
(1968) 07 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3820 of 1968

Chidda Singh

APPELLANT

Vs

Arjun Singh and others

RESPONDENT

Date of Decision : 18-07-1968

Acts Referred:

Constitution of India, 1950 — Article 19(1)(f)

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 5(c)(ii)

Citation : (1968) 38 AWR 689

Hon'ble Judges : M.H. Beg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.H. Beg, J.—The Petitioner Chidda Singh seeks a writ of certiorari from this Court for quashing the orders of the Settlement Officer (Consolidation) passed on 14-3-1963 and of the Deputy Director of Consolidation passed on 11-6-1963. The Petitioner's claim to be the tenure-holder and a cosharer in khatas Nos. 47, 49 and 50 of village Narainpur, Pergana and Tahsil Khafr, in the district of Aligarh, on the ground that he was a bonafide transferee who had obtained the sale deed dated 22-1-1962, of the rights of Smt. Kausha-liya, opposite party No. 9, for Rs. 2500/- and had obtained possession of the share of Smt. Kaushaliya after the sale deed, was allowed by the Consolidation Officer. The Consolidation Officer rejected the claim of Smt. Jai Devi, opposite party No. 5 and others, put forward on the strength of a second sale deed executed by Smt. Kaushaliya, on 2-5-1962, of her share for Rs. 3000/- after permission of the Settlement Officer given on 30-4-1962. The objection of Smt. Jai Devi and others was that Smt. Kaushaliya who was not in possession of the land, had executed a legally void sale deed in favour of the Petitioner on 22-1-1962 as there was no permission of the Settlement Officer so that the sale deed in favour of the Petitioner contravened the provisions of Section 5(c)(ii) of the UP Consolidation of Holdings Act (hereinafter referred to as the Act). It is also alleged by Jai Devi and others that the sale deed in favour of the Petitioner was fraudulent, but this plea was

also repelled by the Consolidation Officer. The officer held that a permission obtained subsequently on 16-3-1962 to sell to the Petitioner cured the legal defect. The Consolidation Officer, therefore, did not enforce the claim of Smt. Jai Devi and others based on a second permission of the Settlement Officer (Consolidation) to sell to them obtained on 30-4-1962 as a result of which they obtained the second sale deed dated 2-5-1962. The view of the Consolidation Officer was that the provisions of the Act were directory only and did not have the effect of invalidating the first sale deed in favour of the Petitioner.

2. The view taken by the Settlement Officer (Consolidation) opposite party No. 11 in an appeal filed by the contesting opposite parties against the order of the Consolidation Officer was that Section 5(c)(ii), read with Section 45-A(2) of the Act, made the sale deed in favour of the Petitioner void. The appeal of the opposite parties having been allowed, the Petitioner went up in revision to the Deputy Director of Consolidation who also upheld the claim of the opposite parties and affirmed the view taken by the Settlement Officer (Consolidation) as against the view taken by the Consolidation Officer. The arguments advanced before the consolidation authorities have been repeated in this Court and an additional argument put forward was that Section 5(c)(ii) is constitutionally invalid if its provisions are mandatory, because, in that case, the Petitioner's fundamental right to acquire and hold property would be, it was submitted, unreasonably curtailed.

3. Section 5(c)(ii) provides: Notwithstanding anything contained in the UP ZA and LR Act 1950 (UP Act I of 1951) no tenureholder, except with the permission in writing of the Settlement Officer (Consolidation), previously obtained shall--

(i)

(ii) transfer by way of sale, gift or exchange any part of his holding in the consolidation area.

Section 45-A (2) of the Act provides : "A transfer made in contravention of the provisions of Section 5(c)(ii) shall not be valid or recognised, anything contained in any other law for the time being in force, to the contrary notwithstanding." The intention of the Legislature, therefore, to make sales in contravention of provisions of Section 5(c)(ii) invalid was expressed in quite unmistakable language. The permission of the Settlement Officer had to be obtained previous to the sale or transfer. This is also made clear beyond any doubt. Therefore, if the provision was effective and valid, the sale in favour of the Petitioner was certainly invalid.

