

MANOJ KUMAR SHARMA
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Upadhyaya Building IInd Floor
High Court, Allahabad
Mob No.9415316192

Writ 'B'

Civil Miscellaneous Petition NO. 14236 OF 2017

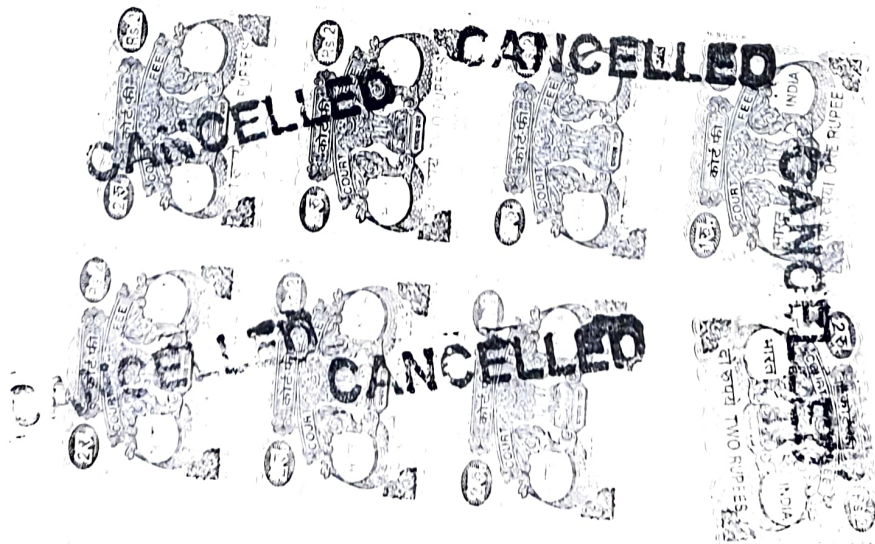
Aradhesh Kumar & Sathies

Versus

State of U.P. & Anos.

District : Meerut.

Order Dated: 06/4/2017





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HIGH COURT OF JUDICATURE AT ALLAHABAD

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Court No. - 16

Case :- WRIT - B No. - 14236 of 2017

Petitioner :- Avadhesh Kumar And 5 Others

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Jahangir Jamshed Munir

Counsel for Respondent :- C.S.C., Rakesh Kumar Verma

Hon'ble Suneet Kumar, J.

Heard learned counsel for the parties.

The petitioner by means of the instant writ petition is assailing the order dated 20 January 2017, passed by Board of Revenue in Revision No.3003 of 2015, arising from a mutation proceeding under Section 34/39 of U.P. Land Revenue Act, 1901.

It is sought to be urged by the learned counsel for the petitioner that the second respondent had set up a case for correcting revenue record in 2014 on the basis of a sale deed alleged to have been executed on 25 July 1956 in favour of her father. It is admitted that pursuant to the sale deed, name of the father of the second respondent was never mutated though, it has been noted in the impugned order that in one Fasli, name of the father of second respondent was recorded. It is further noted in the impugned order that the father of second respondent died in 2011. In the intervening period, consolidation proceedings commenced upon notification under Section 4(2) of U.P. Consolidation of Holdings Act, 1953. In the basic year, it is admitted that name of second respondent or her father was never recorded nor any objection was filed, therefore, it is urged that the proceedings attained finality upon publication of notification in terms of Section 49. It is also admitted by the learned counsel, appearing for the second respondent that for the first time, the application was moved in 2014 and during the entire period until 2014 barring one Fasli, name of petitioner continued in the revenue record as owner pursuant to the sale deed by the recorded tenure holder executed in 1966. Therefore, in this background, it is urged by the learned counsel for the petitioner that there is a presumption of ownership in view of entry continued since long. Therefore, entry could not have been disturbed in

the mutation proceedings under Section 34/39. In support of his submission, learned counsel has placed reliance upon a decision rendered by this Court in **Sridhar Tripathi Vs. Board of Revenue; 1997 (15) LCD 464.**

Submission requires consideration.

Four weeks time is granted to file counter affidavit. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

List thereafter.

Till the next date of listing, effect and operation of impugned order dated 20 January 2017, passed by Board of Revenue, U.P. Lucknow in Revision No. 3003 of 2015, shall remain stayed, the second respondent is restrained from interfering in the peaceful possession of the petitioners in respect of the disputed plot.

