
(2011) 07 AHC CK 0356

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 65976 of 2006

B.R. Nangia

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Uttar Pradesh Bhoodan Yagna Act, 1952 — Section 11(4), 13, 13(3), 14, 14(1)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 131, 131B, 28, 4

Citation : (2011) 10 ADJ 242 : (2012) 1 AWC 262 : (2011) 114 RD 627

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Sudhir Agarwal, J.—Heard Sri M.K. Gupta, learned Senior Advocate, assisted by Sri Vatsal Srivastava, for the petitioner and learned Standing Counsel for the respondents.

2. It is contended by Learned Counsel for petitioner that mutation was allowed by Tehsildar concerned in favour of petitioner in 1997 itself. Thereafter in 2004 an application was filed by Gram Sabha for recall of order of mutation passed in favour of petitioner and thereupon the Tehsildar after for almost eight years and more, without issuing any notice to the petitioner, recalled the order of mutation dated 26.9.1997 vide order dated 3.4.2006 and directed for correction in the entry and, thereafter issued notice to the affected parties.

3. Sri Gupta contended that opportunity of hearing ought to have been allowed to petitioner before recalling order of mutation dated 26.9.1997 and, therefore, impugned order is illegal being in violation of principles of natural justice. The revisional authority has also erred in law in observing that in case of fraud or misrepresentation, no opportunity is required to be given to affected parties. He submitted, if the order has been obtained by fraud or mis-representation, it was incumbent upon by the person concerned, who alleges fraud or mis-

representation, to prove the same and it could not have been done ex parte without hearing the other side. He placed reliance on this Court's decision in Chaturgun and Others Vs. State of U.P. and Others, , Smt Kunti and Others v. Commissioner, Meerut Division, Meerut and Others, 2009 (5) ADJ 728; Bachchu Ram Sing v. Addl. Commissioner (J) Allahabad Division, Allahabad, 2009 (6) ADJ 183; Sanskrit Gram Nirman Sahkari Samiti v. State of U.P. and Others, 2009 (9) ADJ 148; Riz Pal Singh v. State of U.P. and Others, 2009 (9) ADJ 411; Civil Miss. Writ Petition No. 38874 of 2010 (Shri Durgadevi Rural and Educational Society v. State of U.P. and Others, decided on 7.7.2010, and, Civil Misc. Writ Petition No. 13757 of 2011 (Dal Chand and Others v. State of U.P. and Others) decided on 8.3.2011.

4. Sri Gupta further contended that the impugned order was passed by Tehsildar since Gram Sabha has raised an objection that the land in question was donated pursuant to the Bhoodan Yagna, a movement initiated by Acharya Vinoba Bhave, by voluntary gift with a view to distribute to the landless persons and, therefore, could not have been transferred under the provisions of U.P. Bhoodan Yagna Act, 1952 (hereinafter referred to as "Act 1952"). Ignoring the provisions of the said Act, it was first recorded as "transferable" and thereafter has been sold. He contended that Tehsildar ignored the fact that even if the land in question was governed by Act 1952, Section 14(1) provides, when the grant of land is given to landless persons, it shall vest in the grantee with rights and liabilities of a Bhumidhar with non transferable rights. Subsequent amendment of U.P. Zamindari Abolition (sic) and Reforms Act, 1950 (hereinafter referred to as "Act 1950") and insertion of Section 131B providing that after ten years, Bhumidhar with non transferable rights would get transferable right would apply to land governed by Act 1952 and this aspect has been completely ignored by Tehsildar in passing the impugned order.

5. Learned Standing Counsel, having gone through the various authorities on the subject as also the record of the matter, could not dispute that the order impugned in this writ petition was adverse to the interest of petitioner and ought not to have been passed without giving opportunity of hearing to the petitioner.

6. Learned Standing Counsel, however, seriously opposed the argument of Sri M.K. Gupta with respect to applicability of Section 131-B of Act 1950 and contended that it would not apply to the land in respect where to a grant has been made to landless persons under Act 1952 even though the grantee enjoyed the land as Bhumidhar with non transferable rights and is so mentioned u/s 131 of Act 1950. He contended that the land covered by 1952 Act cannot become "Bhumidhari land with transferable rights" inasmuch the provisions of Act 1950 shall not override the provisions of 1952 Act.

7. Before coming to the question of non observance of principle of natural justice, the pure legal question with respect to application of Section 131-B of Act 1950 in respect to land governed by 1952 Act, I find it appropriate to deal with this issue first since it is a pure question of law and needs to be clarified by

this Court.

