

Court No. - 34

Case :- WRIT - C No. - 35703 of 2019

Petitioner :- Veer Singh And 7 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Nagendra Kumar Mishra, Hemlata Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Sudhir Agarwal, J.

Hon'ble Rajeev Misra, J.

1. Heard learned counsel for petitioners and learned Standing Counsel for respondents.

2. This writ petition has been filed seeking following reliefs:

"I. issue a writ, order or direction, in the nature of certiorari to quash the order dated 20.6.2019 passed by District Magistrate, Gautam Budh Nagar and endorsement order dated 15.01.2018 of District Magistrate, Gautam Budh Nagar upon order sheet of office order dated 29.12.2017 passed by Executive Engineer Canal Department, Ghaziabad (Annexure No.2, 4 and 5 to this writ petition).

II. issue a writ order or direction in the nature of mandamus directing to the District Magistrate, Gautam Budh Nagar to allow registration work / registry of the plots of petitioners, pursuance in possession of Khasra No.882 total area 10583 Squire meter situated in Village- Saurakha, Jahidabad, Pargana & Tehsil- Dadri, District Gautam Budh Nagar."

3. District Magistrate by means of impugned order has placed restriction upon registration of sale-deed though a Division Bench of this Court has already considered this issue in **Writ C No. 8093 of 2019 (Sabir Vs. State of U.P. and 3 Others)**, decided on 15.5.2019 and entire judgment reads as under:

"Rejoinder affidavit, filed today, is taken on record.

Heard Shri Vidya Prakash Singh, learned counsel for the petitioner and learned standing counsel for the State - respondents.

The petitioner, in this writ petition, is seeking a direction to the

respondents not to restrain the registration of the sale deed executed by the petitioner.

The petitioner is stated to be the owner and Bhumidar of plot Khasra No. 118 situated in Village - Alawardipur, Tehsil - Dadri, District - Gautam Budh Nagar. He applied for registration before the respondent no. 4, who informed him that the registration of the property cannot be done as there is some order of the District Magistrate dated 20.05.2011 placing a restriction on transfer of property by the owners of the land in the area between river Hindon and the embankments constructed by the Irrigation Department.

The order of the District Magistrate has not been brought on record, either by the petitioner in his writ petition or by the respondents in their counter affidavit. All that has been stated in the counter affidavit is that the action of the respondents is absolutely legal and valid.

This controversy is no longer res integra as the matter has already been settled by a Division Bench of this Court in Civil Misc. Writ Petition No. 70786 of 2011 (Smt. Rajan Yadav & Others Vs. State of U.P. & Others); wherein, the following observation has been made:-

"On the aforesaid discussion, we are of the view that the Act of 1951 or the Government Order dated 3.2.1992, do not give legal authority in the District Magistrate to put restriction on the transfer of property in the subject area between River Hindan and its embankments. The District Magistrate may in order to save and control the loss of property or life in case of floods or apprehension of water levels rising in the area put restrictions for raising of construction in accordance with the building bye-laws made by local authorities including the Municipal Corporation or the Ghaziabad Development Authority. If the building bylaws did not restrict the private builders from raising multistory constructions in the area, it will be arbitrary and discriminatory to place restrictions on sale and purchase of land on farmers for smaller areas. Further the restrictions on registering documents of sale or purchase on plots of land less than one thousand square meters for the reasons stated in the counter affidavit, if contradictory and

causes hostile discrimination with no statable purpose or object to be achieved.

For the aforesaid reasons, the writ petition is allowed. The order of the District Magistrate dated 20.5.2011 placing restriction on transfer of property by the owners of the land in the area between River Hindan and the embankments constructed by the Irrigation Department, is set aside. The petitioners will be free to execute the agreement or transfer deeds, which will be registered by the registration authorities in accordance with law. The petitioners or the purchasers will, however, not raise any constructions, except after obtaining approval from the concerned local bodies or development authorities. Costs are made easy"

Similar view has been taken by another Division Bench of this Court in Public Interest Litigation (PIL) No. 50456 of 2013 (Sachin Yadav Vs. State of U.P. & 4 Others), in which the Division Bench has also recorded that a similar order of the District Magistrate, Ghaziabad dated 21.07.2013 was subsequently withdrawn by a further communication dated 31.07.2013.

The Supreme Court, in (2006) 8 SCC 502 (T. Vijayalakshmi Vs. Town Planning Member), in paragraph no. 15 thereof, has held as under:

"The law in this behalf is explicit. Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless there exists a clear provision the same cannot be taken away. It is also a trite law that the building plans are required to be dealt with in terms of the existing law. Determination of such a question cannot be postponed far less taken away. Doctrine of Legitimate Expectation in a case of this nature would have a role to play."

In the present case, no order of the District Magistrate has been placed before us by the respondents in their counter affidavit to justify the restriction on registration of sale deeds. Unless and until, there are statutory provisions, restricting registration of sale deeds, in any particular Statute, the same cannot be denied through an executive fiat of the District Magistrate.

We, therefore, allow this writ petition and issue a direction in the nature of mandamus directing the respondent no. 4 to examine the sale deed submitted by the petitioner and take appropriate action, in accordance with law, bearing in mind the observations made above. Such decision shall be taken by the respondent no. 4 within a period of three months from the date of receipt of a certified copy of this order in his Office."

4. In terms of aforesaid judgment and for the reasons stated therein, and with same directions, this writ petition is **dispose of** and we direct Registration Authorities to entertain documents presented by petitioners before them for registration in accordance with law and appropriate action be taken without any delay.

Order Date :- 5.11.2019

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