Order Date :- 6.4.2017

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Writ - B **NO. 14236 OF 2017**

Avadhesh Kumar & 5 others

Versus

State of U.P. & And

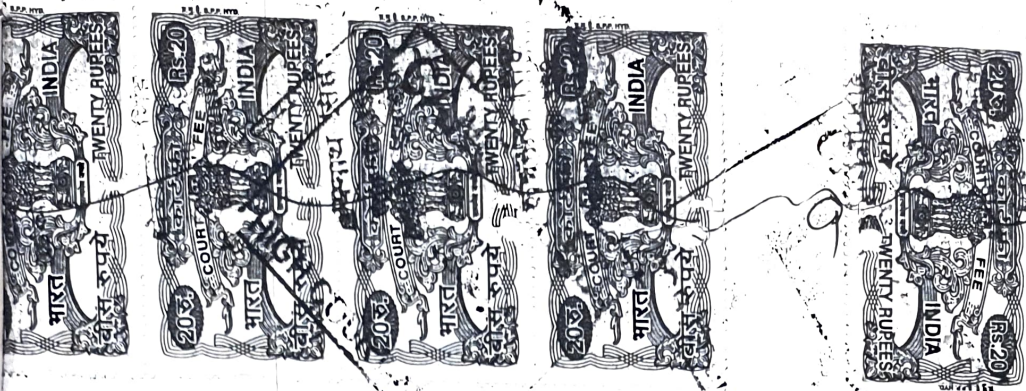
District : Moradabad

Order Dated: 11/11/24

Date of Application: 14/11/24
Date of Filing: 23/11/24
Date of Issuance: 23/11/24



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14/11/24



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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Civil Misc. Writ Petition No. 14236 of 2017

(Under Article 226 of the Constitution of India)

District : MORADABAD

- 1. Avadhesh Kumar }
- 2. Umesh Kumar } Sons of late Ram Bahadur
- 3. Suresh Kumar }
- 4. Naveen Kumar }
- 5. Sanjeev Kumar } Sons of late Ram Kripal
- 6. Pankaj Kumar }

Notice No. 13311/17
 Total 314
 For 44
 Two 10/14
 For 10/14
 Standing Counsel
 High Court, Allahabad

All Residents of Bhartiya Bhawan, Sambhali Gate, Mandi Chowk, Police Station-Kotwali, District-Moradabad.

.....Petitioners.

Versus

State of U.P. through Principal Secretary, Ministry of Revenue, Government of U.P., Lucknow.

- 2. Kavita Sharma, daughter of Sri Vijay Kumar Sharma, resident of Maulagarh, Tehsil Chandausi, district Moradabad (Sambhal).

.....Respondents

R.K. Verma
B/R 05/26/12
13/11/12
for the cause

1204
10/14/13



Ahmad

Court No. - 49

Case :- WRIT - B No. - 14236 of 2017

Petitioner :- Avadhesh Kumar And 5 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Akanksha Mishra, Amit Kumar Sharma, Kshitij Shailendra (Elevated), Manoj Kumar Sharma, Sudhir Mehrotra, Tanisha Jahangir Monir

Counsel for Respondent :- Abhinav Gaur, C.S.C., Krishna Mohan Asthana, Rakesh Kumar Verma, Sanjeev Kumar Pandey, Vibhu Rai, Vidya Shanker Pandey

Hon'ble Saurabh Shyam Shamsbery, J.

1. Heard Sri Manoj Kumar Sharma, learned counsel for petitioners and Sri Krishna Mohan Asthana, learned counsel for contesting respondent.

2. This matter is arising out of a mutation proceedings. Petitioners and contesting respondent are claiming their names on basis of their respective sale-deeds. So far as, claim of petitioners is concerned, it is on basis of a sale-deed dated 14.09.1961 and at the time of consolidation proceedings, their name was entered. Subsequently, the contesting respondent filed a mutation proceedings on basis of a sale-deed dated 25.07.1956, prior in time after a substantial period i.e. in the year 2015, claiming that during interregnum period, name of her father was recorded on basis of said sale-deed. Be that it may be, the said petition was dismissed with following operative part :-

