

(1981) 11 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10454 of 1981

Ghurhu

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 19-11-1981

Acts Referred:

Transfer of Property Act, 1882 — Section 43, 48, 6
Uttar Pradesh Land Laws (Amendment) Act, 1977 — Section 73, 73(1), 73(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 134, 135
Transfer of Property Act, 1882 — Section 43, 48, 6
Uttar Pradesh Land Laws (Amendment) Act, 1977 — Section 73, 73(1), 73(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 134, 135
Transfer of Property Act, 1882 — Section 43, 48, 6
Uttar Pradesh Land Laws (Amendment) Act, 1977 — Section 73, 73(1), 73(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 134, 135

Citation : (1982) AWC 37

Hon'ble Judges : K.N. Misra, J

Bench : Single Bench

Advocate : S.P. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

K.N. Misra, J.—Heard the learned Counsel for the Petitioner and perused the impugned order passed by Respondent No. 1. Respondent No. I has passed order dated 20th May, 1981 directing that the revision along with all proceedings u/s 134 of the UP ZA & LR Act shall abate in view of provisions of Section 73 of U.P. Land Laws (Amendment) Act, 1977. Learned Counsel for the Petitioner contended that the Board of Revenue should not have directed the proceedings u/s 134 of the UP ZA & LR Act to abate. I do not agree with this contention. Section 73 of the U.P. Land Laws (Amendment) Act reads as follows:

Transitory provisions : Notwithstanding anything contained in any other law for the time being in force all proceedings for acquisition of Bhumidhari rights under Sections 134 and 135 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, as they stood immediately before January 28, 1977 and all

proceedings arising therefrom pending on such date before any court or authority shall abate.

(2) Where any proceeding has abated under sub-section- (1) the amount deposited for the acquisition of such rights shall be refunded to the person depositing the same or his legal representative as the case may be.

In view of the aforesaid provisions I do not think that the opposite party No. 1 has committed any error in directing the revision and all other proceedings u/s 134 of the U.P. Zamindari Abolition and Land Reforms Act to abate nor the same is, in any manner, illegal or without jurisdiction.

2. Learned Counsel for the Petitioner contended that in the present case his grievance is that he should get back the money which he has deposited for obtaining Bhumidhari Sanad and since the proceedings have been ordered to abate, his right to get back the amount will be affected. I am unable to agree with this contention in view of express provision contained under Sub-section (2) of Section 73, which provides that where any proceeding has abated under sub-section (1) the amount deposited for the acquisition of such rights shall be refunded to the person depositing the same or to his legal representatives as the case may be.

3. Learned Counsel for the Petitioner next contended that the effect of the order of abatement will be that the vendees will contend that the sale deed executed by the Petitioner in their favour is valid and enforceable. The Petitioner, in my opinion, cannot escape this consequence, which is bound to follow irrespective of the abatement of the proceedings. The legal effect of the provisions contained u/s 73 of the U.P. Land Laws Amendment Act, 1977 would be that all proceedings for acquisition of Bhumidhari rights in respect of the land in question shall stand abated and the applicant tenure holder would be deemed to have become Bhumidhar of the land. The Petitioner cannot escape the consequence of his becoming Bhumidhar of the land in dispute under the provisions of the Act No. VIII of 1977. He, having transferred the land for valuable consideration, cannot be permitted to wriggle out of the transaction of sale. A person who transfers land of his holding for a consideration cannot be allowed to seek the help of the court to repudiate the transaction on the ground that it was void transaction, in view of the principles part dilicto. What is done in contravention of an enactment cannot be made subject matter of an action and the contravener cannot be permitted to seek assistance of court urging that his action, being in contravention of a provision of a statute, is void and the same be not recognised. No court of law will assist a person who derives benefit by performing a thing which is a contravention of a provision of an enactment and subsequently turns round to urge that what he had done was illegal and it be not given effect to against him. In the present case, however, when the revision was still pending before the Board of Revenue, the Petitioner acquired Bhumidhari rights under the aforesaid Amending Act No. VIII. Thus the doctrine of feeding the grant by estoppel would apply to the present case. The Petitioner had executed the sale

deed professing to be Bhumidhar of the land in question and as such Bhumidhari rights, which later on accrued to the Petitioner, would, therefore, operate to feed the grant by estoppel u/s 48 of the Transfer of Property Act. Thus the sale deed in question cannot be challenged by the Petitioner on the ground that he was Sirdar at the time when he had executed the sale deed.

