
(2008) 01 AHC CK 0181

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32861 of 1997

Gurudwara Prabandha Samiti, Banda

APPELLANT

Vs

State of U.P.And others

RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Citation : (2008) 01 AHC CK 0181

Hon'ble Judges : Anjani Kumar, J and Sabhajeet Yadav, J

Final Decision : Dismissed

Judgement

1. The petitioner Gurudwara Prabandha Samiti through its President Sri Giridhar Gopal, who has subsequently been substituted by Raj Kumar Puruswami filed this writ petition under Article 226 of the Constitution of India with the prayer to issue writ, order or direction in the nature of mandamus directing the respondents to convert the land in dispute into free hold the lease plot No. 9495 area 253.9 sq meters situated in Station Road, Banda with a further direction that the respondents may be restrained to transfer the aforesaid plot by any means in favour of respondent No. 6. It is also prayed that a writ of mandamus be issued directing the respondents to abide by the State Government's policy decision in making the free hold of the land of lease and not to charge exorbitant charges for conversion into freehold rights.

2. Heard learned Counsel appearing on behalf of the parties.

3. It is the case of the petitioner as stated in the writ petition that on 3rd September, 1938 a lease was granted by Secretary of State in favour of President of Maternity and Child Welfare Society Banda, District Banda of plot No. 9495 area 012 Biswa and 9496 area 0016 Biswansi for construction of Maternity and Child Welfare Centre at Banda (now Indian Red Cross Society, Banda). The rent was agreed on Rs. 21 per annum. The aforesaid lease was granted for a period of thirty years. The aforesaid lease came to an end on 2nd September, 1968. On 12th July, 1970 one Sudama Mal, Secretary of Gurudwara Prabandh Samiti (also known as Gurunanak Smarak Samiti or Gurunanak Sewa Samiti)

applied for grant of lease of 3 Biswa, 4/16/47 Biswansi, western portion of plot No. 9495. That a Gantaghar was constructed on some part of the aforesaid land which was leased out to Maternity and Child Welfare Society with the consent of District Magistrate concerned over an area of 3 Biswa, 416/47 Biswansi of plot No. 9495. The plan and elevation of Ghantaghar proposed by the said Samiti was sanctioned by the Nagar Palika, Banda. The foundation stone of the Ghantaghar was laid by Lt. Colonel B.R. Mohan, Lucknow. The lease in favour of Maternity and Child Welfare Society was renewed on 14th July, 1983 with effect from 1968, including the land over which the Ghantaghar was proposed. The petitioner's Samiti submitted an application on 16th July, 1993/16th August, 1993 before the District Magistrate, Banda for conversion of the freehold rights of its land under the new policy. As alleged by the petitioner, the then District Magistrate recommended the conversion of the freehold rights in favour of the Samiti vide its recommendation dated 31st August, 1993, but the facts remain undisputed that the land was not converted into the freehold land, nor any lease has been granted in favour of the petitioner's Samiti. The petitioner's Samiti, as alleged by the petitioner in the petition filed writ petition being 432 of 1995. The aforesaid writ petition was decided by this Court by issuing direction to the State Government vide its judgment and order dated 9th January, 1995 to decide the matter of grant of freehold rights to the petitioner's Samiti within two months from the production of certified copy of the aforesaid order. The petitioner's further contention is that on 12th January, 1995, the petitioner's Samiti deposited Rs. 100/ through Challan for making its land free hold after approval of the executive Office of Nagar Palika and Officerincharge Nazul. It is further alleged that Samiti again approached the District Magistrate for conversion of free hold rights over the land in question on 12th September, 1995/1st November, 1995. The District Magistrate again recommended conversion of free hold rights in favour of the petitioner's Samiti for its land. In the month of September, 1996, the Government made some queries from the District Magistrate concerned regarding conversion of the free hold rights in favour of petitioner's Samiti. The District Magistrate vide letter dated 25th October, 1996 has asked for a report from the Nagar Palika in respect of the process of allotment in favour of petitioner's Samiti. It is the petitioner's case that in the meantime the personal of the official of the District Magistrate has been changed, who vide his letter dated 28th October, 1996 submitted a Challan of Rs. 100/ on behalf of Maternity and Child Welfare Society, Banda, which is now known as Red cross Society for conversion of the lease hold rights into the free hold rights by the society. The necessary enquiry was conducted by the Executive Officer, Nagar Palika and submitted a report that the possession of the land in question was handed over to the Samiti in the year 1971 in connection with the construction of Ghantaghar. On 26th December, 1996 an application has been filed on behalf of Red Cross Society in relevant Form 8 for conversion of free hold rights over the land in question with the report of Officerincharge, Nazul regarding 9 Biswa, 146/47 Biswansi in favour of Red Cross Society. The President of petitioner's Samiti filed an application on 25th January, 1997 praying that the land in

