

Court No. - 3

Case :- WRIT - C No. - 1625 of 2004

Petitioner :- Vijay Kumar Varma

Respondent :- U.P.Avas Evam Vikas Parishad Thru
Chairman/H.C. And 3 Ors.

Counsel for Petitioner :- Upendra Nath Misra,Rajat Rajan
Singh

Counsel for Respondent :- C.S.C.,K S Pawar,Mahesh
Chandra,Ninnie Shrivastava,R.K.Mehrotra

Hon'ble Vivek Chaudhary,J.

Hon'ble Manish Kumar,J.

Heard learned counsel for the parties and perused the record.

The present writ petition has been preferred by the petitioner for quashing of the impugned order dated 17.02.2004 passed by Respondent No.2 by which the registered sale deed in favour of the petitioner has been cancelled and the order dated 8.3.2004 passed by Respondent No.3 directing the petitioner to handover the possession of property in question to the Avas Evam Vikas Parishad.

Learned counsel for the petitioner has submitted that the petitioner has purchased the said L.I.G. house by registered sale deed dated 8.11.1996 from the husband of original allottee Smt. Subhawati after her demise. The Avas Vikas Parishad without issuing any show cause notice or without providing any opportunity of hearing has cancelled the sale deed executed in favour of the petitioner. It is further submitted that the registered instrument is to be cancelled only by Civil Court not by the authorities on the administrative side. In support of his submission, learned counsel for the petitioner has relied upon a Full Bench Judgement of this Court dated 18.05.2018 passed in ***Writ-C No.2973 of 2016 (Smt. Kusum Lata vs. State of U.P. & 3 others).***

On the other hand, learned counsel for the Avas Evam Vikas Parishad has submitted that the original allottee of L.I.G. Smt.

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Subhawati claiming herself to be real sister of of Smt. Suman Lata has transferred the registration in her favour, but later on, in an inquiry it has been found that she was not real sister of the original allottee, that is the reason for cancellation of the sale deed executed in favour of the petitioner by the husband of the deceased Smt.Subhawati.

After hearing learned counsel for the parties and going through the record, the position which emerges out in this case is that it is an undisputed fact that prior to the passing of the impugned order, at no point of time, neither any show cause notice was issued to the petitioner nor any opportunity of hearing was given. It is a settled law that a registered instrument cannot be cancelled by the authorities on the administrative side and the same has to be cancelled by initiating a proceeding before the Competent Court of Law and the said controversy has also attained finality by the Full Bench judgement of this Court in the case of **Smt. Kusum Lata (Supra)**.

In view of the above, the impugned order dated 17.02.2004 passed by Respondent No.2 and order dated 8.3.2004 passed by Respondent No.3 are hereby quashed. The writ petition is **allowed**.

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[Manish Kumar,J.] [Vivek Chaudhary,J.]

Order Date :- 3.10.2023

S. Kumar