"उपरोक्त तीनों पक्षों की बहस सुनक में इस निर्णय पर पहुंचता हूं कि विक्रयपत्र दिनांक 25.07.1956 चकबन्दी प्रक्रिया से पूर्व का विक्रय पत्र था तथा जिसके आधार पर चकबन्दी से पूर्व ही एक कागज संख्या 61 ग जो दीवानी के न्यायालय में वादी पक्ष की ओर से प्रस्तुत किया गया था, जिससे प्रतीत होता है कि विक्रेता प्रेमकुंवर के स्थान पर क्रेता विजय कुमार शर्मा पिसरान देवकी नन्दन का नाम बतौर बयनामा 5000/- दर्ज हो चुका था। जब एक बार किसी व्यक्ति का नाम दाखिल खारिज एक दस्तावेज के आधार पर हो चुका हो तो पुनः दाखिल खारिज किया जाना विधि सम्मत नहीं है तथा विक्रयपत्र दिनांक 25.07.1956 चकबन्दी प्रक्रिया से पूर्व का था जिसके विषय में कोई भी अधिकार या दाखिल खारिज की कार्यवाही मात्र चकबन्दी न्यायालय में ही की जानी चाहिए थी जो वादी पक्ष द्वारा नहीं की गयी। इस कारण वादी पक्ष का वाद धारा -49 उ०प्र०जोत चकबन्दी अधिनियम से पूर्णरूप से बाधित है तथा आपत्तिकर्तागण अवधेश

कुमार आदि द्वारा प्रस्तुत विधि व्यवस्थायें इस पर पूर्ण रूप से लागू होती हैं। इसी प्रकार द्वितीय पक्ष अबरार हुसैन की आपत्ति भी विधि अनुसार मेनटेबिल नहीं है क्योंकि उसके पक्ष में कोई स्वत्य आदेश नहीं है और जो आधार उनका गैर रजिस्ट्रीशुदा विक्रयपत्र दिनांक 10.07.1947 के आधार पर किया गया है वह धारा 20 उ०प्र० जमी०उन्मूलन अधिनियम से बाधित है, क्योंकि उस विक्रयपत्र के आधार पर उसे दिनांक 01.07. 1952 से पूर्व उ०प्र०भू० राजस्व अधिनियम के अन्तर्गत दुरुस्ती कराया जाना अति आवश्यक था तथा इसके पश्चात भी चकबन्दी बन्दोबस्त के दौरान कोई आपत्ति नहीं की तो उसका भी क्लेम धारा-49 उ०प्र०जोत चकबन्दी अधिनियम से बाधित है तथा विवादित आराजी न्यायालय उप जिलाधिकारी मुरादाबाद द्वारा वाद संख्या 32/34/08 अन्तर्गत धारा 143 ज.वि.अधि. के अन्तर्गत अकृषक घोषित की जा चुकी है। इस कारण भी उक्त आराजी के संबंध में सुनवाई हेतु राजस्व न्यायालय का क्षेत्राधिकार न होने के कारण वादनी कविता शर्मा का नामान्तरण प्रार्थनापत्र पोषणीय न होने के कारण निरस्त होने योग्य है।"

3. In the aforesaid circumstances, the contesting respondent filed a revision petition before the Board of Revenue, which was allowed by impugned order dated 20.01.2017. The relevant part thereof is mentioned hereinafter :-

"उभय पक्ष के विद्वान अधिवक्ताओं को सुना गया तथा पत्रावली पर उपलब्ध अभिलेखों एवं पक्षगण द्वारा प्रस्तुत लिखित बहस का परिशीलन किया गया।

संक्षेप में तथ्य इस प्रकार है कि प्रेम कुंवर पुत्री ख्यालीराम पत्नी स्व० साहू प्रसादी लाल द्वारा बैनामा दिनांक 25.7.1956 को किये गये बैनामों के आधार पर विजय कुमार शर्मा पुत्र देवकीनन्दन शर्मा की वारिस कविता शर्मा पुत्री विजय कुमार शर्मा की ओर से तहसीलदार न्यायालय में दिनांक 24.03.2015 को नामांतरण प्रार्थनपत्र प्रस्तुत किया। इस नामांतरण वाद में अवधेश कुमार आदि द्वारा दिनांक 21.09.2015 को आपत्ति प्रस्तुत की गयी कि वह विवादित भूमि पर संक्रमणीय भूमिधर चकबन्दी प्रकिया के आकार पत्र 45 के आधार पर दर्ज खातेदार है। प्रार्थनी का दाखिल खारिज का वाद क्षेत्राधिकार के अभाव में व रसज्यूडिकेटा के सिद्धांत से एवं धारा 49 उ.प्र. जोत चकबन्दी अधिनियम से बाधित होने के कारण खरिज होने योग्य है। विद्वान तहसीलदार ने आदेश दिनांक 06.11.2015 के द्वारा नामांतरण प्रसूचना दाखिल खारिज वाद विक्रय पत्र दिनांक 25.07.1956 के आधार पर धारा 49 उ०प्र० जोत चकबन्दी अधिनियम से बाधित होने एवं राजस्व न्यायालय के क्षेत्राधिकार से परे होने के कारण निरस्त किया गया तहसीलदार के आदेश दिनांक 06.11.2015 के विरुद्ध कविता शर्मा पुत्री विजय कुमार शर्मा दवारा माननीय परिषद न्यायालय में निगरानी योजित की गयी है।

