

(2002) 10 AHC CK 0108
In the Allahabad High Court
Case No : C.M.W.P. No. 21626 of 2002

Col. Ranjit Prasad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-10-2002

Acts Referred:

Citation : (2003) 1 AWC 190

Hon'ble Judges : Rakesh Tiwari, J;M. Katju, J

Bench : Division Bench

Advocate : Manish Goyal, for the Appellant;

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the petitioner and the learned counsel for the respondents.

2. The writ-petitioner has moved this writ-application for a direction to the respondents in the nature of mandamus commanding them to grant freehold rights in respect of a portion of Nazul Plot No. 108 bearing Municipal No. 54. Civil Lines, Bareilly.

3. According to the petitioner, the property in question is a part of Nazul Plot No. 108, village Makarandpur Sarkar, Bareilly and was purchased by his predecessor late Het Ram from Madho Rao Peshwar vide registered sale deed dated 13.4.1980. The aforesaid sale deed was registered in book No. 1 Vol 50 pages 132 to 396 on 30.4.1980.

4. It is averred that there was a family partition among the sons of Pt. Het Ram and the property bearing Municipal No. 54, Civil Lines, Bareilly, came into the share of Pt. Madho Prasad, the grandfather of the petitioner. The pedigree of Pt. Madho Prasad is given below :

Madho Prasad _____|
Mathura Prasad Rewati Prasad Kamta
Prasad Rejendra Prasad | | | Window smt. Ashok Prasad Kamal Prasad Ranjit

Prasad | _____ | | | Jaswant Prasad
Ajit Prasad Km. Geeta Prasad (Daughter) 5. It is submitted by the counsel for the petitioner that at the time of enforcement of Act No. 33 of 1976 Urban Land (Ceiling and Regulation) Act, 1976, statements of successors and heirs of late Madho Prasad were filed claiming 1/4th share each for the strips of Mathura Prasad, Rewati Prasad, Kamta Prasad and Rajendra Prasad out of the total area of the Property No. 54, Civil Lines, Bareilly, measuring 183341.90 sq. meters and in the map of family settlement filed in Urban Ceiling Proceedings, the area allotted to each of the share holders of property bearing Municipal No. 54, Civil Lines was clearly demarcated and was admitted to the parties and as such, there is no dispute about the share of the petitioner.

6. He further submits that an advertisement was issued by the District Magistrate, Bareilly, Inviting applications for grant of freehold rights over the property in dispute to those who are the ex-lessee or those who are in possession over the land in dispute vide advertisement dated 19.1.1999 in newspaper "Dainik Jagaran" which has been appended as Annexure-1 to the writ petition. The petitioner in pursuance of the aforesaid advertisement filed an application for grant of freehold rights. Notices were issued to all the co-owners for filing objections.

7. The petitioner submits that the Mukhya Nagar Adhikari, Nagar Nigam, Bareilly, vide letter dated 26.4.2002, had informed the Additional District Magistrate (Finance and Revenue), Bareilly, that the petitioner is in possession of the land in dispute. The petitioner has also deposited a sum of Rs. 2,25,750, i.e., 25% of the total rate, which is being charged by the respondents for conversion of the property into a freehold as per the requirement.

8. The grievance of the petitioner is that inspite of the fact that he is In possession of the land in dispute and has deposited 25% of the total rate being charged for grant of freehold rights in accordance with the Government policy, the respondents are not issuing any direction for conversion of the land into freehold property in view of the interim order passed in Writ Petition No. 4061 of 1999. The interim order is as under :

"Standing counsel may file counter-affidavit within a month. Until further orders of this Court the impugned G. O. dated 1.12.1998, in so far as it relates to the petitioners shall remain stayed."

9. A perusal of the interim order would show that the effect of the G. O. dated 1.12.1998 was stayed in so far as it related to the writ petitioners of Writ Petition No. 4061 of 1999, hence by no stretch of imagination can the interim order dated 1.2.1999, be a bar for the writ petitioner of the present writ petition. In the circumstances stated above, it is clarified that the interim order dated 1.2.1999 was passed on its own peculiar facts and circumstances of the case in Writ Petition No. 4061 of 1999 only and is not applicable to the petitioner of the present writ petition.

10. Writ Petition No. 4061 of 1999 was filed by Yogesh Prasad son of Doctor Rameshwar Prasad, Jaswant Prasad son of late Pt. Mathura Prasad and Ashok Prasad son of late Sri Revati Prasad. The writ petitioners of Writ Petition No. 4061 of 1999 are residents of 55, Civil Lines, Bareilly and not of 54, Civil Lines, Bareilly. In the aforesaid writ petition. Government order dated 1.12.1998, had been challenged in so far as it related to the writ petitioners in that writ petition and the share of the petitioner in the present writ petition was already accepted, the petitioner has relied upon copy of the judgment issued by the Celling Authority in this regard, which has been filed as Annexure-8 to the writ petition.

11. The contention of the petitioner is that the interim order in Writ Petition No. 4061 of 1999, only stays the effect of the Government order dated 1.12.1998, in so far as it related to the petitioners in that writ petition and the stay order is not applicable to the petitioner of the present writ petition as he has a separate right and entity which has been acknowledged by the petitioners of the said writ petition and has been decided judicially and the Interim order granted by this Court in Writ Petition No. 4061 of 1999, is not a bar for grant of freehold rights to the petitioner.

12. In this view of the matter, the petitioner's case for grant of freehold rights is liable to be considered by the respondents in accordance with law. Under the circumstances stated above, the respondents are directed to consider the application of the petitioner for grant of freehold rights in accordance with law preferably within a period of two months from the date of production of a certified copy of this order.

13. With the aforesaid clarification and observations the writ petition is disposed of finally.