possession of the Samiti be excluded from the conversion of free hold rights in favour of Red Cross Society. The Nazul officer asked for a report from the Executive Officer of the Municipal Board on 31st January, 1997. After enquiry, the land for conversion of free hold right in favour of Red Cross Society were prepared on 1st April, 1997, which according to the petitioner was because of the collusion with the District Magistrate. Thereafter the Samiti the present petitioner filed the present writ petition being civil misc. writ petition No. 32861 of 1997 before this Court in which this Court has been pleased to pass an order on 30th September, 1997 directing the parties to maintain statusquo with regard to the nature of the land in question. The petitioner's Samiti however has completed all the paper formalities with regard to conversion of the free hold rights in their favour when the present writ petition was filed.

4. The State Government has filed a detailed counteraffidavit and the respondent No. 6 has also filed counteraffidavit. The stand taken by respondent No. 6 is that the facts narrated by the petitioner's Samiti are incorrect. The stand taken by the State Government is that the petitioner's Samiti has never been given lease of the land in question, nor was the owner of the land in question and the original lease, as stated in the writ petition, was granted in favour of the Maternity and Child Welfare Society, which continued and the application filed by the petitioner's Samiti for conversion is not maintainable, as the petitioner has no right to get the land in dispute converted into free hold from lease hold rights. In view of the aforesaid pleadings, the matter has come up before us for hearing.

5. From the pleadings of the parties, it is abundantly clear that there are serious disputes regarding the facts among the parties, which this Court normally do not interfere in exercise of jurisdiction under Article 226 of the Constitution of India. However, on the basis of the admitted facts, the question in law is as that the petitioner's society filed the writ petition for conversion of the lease hold rights into free hold rights with regard to the land in question in their favour on the basis that they are the lessee in possession over the land in question. From the different correspondence annexed alongwith the writ petition and also from the pleadings of the parties before this Court it is apparent that there is absolutely no materials on record, which may demonstrate that the petitioner has ever been a lessee of the land in question. In this view of the matter, to us it appears that the policy by the State Government for conversion of the lease hold right into free hold right cannot confer any right upon the petitioner's society to get the free hold rights in their favour. On the contrary, from the materials on record, it is abundantly clear that it is in fact the Red Cross Society which is the lessee and they have come before the State Government for conversion of the lease hold right into free hold rights that they have a right to get the lease land converted into free hold land.

6. Sri V.K.S. Chaudhary, learned Senior Counsel has tried to take assistance that by different correspondence annexed alongwith the writ petition as well as the supplementary affidavit, but to us it appears that he has failed to demonstrate

that the petitioner has any right to get the lease hold rights with regard to the land in question converted into free hold rights in their favour. In this view of the matter, since the petitioner does not have any right, therefore the prayers asked for by the petitioner cannot be granted.

In view of what has been stated above, this writ petition is devoid of any merits and is accordingly dismissed with cost. The interim order, if any, stands vacated.