4. The effect of the accrual of Bhumidhari right under the provisions of the U.P. Land Laws (Amendment) Act, 1977 (U.P. Act No. VIII of 1977) would be that the sale deed executed by the Petitioner would be valid and enforceable in view of the provisions contained u/s 43 of the Transfer of Property Act because the Petitioner has executed sale deed professing to transfer the land as Bhumidhar and transferred his Bhumidhari interest in the land in question to the transferees. It has been held by this Court in Jagat Narain v. Lalji 1964 AWR 546, that:

If a person professed to transfer the interest of a Bhumidhar in a land in which he had only the non-transferable interest of a sirdar but he subsequently acquires in the land the interest of a Bhumidhar the benefit of the subsequent acquisition would go to the transferee, u/s 43 of the Transfer of Property Act, and he subsequently acquired interest of Bhumidhar will be deemed as having passed to the transferee under the transfer in his favour. Section 6 of the Transfer of Property Act cannot stand in the way of the applicability of section 43 of the Transfer of Property Act because these two provisions have different spheres of operation and the question of conflict between them does not arise. In the present case, therefore, the benefit of acquiring statutory rights of subsequent Bhumidhar in view of the provisions of the aforesaid Act would go to the transferee under the provisions of Section 43 of the Transfer of Property Act. The Petitioner, therefore, cannot successfully urge that the sale deed executed by him is void as he was merely Sirdar on the date of the execution of the sale deed.

5. In this view of the matter, I am of the opinion that the contention of the learned Counsel for the Petitioner to the effect that the sale deed executed by the Petitioner is void as he was merely Sirdar on the date of execution of sale deed, cannot be upheld, being devoid of merit.

6. Learned Counsel for the Petitioner next contended that although the revision filed by the opposite party arose out of proceedings u/s 134 of the UP ZA and LR Act, but it could not be ordered to abate, as no order was passed for grant of Sanad Bhumidhari to the Petitioner. I am unable to agree with this contention. It cannot be disputed that the revision which was filed by the opposite party arose out of proceedings u/s 134 of the UP ZA and LR Act and as such u/s 73 of the U.P. Land Laws (Amendment) Act, the revision, along with all proceedings u/s 134 of the UP ZA and LR Act, were to abate. Although no order granting Bhumidhari Sanad was passed, nonetheless the proceedings were one u/s 134 of the said Act and as such, in my opinion, the revision arising therefrom was rightly ordered to abate. The amount which the Petitioner had deposited would be liable to be refunded to him in view of the provisions contained under Sub-section (2) of Section 73 referred to above.

7. Learned Counsel lastly contended that the Petitioner had applied for grant of Bhumidhari Sanad on 26th April, 1971 and on that very day, within few hours of his depositing the twenty times of rent for obtaining Bhumidhari Sanad, he had applied for withdrawal of the twenty times of rent which he had deposited for obtaining Sanad Bhumidhari, as he was defrauded in applying for grant of sanad Bhumidhari and in executing the sale deed in favour of the opposite parties. I am unable to agree with this contention. The Petitioner has annexed to the writ petition, as Annexure-1, the true copy of the application dated 26th April, 1971, by which he had prayed for return of the money which he had deposited in obtaining Sanad Bhumidhari. I have gone through that application and I find that nowhere in that application the Petitioner has alleged that he was defrauded in applying for grant of Sanad or in execution of the sale deed in favour of the opposite party. In the said application he had merely stated that he had on 26-4-1971 deposited a sum of Rs. 178.20 for obtaining Bhumidhari Sanad which has not yet been prepared. He does not want, for the present to obtain the Bhumidhari Sanad and as such the amount deposited by him be refunded to him. The aforesaid contention of the learned Counsel thus, appears to be based on wrong assumption of facts. The Petitioner had not alleged in his aforesaid application that he was defrauded in applying for grant of Bhumidhari Sanad or in execution of the sale deed. In these circumstances, I am unable to agree with the aforesaid argument of the learned Counsel for the Petitioner that since the Petitioner was defrauded he could withdraw the amount which he had deposited in obtaining Sanad Bhumidhari.

8. In view of above, I do not find any merit in this writ petition. It is accordingly dismissed in limini.