel for the petitioner that the learned Court of Tehsildar (respondent no.3) without taking into consideration the objections as raised by the petitioner, allowed the said mutation application filed by the fifth respondent, against which the petitioner preferred an appeal under Section 35(2) of the U.P. Revenue Code, 2006 before the court of Sub Divisional Officer, Tehsil- Pailani, District- Banda. The Appellate Court after affording due opportunity of hearing to the parties concerned allowed the said appeal vide order dated 02.11.2023 and set aside the aforesaid order passed by the Tehsildar (respondent no.3).

6. Aggrieved by the aforesaid order, the respondent no.5 filed a revision under Section 210 of the U.P. Revenue Code, 2006 before the learned court of Commissioner, Chitrakoot Dham Mandal, Banda (respondent no.2). The said revision was registered as Revision No.1588 of 2023. The Revisional Court after setting aside the order dated 02.11.2023 passed by the Sub Divisional Officer, Tehsil- Pailani, District- Banda, remanded the matter to the Appellate Court for reconsideration with a direction to decide the appeal afresh on merits after affording due opportunity of hearing to the parties concerned.

7. The contention of the learned counsel for the petitioner is that the petitioner is in

possession over the disputed property. He relied upon the law laid down by the Hon'ble Apex Court in the case of **Kewal Krishna versus Rajesh Kumar and others**; reported in **AIR 2022 Supreme Court 564**, wherein Hon'ble Apex Court has been pleased to hold that a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by Section 54 of the Transfer of Property Act.

8. Learned counsel for the petitioner further submits that if a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. Defending the order dated 02.11.2023 passed by the Sub Divisional Officer, Tehsil- Pailani, District- Banda, learned counsel for the petitioner submits that the Appellate Court has correctly set aside the order passed by the Tehsildar (respondent no.3) and the Revisional Court without taking into consideration the settled preposition of law on the subject, has passed the impugned order dated 05.08.2024, whereby the revision filed by the respondent no.5 has been allowed.

9. Per contra, Sri Rajesh Kumar, learned counsel for the respondent no.5 submitted that the name of the respondent no.5 has been mutated in the revenue records in respect of the property in question. He further submits that that once the execution of the sale deed has not been challenged anywhere, the learned Tehsildar has rightly allowed the application for mutation and there is no error in the impugned orders challenged by the petitioner in the present writ petition. He further submits that the learned Tehsildar (respondent no.3) has correctly passed the order treating the sale deed as the basis for mutation as the execution of the sale deed was not under dispute. He has pointed out that the averments made by the respondent no.5 in the revision before the Appellate Court that he is in possession of the property in question has not been disputed by the petitioner before the court concerned. He also submits that the sale deed itself provides that the possession of the property in question has been handed over to the respondent no.5 and the Revisional Court

after taking into consideration the fact has also accepted the physical possession of the respondent no.5 over the property in question.

10. Sri Anshul Nigam, learned Standing Counsel appearing for the State-respondents has raised a preliminary objection regarding the entertainability of the present writ petition in the light of the judgment rendered by this Court in the case of **Smt. Kalawati versus The Board Of Revenue And 6 Others**; reported in **2022 (4) ADJ 578**, wherein this Court has held as under:

"

40. Having regard to the foregoing discussion the exceptions under which a writ petition may be entertained against orders passed in mutation proceedings would arise where :

(i) the order or proceedings are wholly without jurisdiction;

(ii) rights and title of the parties have already been decided by a competent court, and that has been varied in mutation proceedings;

(iii) mutation has been directed not on the basis of possession or on the basis of some title deed, but after entering into questions relating to entitlement to succeed the property, touching the merits of the rival claims;

(iv) rights have been created which are against provisions of any statute, or the entry itself confers a title by virtue of some statutory provision;

(v) the orders have been obtained on the basis of fraud or misrepresentation of facts, or by fabricating documents;

(vi) the order suffers from some patent jurisdictional error i.e. in cases where there is a lack of jurisdiction, excess of jurisdiction or abuse of jurisdiction;

(vii) there has been a violation of principles of natural justice."

He has also relied upon the judgment passed by this Court in the case of **Amritansh Pandey versus State of U.P. and others**; reported in **2023(9) ADJ 457**, wherein this Court has held as under:

"

19. 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. 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. Mutation in revenue records neither creates nor extinguishes title of the person nor it has any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. In view thereof, this Court has consistently held that such writ petitions are not to be entertained in exercise of discretionary power conferred under Article 226 of the Constitution of India.

