

(1975) 03 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3293 of 1970

Balbir Singh and Others

APPELLANT

Vs

Indra Kumar and Others

RESPONDENT

Date of Decision : 07-03-1975

Acts Referred:

Contract Act, 1872 — Section 23

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 144, 154, 163

Citation : (1975) AWC 515

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : K.M. Dayal, for the Appellant;

Final Decision : Allowed

Judgement

Satish Chandra, J.—One Smt. Sukhrani had a share in a bhumidhari Khata. She executed a deed of sale on 4th July, 1958, in respect of certain of its plots. On commencement of consolidation proceedings the vendees filed an objection u/s 9 of the Consolidation of Holdings Act claiming to be recorded as bhumidhars over the plots which were purchased by them. It appears that Smt. Sukhrani had died and her personal heirs contested the claim of the vendees. The consolidation authorities have concurrently found that the sale deed executed by Smt. Sukhrani contravened Section 144 of the U.P. Zamindari Abolition and Land Reforms Act, and, therefore, vendees did not acquire any title under it. It was also found that Smt. Sukhrani had inherited the bhumidhari holding from her husband in 1925. She had only a life interest. The sale deed, therefore, became void on her death. For this reason also the vendees were not entitled to be recorded as bhumidhars.

2. In Ramji Dixit v. Bhrigu Nath 1964 AWR 75 a Full Bench of this Court held that a female bhumidhar has power of transfer even though she may have inherited

the holding from a male holder. She acquires full rights in the holding under the Zamindari Abolition and Land Reforms Act. Her interest is not limited to her lifetime. In view of this decision, which was subsequently affirmed by the Supreme Court in *Ramji Dixit v. Bhrigunath* 1968 AWR 748, the sale deed could not be held to have become ineffective on the death of Smt. Sukhrani.

3. The other finding is equally without merit. In *Fakirey v. Board Revenue* 1968 RD 49 and *Barjor v. Deputy Director of Consolidation* 1968 AWR 156 it has been held that a transfer made by a bhumidhar in contravention of Section 154 does not become void. On the execution of the sale deed the interest of the transferee would not be affected and the transferee does become a bhumidhar subject to being liable to ejectment on a suit of the Gaon Sabha. Where Gaon Sabha did not file a suit, it cannot be claimed that the transferee did not acquire any interest or that the transfer was void in law. These authorities are directly applicable to the facts of the present case. In the present case the Gaon Sabha has not filed any suit for the ejectment of the Petitioners. Therefore, the Petitioners were entitled to be recorded as bhumidhars over the plots which were the subject matter of the sale in their favour.

4. For the Respondents reliance was placed upon a Division Bench decision of this Court reported in *Awadesh Kumar v. Board of Revenue* 1974 RD 286. In that case the question was whether the sale of a grove having an area of more than 12 1/2 acres was valid. The Division Bench held that a grove is transferable and is not covered by Section 154 of the Zamindari Abolition and Land Reforms Act. The question whether transfer of agricultural land in violation of Section 154 will be void or voidable was neither raised nor considered by the Division Bench. The decision in *Fakirey v. Board of Revenue* mentioned above was not brought to their notice. This decision is distinguishable.

5. It was further urged that a sale in contravention of Section 154 would be void u/s 23 of the Contract Act, because it will be against public policy. I am not impressed by this submission. The public policy behind Section 154 according to the decision of the Supreme Court in *Krishna Pal Singh v. Babulal* 1969 RD 475, is to place a ceiling on land holdings. This policy has been effectuated by the Legislature in enacting Section 154 as well as Section 163 of the Zamindari Abolition and Land Reforms Act. u/s 163 in case of a transfer in contravention of Section 154, the transferee is liable to ejectment at the suit of the Gaon Sabha. On the ejectment of the transferee the land becomes vacant land. Reading the two provisions together, it is apparent that the public policy was that if a transfer is made in contravention of Section 154, the Gaon Sabha, as the custodian of public land, was given the right to eject the transferee. If the Gaon Sabha does not choose to eject transferee, the transfer remains in operation and the transferee's rights remain unimpaired. It cannot hence be said that the sale in contravention of Section 154 is ipso facto against public policy.

6. In the result the petition succeeds and is allowed. The orders of the consolidation authorities are set aside, and it is directed that the Petitioner be

recorded over the plots which were the subject matter of the deed of sale. The Petitioners will be entitled to costs.