8. Act 1952 was enacted to facilitate donation of land in connection with the Bhoodan Yagna initiated by Acharya Vinoba Bhave and to provide for settling of such land on the landless persons. The statute was enacted realizing certain difficulties faced in respect to donation of land by the persons having agricultural land in view of certain provisions of Act 1950 and to overcome such difficulties. The statement of objects and reasons published with Act 1952 in U.P. Gazette, Extraordinary, dated 21.11.1952 reads as under:

In the last cold weather Acharya Vinoba Bhave started the Bhoodan Yagna movement with a view to obtain land so that it could be distributed among the landless persons of the State. The response of the people of the State was very encouraging. The Zamindars as well as the tenants donated their land to Acharyaji. There were, however, certain legal difficulties. The donations made by the zamindars were defective according to the provisions of Section 28 of U.P. Zamindari Abolition and Land Reforms Act, 1950. The tenants did not possess any right to transfer their lands by gift. The Bill is intended to remove these and certain other legal difficulties and to ensure the achievements of the object of this movement. Both in regard to the donations of land to the Bhoodan Yagna and its distribution to the "landless person.

9. The Act contemplates establishment and incorporation of a Committee, namely, Bhoodan Yagna Committee understate of U.P. (hereinafter referred to as "Bhoodan Committee") having perpetual succession, a body corporate, vested with the capacity to sue and being sued in its corporate names acquiring, holding, administering and transferring property, both movable and immovable and entering into contracts. The constitution of Bhoodan Committee and other details are contained in Sections 4, 5 and 6 of 1952 Act-The duties of the Committee are contained in Section 7, which reads as under:

7. Duties of the Committee.--(1) It shall be the duty of the Committee to administer all lands vested in it for the benefit of the Bhoodan Yagna.

(2) The Committee shall for the purpose of Bhoodan Yagna perform such other functions and possess such other powers as may be necessary in respect of such land.

10. The land which is donated and is governed by Act 1952 after such donation is completely vest in "Bhoodan Committee" by virtue of Sections 11(4) and 13(3) (a) of Act 1952. When Bhoodan Committee or Collector, as the case may be, grant land to landless persons, rights conferred upon such person are provided in Section 14 and 15 of 1952 Act which read as under:

14. Grant of land to landless persons.--(1) The Committee or Such other authority or person as the Committee with the approval of the State Government, specify either generally or in respect of any area, may, in the manner prescribed, grant lands which have vested in it to the landless

agricultural labourers and the grantee of the land shall-

(i) where the land is situate in any state which has vested in State Government under and in accordance with Section 4 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, acquire in such land the right and the liabilities of a bhumidhar with non-transferable rights and the grantee of the land shall--

(ii) where it is situate in any other area, acquire therein such rights and liabilities and subject to such conditions, restrictions and limitations as may be prescribed and shall have effect, any law to the contrary notwithstanding.

(2) Where the committee or other authority or person as aforesaid fails to grant any land in accordance with sub-section (1) within a period of three years from the date of vesting of such land in the committee or from the date of commencement of the Uttar Pradesh Bhoodan Yagna (Amendment) Act, 1975, whichever is later, the Collector may himself grant such land to the landless agricultural labourers in the manner prescribed, and thereupon the grantee shall acquire the rights and liabilities mentioned in sub-section (1) as if the grant were made by the committee himself.

(3) Omitted

(4) In making grant of land under this section, the committee or other authority or persona as aforesaid or the Collector, as the case may be, shall observe the following principles:

(a) At least fifty per cent of the land available for grant shall be granted to persons belonging to the Scheduled Castes, Scheduled Tribes and persons belonging to the Kol, Pathari, Khairwar, Baiga, Dharikar, Panika and Gond Tribes and such other tribes as the State Government on the recommendations of the Committee may notify in this behalf;

(b) The land situate in one village shall, as far as possible, be granted to persons residing in that very village.

Explanation.--For the purpose of this section, the expression "landless agricultures labourer" means a person whose main source of livelihood is agriculture labour or cultivation and who at the relevant time either holds no land or holds lands not exceeding 0.40468564 hectares (one acre) in Uttar Pradesh as a bhumidhar, asami or Government lessee.

15. Grants to be made in accordance with Bhoodan Yagna Scheme.-- All grants shall be made as far as may be in accordance with the scheme of Bhoodan Yagna.

