(2010) 12 AHC CK 0167

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 73630 of 2010

Shamim Ahamad and Others APPELLANT

Vs

State of U.P.and Others RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Citation : (2010) 12 AHC CK 0167

Hon'ble Judges : V.K.Shukla, J

Final Decision : Disposed Of

Judgement

V.K.Shukla,J.

1. Present writ petition in question has been filed by the petitioners questioning the validity of the order dated 30.09.2010 passed by respondent No. 1 i.e. Commissioner Gorakhpur Division Gorakhpur in Appeal No. 7/D of 1994, Shamim Ahamad and other v. Shamshad Ahamad and others and also impugned order dated 06.11.1993 passed by respondent No. 2 i.e. Administrator/District Magistrate Deoria otherwise the petitioners shall suffer an irreparable loss and injury.

2. In the present case writ petition petitioners claim that house no. 6/143144 new numbers 12/31 and 22/30 situated at mauza Garulpur Thatheri Gali under Nagar Palika Prisad Deoria belongs to his grand father and further claim that his grand father on 10.08.1955 had executed sale deed in favour of his wife and entries were also made in Nagar Palika Prisad, Deoria. Petitioners contention has been that his grand mother Gudani @ Nurani had given said property by way of Hibanama during her life time as such name of petitioners'' has been mutated. Petitioners'' contention that Gudani @ Nurani had died on 06.10.1989 and during her life time AzizulRahman died on 04.08.1997 and after death of his father petitioners'' got their name mutated after Gudani @ Nurani then application was moved for mutation on behalf of Mumtaz Ahmad and others. Said application in question was allowed and thereafter appeal preferred against the same has also been dismissed. At this juncture present writ petition in question has been filed.

3. Learned counsel for the petitioner Sri R.C. Kushwaha, contended with vehemence that in the present case that there was valid Hibanama (oral gift) in favour of petitioners'' father and based on the same mutation proceedings has been undertaken and as such both the authorities have erred in law in not accepting the claim of the petitioners, as such writ petition deserves to be allowed.

4. Countering the said submission, learned Standing counsel on the other hand contended that objective consideration has been done and thereafter rightful finding of fact has been arrived at in the present case as such writ petition in question deserves to be dismissed.

5. After after respective arguments have been advanced factual position which is emerging in the present case is that on one hand petitioners are claiming that they have right over the property in question based on hibanama whereas claim of the other side is that Gudani @ Nurani at no point of time has executed any oral hibanama as has been claimed. Authorities have found as a matter of fact of the matter is that Gudani sons Azizul Rahman, Mumtaz and Hasnain are still staying in the said premises in question and their names have also been entered in the electoral roll. In summary proceedings of assessment, validity of the oral gift deed can not be gone into. Remedy of the petitioners lie in filing suit.

6. Hon''ble Apex Court in the case Suraj Bhan v. Financial Commissioner (SC), 2007 (103) RD 116 has clearly taken view that it is sell settled that an entry in Revenue Records does not confer title on a person whose name appears in Record of Rights. It is settled law that entries in the Revenue Records or Jamabandi have only ''fiscal purpose'' i.e. payment of landrevenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent Civil Court. In the said case it has also been specifically mentioned that all contentions of all parties are kept open and all questions will be decided in appropriate proceedings by Competent Authorities or Courts without being inhibited by the present decision. Relevant para 8 is being quoted below:

?There is an additional reason as to why we need not interfere with that order under Article 136 of the Constitution. It is well settled that an entry in Revenue Records does not confer title on a person whose name appears in Record of Rights. It is settled law that entries in the Revenue Records or Jamabandi have only ''fiscal purpose'' i.e. payment of landrevenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent Civil Court vide jattu Ram v. Hakam Singh and others. As already noted earlier. Civil Proceedings in regard to genuineness of Will are pending with High Court of Delhi. In the circumstances, we see no reason to interfere with the order passed by the High Court in the writ petition.

7. On the parameter as set out, this much is accepted that assesment proceedings are summary proceeding and the question of title cannot be

adjudicated and only for the purpose of payment of house tax and water tax, entries are made. In this background once objectively consideration has been made and order has been passed for mutation then in such a situation and in this background, in view of finding of fact returned there is hardly any scope of interference in exercise of authority of judicial review.

8. Consequently this Court refuses to interfere with orders impugned and the remedy of the petitioner lies in filing suit. In case any suit in question is filed then said suit be decided on its own independent assessment of evidence without being influenced by the finding recorded in summary proceedings.

9. With the above direction present writ petition is disposed of.

10. No order as to cost.