

(2018) 09 UK CK 0024

In the Uttarakhand High Court

Case No : Writ Petition No. 2143 (MS) of 2009

Diwan Singh

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 06-09-2018

Acts Referred:

Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 — Section 157B
Constitution of India, 1950 — Article 14, 300A

Citation : (2018) 09 UK CK 0024

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Sudhir Kumar, Pankaj Purohit, V.D. Bisen

Final Decision : Dismissed

Judgement

Alok Singh, J.

1. Petitioner has approached this Court seeking to quash the provisions of Section 157B of the U.P. Zamindari Abolition & Land Reforms Act, 1950

being ultra vires and unconstitutional.

2. Brief facts of the present case are that petitioner is a member of Scheduled Tribes community namely Buxa. Petitioner is recorded as a Bhumidhar

with transferable rights of 1.3040 hectares of land in Village Veerpur Lachchi, Tehsil Ramnagar, District Nainital. Petitioner took loans from Bank of

Baroda and Allahabad Bank and mortgaged the aforesaid land. Now, petitioner wants to sell this land in order to pay his loans but there is restriction

on the members of scheduled tribes, on transfer of land, as per provision of Section 157B of the U.P. Z.A. & L.R. Act. Feeling aggrieved, petitioner

approached this Court.

3. Heard Mr. Sudhir Kumar, Advocate for the petitioner and Mr. Pankaj Purohit, Deputy Advocate General with Mr. V.D. Bisen, Brief Holder for the State of Uttarakhand.

4. Mr. Sudhir Kumar, Advocate for the petitioner submits that this restriction is adversely affect the petitioner. Had this restriction not there, petitioner would have sold his land on a better price. He further submits that land mortgaged by him can be sold by the bank but he cannot sell his own land, which amounts to discrimination and violation of Article 14 of the Constitution of India. He further submits that Article 300A provides that no person shall be deprived of his property save by authority of law.

5. Mr. Pankaj Purohit, Deputy Advocate General submits that this Court can declare any provision of Act as ultra vires or unconstitutional, if petitioner is able to prove that it lacks legislative competence or it is violative of any fundamental right. Here, it is only apprehension of the petitioner that he would get better price of his land, if there is no restriction.

6. The Seven Judge Constitution Bench of Hon'ble Apex Court in the case of Budhan Choudhry Vs. State of Bihar reported in AIR 1955 SC 191

has explained the true meaning and scope of Article 14, which reads as follows:-

It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In

order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an

intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must

have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely,

geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification

and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only

by a substantive law but also by a law of procedure.

7. In the case of Ram Krishna Dalmia Vs. S.R. Tendolkar reported in AIR 1958 SC 538, the Hon'ble Supreme Court laid down the principles

which would help in testing the legislation on the touchstone of Article 14 in the following words :

â??(a) That a law may be constitutional even though it relates to a single individual if on account of some special circumstances or reasons applicable

to him and not applicable to others, that single individual may be treated as a class by himself;

(b) That there is always presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there

has been a clear transgression of the constitutional principles;

(c) That it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to

problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) That the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the

clearest;

(e) That in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of

common report, the history of the times and may assume every state of facts which can be conceived existing at the time of the legislation; and

(f) That while good faith and knowledge of the existing conditions on the part of the legislature are to be presumed, if there is nothing on the face of

the law or the surrounding circumstances brought to the notice of the court on which the classification may be reasonably be regarded as based, the

presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for

subjecting certain individuals or corporations to hostile or discriminating legislation.

8. In view of law laid by the Constitution Bench, in my view there is no discrimination with the petitioner being a member of Scheduled Tribes. Bank

and petitioner are two different entities having different status. The object sought to be achieved by inserting Section 157 B in the Act is to protect the

land of members of Scheduled Tribes from musclemen, influential persons or land mafias etc. This Section is for the welfare of members of

Scheduled Tribes. Their Lordships in the case of Ram Krishna Dalmia (supra) held that a single individual may be treated as a class by himself. In the

present case, petitioner has not been deprived from his any constitutional right,

therefore, does not create a class in himself. More so, Article 300A provides that no person shall be deprived of his property save by authority of law and this has been strengthened by Section 157B. Section 157B does not create absolute bar on the transfer of land. The land can be transferred to a person belonging to Scheduled Tribes. I do not find by imposing a restriction petitioner has been deprived from any right.

9. In view of the above discussion, I do not find any force in the writ petition. Accordingly, the same is dismissed. No order as to costs.