20. It would not be out of place to mention here that the power to issue prerogative writs under Article 226 is plenary in nature. It does not, in terms, impose any limitation or restraint on the exercise of the power to issue writs. It is the discretion of the Writ Court whether to entertain writ petition or not depending upon the facts and circumstances of each particular case. One of the self imposed restrictions on the exercise of the power under Article 226 of the Constitution that has evolved through judicial precedents is that the High Court should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under Article 226 of the Constitution has not pursued would not oust the jurisdiction of the High Court and render a writ petition 'not maintainable'.

21. The Hon'ble Supreme Court in the case of **M/s. Godrej Sara Lee Ltd. versus Excise and Taxation Officer-cum-Assessing Authority and others**; reported in **AIR 2023 Supreme Court 781**, has been pleased to explain the distinction between the 'entertainability' and 'maintainability' of a writ petition. The extract from paragraph 4 of the said judgment is quoted below:

".....Though elementary, it needs to be restated that “entertainability” and “maintainability” of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to “maintainability” goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of “entertainability” is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner,

despite setting up a sound legal point, if grant of the claimed relief would not further public interest....."

22. The reluctance of this Court to interfere with the orders under challenge in the instant petition, is primarily that the same are the outcome of the mutation proceedings and it is a settled legal position that entry in the revenue records does not confer title to a person whose name appears in the records-of-rights, which is maintained for revenue purpose and an entry therein has reference only to possession. Further, the provision of Section 39 of the U.P. Revenue Code, 2006 makes it more clear that orders passed under the provisions relating to mutation of revenue records would not act as a bar against any person from establishing his rights in the property by way of suit for declaration. For ready reference the provision of Section 39 of the U.P. Revenue Code, 2006 is quoted below:-

"39-Certain orders of revenue officers not to debar a suit. -No order passed by a Revenue Inspector under section 33, or by a Tahsildar under sub-section (1) of section 35 or by a Sub-Divisional Officer under sub-section (3) of section 38 or by a Commissioner under sub-section (4) of section 38 shall debar any person from establishing his rights to the land by means of a suit under section 144."

23. Normally, the High Court in exercise of its plenary power does not entertain writ petition under Article 226 of the Constitution of India, against the orders passed by the Revenue Courts in mutation proceedings, except under the conditions as formulated by this Court in cases as mentioned above.

24. The fact of the present case does not attract the above mentioned exceptions as carved out by this Court under which this Court in exercise of its power under Article 226 of the Constitution may entertain a writ petition against the order passed in mutation proceedings that are admittedly summary in nature. 25. It is well settled that the orders for mutation are passed on the basis of the possession of the parties and since no substantive rights of the parties are decided in mutation proceedings, ordinarily the Writ Courts decline to entertain the writ petition as not entertainable in respect of orders passed in mutation proceedings, unless found to be totally without jurisdiction or contrary to the title already decided by the competent court.

26. In view of the above, as no substantive rights of the parties have been decided or are likely to be decided in the mutation proceedings, no case for exercise of extra-ordinary writ jurisdiction under Article 226 of the Constitution of India is made out. Needless to say, it is always open to the petitioner to get his rights/title in respect of the land in question be crystallised by competent Civil Court."

11. Taking into consideration the aforesaid settled legal preposition that ordinarily the writ petitions are not entertainable against the orders passed by the Revenue Court in the mutation proceedings and further the controversy involved herein does not attract any of the exceptions as carved out in paragraph no.40 of the judgment passed by this Court in the case of **Smt. Kalawati (supra)**, this Court is of the considered view that the present writ petition is not entertainable under Article 226 of the Constitution of India. Accordingly, the same is **consigned to record**. However, without entering into the merit of the claims of the petitioner, this Court in the interest of justice, deems it appropriate to record its observation that the petitioner is always at liberty to get his rights adjudicated or declared by the competent court of jurisdiction.

12. Needless to say that the order passed in the mutation proceedings would abide by the decision of the competent court and the said court while deciding the case before it, would not, in any manner, be influenced by any findings or observations made by the Revenue Court in the mutation proceedings.

Order Date :- 6.3.2025

Abhishek Gupta