11. A grant made under Act 1952 can be cancelled in certain contingencies as provided in Section 15-A, which reads as under:

15-A. Cancellation of certain grants.--(1) The Collector may of his own motion and shall on the report of the committee or on the application of any person aggrieved by the grant of any tend made u/s 14, whether before or after the

commencement of the Uttar Pradesh Bhoodan Yagna (Amendment) Act, 1975, inquire into such grant, and if he is satisfied that the grant was irregular or was obtained by the grantee by mis-representation or fraud, he may-

(i) cancel the grant, and on such cancellation, notwithstanding anything contained in Section 14 or in any other law for the time being in force, the rights, title and interest of the grantee or any person claiming through him in such land shall cease, and the land shall revert to the committee; and

(ii) direct delivery of possession of such land to the committee after ejectment of every person holding or retaining possession thereof, and may for that purpose use or cause to be used such force as may be necessary.

(2) Notice of every proceeding under sub-section (1) shall be given to the committee, and any representation made by the committee in relation thereto shall be taken into consideration by the Collector.

(3) No order shall be passed under sub-section (1) except after giving an opportunity of being heard to the grantee or any person known to the Collector to be claiming under him.

(4) The order of the Collector passed under sub-section (1) shall be final and conclusive.

12. Act 1950, in essence, has not been made applicable to Act 1952 in its entirety to the land governed by Act 1950. Therefore, all the provisions of Act 1950 cannot be applied to the grant of land governed by Act 1952 ipso facto.

13. Further, Section 17 of Act 1952 confers power upon the State Government to make Rules for the purpose of carrying into effect the provisions of the Act. Sub-section 2 (k) says specifically that Rules may provide for the matters relating to the land in pursuance of Section 14.

14. In purported exercise of power u/s 17 of Act 1952, U.P. Bhoodan Yagna Rules, 1953 (hereinafter referred to as "Rules 1953") has been framed.

15. Rule 3 provides that after grant of land by the Bhoodan Committee to a grantee, the grantee as also the land which is subject of the grant shall, subject to the provisions of the Act, be governed by the prevailing law relating to land-tenure.

16. This makes it clear that Act 1950 would apply to the land Governed by Act 1952 but subject to Act 1952. Rule 14 (2) provides two aspects, firstly in respect to the land to which Act 1950 does not apply. It says that the grantee shall acquire such rights and liabilities as the Bhoodan Committee may confer under the law. In general, for all grantees it says that the grantee shall be subject to the following conditions, restrictions and limitations:

(i) the grantee shall pay the rent to the Committee in such instalments and on such dates as the Committee may specify;

(ii) the grantee shall not be entitled to sublet or transfer the land; and

(iii) the grantee shall not be entitled to use the land for any purpose other than for which it was granted.

17. Therefore, it is very much clear under the Rules also that grantee shall not be entitled to sublet or transfer the land and cannot use it for the purpose other than it was granted.

18. In the circumstances, in absence of anything to show that Act 1950 had overriding effect over the Act 1952, it cannot be said that land once granted by means of grant by Committee would be governed by the provisions of Act 1950 in all respect including Section 131-B ignoring the provisions of Act 1952.

19. Now, I come to another issue, namely, denial of opportunity to petitioners. It is well settled that an order, adverse to interest of a person, which has civil consequences, ought not to have been passed without affording any opportunity of hearing.

20. It is true that the order of mutation does not confer any right or title upon the incumbent; but, when statutory authority has passed some order, before recalling, it ought to have afforded opportunity to the affected persons). The principles of natural justice in this regard have been extended even to administrative orders. The necessity of giving opportunity in such matters has been stressed upon by observing in para 9 in Chaturgun and others (supra) as under:

9. Revenue authorities/Courts must remember that a party can in some cases successfully show that entry of his name in the revenue record is correct and not fake or based upon fake order. This question can be decided only and only after hearing the party concerned and likely to be affected.

21. Various authorities cited on behalf of petitioner also support his contention that he was entitled for opportunity of hearing before Tehsildar could have passed the order impugned in this writ petition.

22. In view of above, writ petition is allowed. Impugned order dated 3.4.2006 (Annexure 11 to writ petition) and revisional order dated 11.9.2006 (Annexure 13 to writ petition) are hereby quashed. Matter is remanded to Tehsildar to consider afresh after giving opportunity of hearing to petitioner also and pass a fresh order in accordance with law.

23. Considering the fact that the matter is sufficiently old, Tehsildar shall complete the process, as directed above, expeditiously, and, in any case, within three months from the date of production of a certified copy of this order.

24. It is, however, made clear that till the matter is decided by Tehsildar, the property in dispute shall not be sold or transferred in any manner by the petitioner. He shall not be entitled to claim any benefit on the basis of existence of entry in his favour in any transaction with respect to property in dispute. He

shall not change the nature of the property and shall not create third party rights.