
(2003) 05 AHC CK 0104

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37671 of 2001

Amit Kumar

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 21-05-2003

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2003) 5 AWC 4035 : (2003) 95 RD 592 : (2003) 2 UPLBEC 1733

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : Somesh Khare, for the Appellant; C.K. Parekh, S. Chaturvedi, R.K. Saxena, S.N. Srivastava, A.K. Singh, S.D. Dube, M.I. Khan and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed against the impugned order dated 19.1.2001, Annexure-10 to the writ petition and the order dated 27.7.2001, Annexure-11 to the writ petition. The petitioner has prayed that respondent No. 3 the District Magistrate, Varanasi be directed not to evict the petitioner from the property in dispute.

2. It is alleged in Paragraph 3 of the petition that the petitioner's father was the lessee of Property No. S-17/317-B, Nadesar, Varanasi. In respect of which the Municipal Board, Varanasi executed a lease deed on 17.7.1957, vide Annexure-1 to the writ petition. This lease was granted in favour of the petitioner's father for a period of 30 years and hence it was to expire on 29th March, 1987. The petitioner's father gave an application to the Administrator Nagar Mahapalika, Varanasi (Now Nagar Nigam) on 24.3.87, vide Annexure-2 to the writ petition praying for extension of the lease period for a period of 99 years. However, it is alleged that no action was taken on this application.

3. By Notification dated 23.5.1992, issued by the State Government vide

Annexure-3 to the writ petition, the Nazul Policy of the State Government was declared. A perusal of the aforesaid Policy shows that it was decided by the State Government that the leases which had expired shall not be renewed, but it is open to the lessee for conversion of lease hold rights to free hold right. In pursuance of this Policy a communication dated 18.8.1997 was sent by the Varanasi Development Authority (VDA) vide Annexure-4 to the petitioner by a Government Order dated 3.10.94, the various rates of conversion of lease hold right to free hold right was specified.

4. It is alleged in Paragraph 14 of the petition that the petitioner's father died on 22.2.91 and the petitioner stepped into his shoes. The petitioner obtained succession certificate vide Annexure-6 to the writ petition and deposited Rs. 16,000 and a free hold deed was executed in his favour on 2.5.98 vide Annexure-7 to the writ petition. In Paragraph 22 of the petition it is stated that subsequently by notice dated 21.3.2001, petitioner was informed that the land does not vest in the State of U.P., and hence the proceedings for cancellation of the deed dated 2.4.98 have been initiated and petitioner can file objection. Copy of the said notice is Annexure-8 to the writ petition. It is alleged that petitioner had invested substantial amount of money and he filed an objection dated 3.4.2001, vide Annexure-9 to the writ petition. The petitioner was given copy of the letter dated 19.1.2001, vide Annexure-10 to the writ petition. Thereafter, the impugned order dated 27.7.2001, cancelling the free hold right was passed vide Annexure-11 to the writ petition. It is alleged that the impugned order is arbitrary and discriminatory and violative of Article 14 of the Constitution.

5. A counter-affidavit has been filed and we have perused the same. It is stated in Paragraph 6 of the same that only management of the plots measuring 160 acres including the land in question was entrusted to the Municipal Board, Benaras (now known as Nagar Nigam, Varanasi). The Commissioner, Benaras Division vide letter dated 11.5.1998 addressed to the Chairman, Municipal Board, Benaras informed that the area transferred will be considered intra-municipal Nazul of which the usufruct has been transferred to the Municipality. It was stated in that letter that 3/4 of the income of such Nazul land would go to the Municipality or District Board, and 1/4 income would go to the Provincial Revenue. As such it is alleged that no title had been transferred by the Union of India in favour of Nagar Nigam, Varanasi. True copy of the letter dated 11.5.1998 is Annexure-CA-3 to the counter-affidavit. In this connection the report of the District Magistrate, Varanasi dated 14.5.1969 to the Deputy Secretary, Government of U.P. and covered letter are Annexure-CA-4 to the counter-affidavit. Another report of the District Magistrate dated 22/24 May, 1971 and covering letter dated 10.6.71 are Annexure-CA-5 to the counter-affidavit. This report acknowledges the ownership of the Government of India, Ministry of Defence, New Delhi over an area of 160 acres in Varanasi Cantonment. In Paragraph 9 of the counter-affidavit it is stated that it came to the notice of the Cantonment Board, Varanasi that without the concurrence of the Central Government, the State Government started converting the properties in question

into free hold. The Defence Estate Officer, Allahabad sent a letter to the District Magistrate, Varanasi bringing to his notice that defence land in Nadesar area, Varanasi Cantonment is being sold and the sale transaction are being registered by the Sub-Registrar without making any reference to the Cantonment Board, Varanasi or Defence Estate Officer, Allahabad. He brought to the notice of the District Magistrate, Varanasi that no intimation about the same was received in his office. He requested the District Magistrate, Varanasi to instruct the Sub-Registrar to refuse registration of such transaction in order to safeguard the interest of the Government of India in the defence land. A true copy of the letter dated 17.11.1997 has been annexed as Annexure-CA-7 to the counter-affidavit.

6. The Government Executive Officer, Varanasi sent letter dated 28.2.1998 and letter dated 21.12.1998 to the Principal Director, Defence Estates, Head Quarters, Central Command, Lucknow bringing the entire facts to his notice that the aforesaid land which was given to the Nagar Nigam, Varanasi for management and the said authority was converting the aforesaid land into free hold. The Cantonment Executive Officer, Varanasi sought guidance from the Principal Director, Defence Estate as to whether the order of the U.P. Government was binding on the Cantonment Board. By another letter dated 21.12.1998 the Cantonment Executive Officer, Varanasi brought to the notice of the Principal Director, Defence Estates that the aforesaid land measuring 160 acres was given to the Municipal Board by the Government of India in the year 1896 for management on payment of certain compensation for the loss of revenue.