4. The Petitioner, however, raised the contention that the requirements of Section 5 of the Act giving effect to declarations made u/s 4 of the Act could only take effect after a declaration had been published in the official Gazette as well as in the particular unit of the district in which the land in question lay. The Petitioner relied on the terms of Section 4 read with Section 5. Section 4 reads as follows:

Declaration regarding consolidation.--

(1) Whenever the State Government decides to start consolidation operations in a district or part thereof, it may issue a declaration to this effect.

(2) Every such declaration shall be published in the official Gazette and in each unit of the said district.

Section 5 opens with the following words:

Effect of declarations--Upon the publication of the notification u/s 4 in the official Gazette, the consequences, as hereinafter set forth, shall, subject to the provisions of this Act, from the date specified thereunder till the publication of notification u/s 52 or Sub-section (1) of Section 6, as the case may be, ensue in the area to which the declaration relates, namely....

5. It is true that the declaration has to be published both in the official Gazette and in each unit of the district covered by the declaration, but Section 5 speaks of consequences ensuing from the publication in the official Gazette and does not, in addition, make publication in the unit also a condition precedent for the consequences laid down in Section 5 to ensue. It was urged that, without publication of a declaration in each unit covered by the declaration also, the declaration could not be effective in that unit as it would be no declaration at all in the eye of law, for that unit. If this was the intention behind Section 4(2) Section 5 would have required publication in the official Gazette as well as in each unit covered by the declaration as a condition precedent to consequences ensuing from publication. The clear language of Section 5 indicates that the consequences of the declaration flow from publication in the official Gazette only. Of course, if a person could show that he had been prejudiced by the absence of publication in the unit of a district he may be able to rely on Section 4(2) for condonation of some inaction on his part due to failure to obtain knowledge of the declaration. Nevertheless, the law makes it clear that the consequences of the declaration will ensue from the publication in the official Gazette. Therefore, the whole of the consolidation proceeding in a unit could not be invalidated simply because there was no publication in the unit in which the land in dispute lay. The consolidation authorities did not give a finding that there was no publication in the unit, but they dealt with this argument on the assumption that there was no publication in the unit involved as that does not seem to have been disputed there. I, however, find no error in the view taken by the Deputy Director of Consolidation and the Settlement Officer (Consolidation) that mere non-publication of the declaration in a unit of a district would not prevent the consequences from ensuing because of the clear provisions of Section 5 of the Act.

6. The question whether Section 5(c)(ii) operates as an unreasonable restriction upon the fundamental rights of the Petitioner to hold and acquire property guaranteed by Article 19(1)(f) of the Constitution is also not acceptable. There is no prohibition upon a sale or transfer. The only requirement is that the

permission of the Settlement Officer (Consolidation) should be taken. Such a requirement seems very reasonable when a village has come under consolidation operations and a scheme has to be prepared in which compact areas have to be allotted on certain principles to tenureholders. This contention, therefore, has no force.

7. The Settlement Officer has also given a satisfactory reply to the argument that, at the time when the Petitioner obtained a sale in his favour, there was no Settlement Officer for Tahsil Khair. The answer was that the Settlement Officer responsible for the Tahsil at that time could have given the permission. In any case, the Petitioner could also have waited a little longer for the Settlement Officer to be appointed. The Settlement Officer was separately appointed for this Tahsil a little later and gave the permission required. The evidence was that the permission given on 16-3-1962 for sale to the Petitioner was subsequent to the sale and therefore, of no effect on the view taken by the consolidation authorities, which accords with Section 5(c)(ii). No second sale deed was executed in pursuance of this permission in favour of the Petitioner. On the other hand, a second permission subsequently granted on 30-4-1962 was duly acted upon by the sale deed executed in accordance with it on 2-5-1962. The remedy of the Petitioner, if any, is by way of a suit for recovery of money from his vendor.

8. This writ petition fails. As no one appears for the opposite parties I make no order as to costs.