
(1980) 09 AHC CK 0033

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7230 of 1974

Guggan

APPELLANT

Vs

Board of Revenue and others

RESPONDENT

Date of Decision : 23-09-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176, 178

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 159B

Citation : (1980) 09 AHC CK 0033

Hon'ble Judges : K.P.Singh, J

Final Decision : Dismissed

Judgement

K. P. Singh, J.

By means of this writ petition the petitioner has prayed for quashing the judgments of opposite parties Nos. 1 to 3 which are Annexures 1 to 4 attached with writ petition.

It appears that opposite party No. 4 Tala had filed a suit for partition under Section 176 of the U. P. Zamindari Abolition and Land Reforms Act. The share of the petitioner and the contesting opposite party No. 4 and 5 was determined as 1/3 each. Since the disputed property was less than 31/8 acres, hence it was to be sold and the proceed thereof was to be distributed amongst the cosharers in view of the provisions of Section 178 of the U. P. Zamindari Abolition and Land Reforms Act. The opposite party No. 4 Tala had filed an application with the allegations that he and opposite party No. 5 Girwar were landless persons, hence they were entitled to purchase the disputed property whereas the petitioner had filed an application alleging that he was entitled to purchase the disputed property as he had spent a sum of Rs. 1500/ in making the disputed land cultivable. The trial Court, through its judgment dated 981973, rejected the claim of the petitioner. Aggrieved by the judgment of the trial Court the petitioner preferred an appeal which was dismissed by the appellate Court

through its judgment dated 21111973. Thereafter the petitioner preferred a second appeal which was also dismissed by the second appellate Court through its judgment dated 1681974. A review petition was filed which also stood dismissed through the order passed by the second appellate Court on 2791974, hence the petitioner approached this Court under Article 226 of the Constitution and has approached for quashing of the four judgments.

It is noteworthy that during the pendency of the appeal before the appellate Court it appears that the petitioner had transferred his interest in the disputed land to one Roop Singh who was probably a landless person and had a preferential right to purchase and his claim was pressed by the petitioner in the first appeal and the appellate Court has expressed itself in the following words:

".....In case any of the parties concerned have transferred their title to any person who would also be entitled to preferential right to purchase necessary substitution in the order, appeal may be made before its execution."

Before me, the learned counsel for the petitioner has contended that in view of Rule 159B of the U. P. Zamindari Abolition and Land Reforms Rules, the revenue Courts have patently erred in not accepting the claim of the petitioner. Rule 159B reads as below:

"159B. The following shall be the order of preference for sale to cotenureholders under Section 179

(a) a cotenureholder, who does not hold any land in the circle other than his interest in the holding in suit;

(b) A cotenureholder, who is an asami in the circle but does not hold any land as bhumidhar or sirdar other than his interest in the holding in suit; and

(c) A cotenureholder, holding land less than 3? acres in area in the circle as a bhumidhar or sirdar other than his interest in the holding in suit.

On the findings recorded by trial Court the case the petitioner is covered under Rule 159B (c), hence the judgment of the trial Court appears to me quite correct.

In Roshan Singh v. Rajendra Kumar(1976 R.D. 193), a learned Member, Board of Revenue while considering the scope of Rule 159B has expressed himself in the following words vide Paragraph 5 of the judgment :

".....It is not disputed that on the date the suit was brought the appellant had some other land as well, though later on he sold it off. Thus if adjudged with reference to the date of the suit the respondent is definitely entitled to the benefit given to him by Rule 159B. Thus in my view it is definitely an attempt on his part to circumvent the provisions of law in order to defeat the preferential claim of the respondent. Such transaction cannot be taken into account while determining the order of preference. In such a case, in my view, material date would be the date of the suit and not the date after which the other cotenureholder disposed off his interest in land other than the land in dispute.

Subsequent transfer by the cosharer during the pendency of the suit should not be allowed to defeat the rights of the other cotenureholders."

To my mind, the learned Member in the aforementioned ruling has correctly construed the scope of Rule 159B of the U. P. Zamindari Abolition and Land Reforms Act.

The learned counsel for the petitioner contended before me that due to the saledeed executed by the petitioner in favour of Ram Rup Singh, the petitioner had only interest in the holding and was at par with the contesting opposite parties in the present writ petition; hence his claim should have been allowed. In my opinion, one cannot be permitted to circumvent the provisions of law by his voluntary act. If the petitioner had transferred his interest in the holding other than the holding in suit to Roop Singh, his action would be only to defeat the provisions of law and he cannot be permitted to take benefit of such an act at least in the exercise of jurisdiction under Article 226 of the Constitution.

Roop Singh has not approached this Court to get his claim investigated, hence I am not inclined to consider the claim of Roop Singh, the transferee of the petitioner in the present case.

During the course of argument, the learned counsel for the petitioner suggested that the transferdeed executed by him might be regarding share in the disputed holding, hence the transfer would be void and the petitioner is entitled to purchase of the disputed land. To my mind, the contention of the learned counsel for the petitioner is misconceived. If it is accepted that the petitioner has transferred his share in the disputed holding he would be no longer a cotenureholder of the disputed land and he would not be entitled to the benefit of Rule 159B of the U.P. Zamindari Abolition and Land Reforms Act. Moreover, in my opinion the conduct of the petitioner in transferring the land during the pendency of the suit as such in the circumstances of the present case as to disentitle him to invoke the jurisdiction of this Court under Article 226 of the Constitution.

The suggestion of the learned counsel for the petitioner about the claim of his transferee Roop Singh cannot be accepted in view of the ruling reported in Ram Kumar v. Board of Revenue (1973 A. L. J. 575.), wherein it has been observed that the sale of the holding could be ordered between cosharers whose rights had been declared by the preliminary decree. Subsequent transfers by the cosharers in the holding could not affect the question of sale of the holdings amongst the cotenureholder. Moreover, I have already indicated above that the aforesaid Roop Singh has not approached this Court and the petitioner cannot be permitted to hold brief for him.

In the result, the writ petition lacks merits and is accordingly dismissed. Parties are directed to bear their own costs.