7. In Paragraph 14 of the counter-affidavit it is stated that the Principal Director, Defence Estate wrote a letter to the Cantonment Executive Officer, Varanasi that the land was transferred from the management of the Benaras Cantonment to the Nagar Mahapalika, Varanasi on annual payment of Rs. 1657/6 vide Annexure-CA-9 to the counter-affidavit. The Cantonment Board, Varanasi then resolved that permanent transfer of the land to the Municipal Corporation be offered on payment of market value to the Defence Ministry and on unwillingness to do so to pay the transfer value, vide Annexure-CA-10 to the counter-affidavit. The Cantonment Board, Varanasi communicated about the resolution to the Mukhya Nagar Adhikari, Varanasi vide letter dated 24.7.1999 Annexure-CA-11 to the counter-affidavit. In Paragraph 17 of the counter-affidavit it is stated that objection having been raised by the Cantonment Board, Varanasi and the Defence Estate Officer, Allahabad about the conversion of land to free hold, the matter was taken up with the State Government as a consequence of which the Mukhya Nagar Adhikari, Varanasi wrote a letter dated 3.1.2001 and another letter dated 9.1.2001 to the District Magistrate, Varanasi bringing the entire facts to the notice of the District Magistrate and requesting for cancellation of proceedings for conversion of land to free hold. True copies of the said letters are Annexure-CA-12 to the counter-affidavit.

8. In Paragraph 18 of the counter-affidavit it is stated that in the relevant Khatauni the land in question measuring 160 acres contains entry to the effect

that the ownership of the land is of the Government of India vide Annexure-CA-13 to the counter-affidavit. Since the entire matter was brought to the notice of the State Government the Special Secretary, U.P. Government issued letter dated 19.1.2001 to the District Magistrates Varanasi for cancelling the free hold proceedings and accordingly, the District Magistrate Varanasi vide order dated 27.7.2001 has cancelled the same. It is alleged in Paragraph 20 of the counter-affidavit that the respondent 1 to 6 had no right at all to transfer the land or to convert the same into free hold since the ownership of the land vests in the Government of India, Defence Ministry. The Government of India is the owner of the land and hence the State Government or the District Magistrate, Varanasi has no right to sell the land or allow it to be converted into free hold. Only the management of the land was entrusted to the Municipal Board, Varanasi but the Municipal Board was not authorized to allow people to erect houses or to execute lease deed or to convert the land into free hold. The Nagar Nigam, Varanasi acted beyond its authority in passing the transfer orders or granting free hold rights. The lease deed dated 17.7.1957 confers no title or interest in favour of the petitioner.

9. On the facts of the case we find no merit in this petition. It is obvious from a perusal of the counter-affidavit that the land in question belongs to the Government of India and the State Government was never conferred title over the land. Only the management of the same was entrusted to the Municipal Board, Varanasi (now the Nagar Nigam, Varanasi). Hence, the Nagar Nigam, Varanasi, has no right either to transfer the land or grant lease over the same or allow conversion of the land to free hold.

10. A careful perusal of the report of the District Magistrate, Varanasi dated 22/24 May, 1971, Annexure-5 to the counter-affidavit shows that there was some litigation about the title to the said land between the Cantonment Board and Nagar Mahapalika, Varanasi and ultimately that dispute was decided by the order of the Commissioner, Varanasi by order dated 24.1.1957, by which he rejected the claim of the Nagar Mahapalika of title over the land. In the same order it has been held that no appeal was filed against the aforesaid order of the Commissioner and this proves the title of the Government of India over the said land. In the order of the Defence Estate Officer, Allahabad dated 17.11.97, Annexure-CA-7 to the counter-affidavit, it is stated that defence land cannot be sold and the Registrar was directed to refuse to register such transactions. In the letter dated 28.2.98 Annexure-CA-8 to the counter-affidavit, the Cantonment Executive Officer, Varanasi informed the Principal Director, Defence Estate that the land was given to the Nagar Nigam, Varanasi for management and compensation, which had to be paid by the Nagar Nigam, Varanasi for loss of revenue and presently certain buildings had come up on the said land and verbal complaints were received in this connection that Nagar Nigam, Varanasi is giving this land for different purposes and also granting free hold rights. Hence the Cantonment Board resolved to enhance the compensation payable by the Nagar Nigam and guidance was sought from the Principal Director, Defence Estate

whether consent of the Defence Ministry was taken, whether the order of the U.P. Government is binding on the Cantonment Board and what further action should be taken by the Board in this connection.

11. Very relevant is the letter of the Mukhya Nagar Adhikari, Varanasi which is Annexure-CA-12 to the counter-affidavit, admitting that the property never belonged to the State Government and hence the entire proceedings treating it to be Nazul land were illegal and without jurisdiction. In this letter the entire matter has been discussed in great detail. In the Khatauni copy of which is Annexure-CA-13 to the counter-affidavit it is stated that the property belongs to the Union of India.

12. In our opinion, therefore, the State Government or Nagar Nigam, Varanasi had no right to transfer the land to anyone or grant free hold or lease right to anybody. The property belongs to the Government of India and only the Government of India had the right to do so. It seems that the entire action of the Nagar Nigam, Varanasi was wholly illegal and without jurisdiction. The land belongs to the Government of India and it was only given for management to the then Nagar Mahapalika, Varanasi (Now known as Nagar Nigam).

13. Granting the power of management does not, in our opinion, amounts to transfer of title to the land, which, in our opinion, continues to vest in Government of India. Thus, there is no force in this petition and it is dismissed.

14. Interim order is any is vacated.