पत्रावली पर उपलब्ध विद्वान तहसीलदार के आदेश दिनांक 06.11.2015 के अवलोकन से ज्ञात होता है। कि तहसीलदार ने अपने इस आदेश से नामांतरण वाद इस आधार पर निरस्त किया कि नामांतरण प्रसूचना / दाखिल खारिज वाद विक्रय पत्र दिनांक

25.07.1956 के आधार पर धारा 49 उ.प्र. जोत चकबन्दी अधिनियम से बाधित होने एवं राजस्व न्यायालय के क्षेत्राधिकार से बाहर है।

विद्वान तहसीलदार अपने आदेश दिनांक 6.11.2015 में इस तथ्य का भी उल्लेख किया है। कि विक्रय पत्र दिनांक 25.7.1956 चकबन्दी प्रक्रिया से पूर्व का विक्रय पत्र था तथा जिसके आधार पर चकबन्दी से पूर्व ही एक कागज सं० 61 ग जो दीवानी के न्यायालय में वादी पक्ष की ओर से प्रस्तुत किया गया था जिससे प्रतीत होता है कि विकेता प्रेम कुंवर के स्थान पर विजय कुमार शर्मा पुत्र देवकीनन्दन का नाम बतौर बैनामा दर्ज हो चुका था जब एक बार किसी व्यक्ति का नाम दाखिल खारिज एक दस्तावेज के आधार पर हो चुका हो तो पुनः दाखिल खारिज किया जाना विधि सम्मत नहीं है तथा विक्रय पत्र दिनांक 25.07.1956 चकबन्दी प्रक्रिया से पूर्व का था जिसके विषय में कोई भी अधिकार या दाखिल खारिज की कार्यवाही मात्र चकबन्दी न्यायालय में ही की जानी चाहिए थी। जो वादी पक्ष द्वारा नहीं की गयी। इन तथ्यों से स्पष्ट होता है कि तहसीलदार द्वारा अपना आदेश विरोधाभाषी तथ्यों के आधार पर पारित किया गया है। उपरोक्त तथ्यों के आधार पर विद्वान तहसीलदार का आदेश दिनांक 06.11.2015 विधिक रूप से त्रुटिपूर्ण है।

उपरोक्त विवेचना के आधार पर निगरानी स्वीकार की जाती है तथा विद्वान तहसीलदार का आदेश दिनांक 06.11.2015 निरस्त किया जाता है। एवं विक्रय पत्र दिनांक 25.07.1956 के आधार पर पारित आदेश दिनांक 25.10.1956 की पुष्टि की जाती है। अवर न्यायालय के अभिलेख वापस किये जाये। वाद आवश्यक कार्यवाही पत्रावली दाखिल दफ्तर की जाये।"

4. Petitioners have filed this writ petition challenging the aforesaid referred order.

5. This Court has passed following order on 06.04.2017 :-

"Heard learned counsel for the parties.

The petitioner by means of the instant writ petition is assailing the order dated 20 January 2017, passed by Board of Revenue in Revision No.3003 of 2015, arising from a mutation proceeding under Section 34/39 of U.P. Land Revenue Act, 1901.

It is sought to be urged by the learned counsel for the petitioner that the second respondent had set up a case for correcting revenue record in 2014 on the basis of a sale deed alleged to have been executed on 25 July 1956 in favour of her father. It is admitted that pursuant to the sale deed, name of the father of the second respondent was never mutated though, it has been noted in the impugned order that in one Fasli, name of the father of second respondent was recorded. It is further noted in the impugned order that the father of second respondent died in 2011. In the intervening period, consolidation proceedings commenced upon notification under Section 4(2) of U.P. Consolidation of Holdings Act, 1953. In the basic year, it is admitted that name of second respondent or her father was

never recorded nor any objection was filed, therefore, it is urged that the proceedings attained finality upon publication of notification in terms of Section 49. It is also admitted by the learned counsel, appearing for the second respondent that for the first time, the application was moved in 2014 and during the entire period until 2014 barring one Fasli, name of petitioner continued in the revenue record as owner pursuant to the sale deed by the recorded tenure holder executed in 1966. Therefore, in this background, it is urged by the learned counsel for the petitioner that there is a presumption of ownership in view of entry continued since long. Therefore, entry could not have been disturbed in the mutation proceedings under Section 34/39. In support of his submission, learned counsel has placed reliance upon a decision rendered by this Court in Sridhar Tripathi Vs. Board of Revenue; 1997 (15) LCD 464.

Submission requires consideration.

Four weeks time is granted to file counter affidavit. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

List thereafter.

Till the next date of listing, effect and operation of impugned order dated 20 January 2017, passed by Board of Revenue, U.P. Lucknow in Revision No. 3003 of 2015, shall remain stayed, the second respondent is restrained from interfering in the peaceful possession of the petitioners in respect of the disputed plot. "

6. Thereafter, matter remained pending for substantial period and on 15.12.2022 following order was passed on a Stay Extension Application No.28 of 2020 :-

"C.M.Stay Extension Application No.28 of 2020

The instant application has been filed to extend the interim order dated 06.04.2017 passed by this Court staying the effect and operation of the impugned revisional order as well as respondent was restrained from interfering in the peaceful possession of the plot in dispute. The interim order granted by this Court was extended from time to time, but the same was not extended on certain dates. Accordingly, the instant application has been filed.

Counsel for the petitioners submitted that petitioners were recorded in the revenue record during consolidation operation on the basis of registered sale-deed executed by recorded tenure holder in favour of petitioners in 1966, as such the entry of petitioners cannot be expunged in the summary proceeding.

On the other hand, learned counsel for the respondents submitted that suit for cancellation of petitioners sale deed is pending in the civil court as such, the writ petition arising out of summary proceeding should not be entertained.

Considering the facts and circumstances of this case that petitioners were recorded during consolidation operation on the basis of registered sale deed of 1966, interim order granted by this Court dated 06.04.2017 is hereby extended until further orders of this Court and the parties are

directed to maintain status quo with respect to the nature and possession of the property in dispute.

Application is accordingly, disposed of.

Order on writ petition

List this matter for disposal of 31st January, 2023. "

7. Counsel for parties have not much disputed that contesting respondent has filed a suit to challenge the sale-deed dated 14.09.1961 executed in favour of petitioners, however, the said suit was dismissed by an order dated 11.07.2023.

8. Learned counsel for petitioners submits that against first Appeal No.131 of 2023 before learned District Judge is still pending and it is at stage of fag end, however, he fairly submits that there is no interim order in proceedings.

9. It has been also brought on record that a proceeding arising out of a complaint for inspection of sale-deed wherein a direction was passed by District Magistrate was challenged before this Court, wherein a Division Bench of this Court in **Kavita Sharma Vs. State of U.P. and 4 others, 2024:AHC:207441-DB**, has dismissed it.

10. The said order is under challenge before the Supreme Court, wherein notice has been issued, however, the outcome of it does not impact much on merit of the present case.

11. It is well settled that mutation proceedings are of summary nature. It does not confer affirmative of title of any land.

12. The dispute before this Court is in regard to entries in the revenue records, on basis of their respective sale-deed. It is not on record that petitioners have challenged the sale-deed executed in favour of contesting respondent.

13. As referred above, so far as challenge to sale-deed executed in favour of petitioners, subsequently, has been failed since a suit at the instance of contesting respondent has already been rejected though first appeal is pending but there is no interim order.

14. In the aforesaid circumstances, since there are subsequent development, therefore, this writ petition is disposed of with an observation/direction that petitioners will have liberty to carry out mutation proceedings afresh on basis of subsequent events since this writ petition is pending for last more than 7 years, and there is an interim order operating, therefore, interim order

referred above shall remain in currency for a period of six weeks.

15. Meanwhile, concerned Court will decide the said mutation proceedings on basis of subsequent events, if a fresh application is filed.

16. Meanwhile, if the first appeal is decided a copy of the order be placed as its legal consequence will also be considered.

17. Since, the proceedings are arising out of mutation proceeding which are summary in nature, no observation of this Court may affect issue of title.

Order Date :- 11.11.2024

P. Pandey

sd/- Saurabh Shyam Shamsker

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