

(2017) 10 AHC CK 0015
In the Allahabad High Court
Case No : 3072 of 2015

Gurukul Vidyapeeth Saraswatipuram Gomti Nagar & Anr. Vs State Of U.P. & 8 O .

Date of Decision : 13-10-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950,
Section 167, Section 157-A

Citation : (2017) 10 AHC CK 0015

Hon'ble Judges : Dilip B. Bhosale, Rajan Roy

Bench : Division Bench

Advocate : Brijesh Kumar Singh, Dr V K Singh, Mahesh Chandra, Mohammad Aslam Khan, Shashi Prakash Singh, Umesh Chandra Pandey

Judgement

1. This writ petition has been filed by the petitioners one of whom is an educational institution, the other is the Principal of the said institution, as a Public Interest Litigation challenging the order dated 05.02.2015 passed by the Sub Divisional Magistrate, Sadar, Lucknow in the context of an application submitted by Smt. Vindheshwari Devi w/o late Ram Khelawan for measurement/demarcation in relation to Gata No. 3-Sa situated at Village Khargapur, Saraswatipuram near petitioner School, Lucknow inter-alia directing the Station House Officer, Gomti Nagar to ensure that no person creates unnecessary hindrance or interference in the land in possession of the said Smt. Vindheshwari Devi and to maintain law and order on the spot.

2. The contention of the learned counsel for the petitioner is that the Sub Divisional Magistrate has veritably recognized the right, title and possession of the Smt. Vindheshwari Devi over the Gata in question whereas part of the said land was sold of by the erst-while co-owner Sri Ram Autar to a society known as Kailash Vihar Sahkari Awas Samiti which sold of the said land in plots to various persons including the petitioner and the portion of the land forming part of Gata no. 3 SA which is the subject matter of dispute is in fact a Park and the opposite

party no.8 who has purchased the said land from Smt. Vindheshwari is trying to usurp the same, although, the said sale deed executed in his favour by Smt. Vindheshwari Devi on 24.02.2015 is void for the reason the said land had already been sold of by the co-tenure holder Ram Autar, the brother of Smt. Vindheshwari Devi's - husband Ram Khelawan and the latter sold of the remaining land to another society namely, Priya Sahkari Grih Nirman Samiti, therefore, there was nothing left to be sold out by Smt. Vindheshwari Devi.

3. He contended that the land in dispute was originally recorded in the name of Budha and after his death the same came to be recorded in the name of his two sons namely, Sri Ram Autar and Sri Ram Khelawan. Smt. Vindheshwari Devi is the wife of Sri Ram Khelawan. However, in the same vein the learned counsel also submitted that the sale deed executed by Sri Ram Khelawan having been found to be in violation of Section 157-A, of the U.P. Zamindari Abolition and Land Reforms Act, 1950, therefore, as per the consequences mentioned in Section 167 of the Act, 1950 the same came to vest in the State as the Vendor Sri Ram Autar belonged to the scheduled caste but had sold of his holding to a non scheduled caste person without the permission of the competent authority, as was mandatory under Section 157 therefore, he stated that it being the land of the State and a Park existing thereon, the same would be protected under the U.P. Parks, Playgrounds and Open Spaces (Regulation and Control) Rules, 2005 (hereinafter referred to as "the Rules, 2005") which was not only applicable to the Parks belonging to or vested in the Local-bodies but also to Parks owned or occupied by others, thus, for this reason, according to him, the opposite party no.8 should not be allowed to disturb the existing Park on the plot in dispute.

4. Sri Mohd. Arif Khan, learned Senior Advocate appearing for the opposite party no.8 submitted that the petitioners are not sure about his stand; on the one hand they claim that the land was sold by the erst-while recorded tenure-holder to Kailash Vihar Sahkari Awas Samiti, on the other hand they say that the land has vested in the State Government, therefore, the question is what right does the petitioner have if the land has been vested in the State Government, as then, the purchase of part of the said land by the petitioner itself is void.

5. The contention of Sri Khan is that the other half of the plot which was in the share of Sri Ram Khelawan was sold of by his wife to the opposite party no.8, therefore, the purchase of the said land by opposite party no.8 is from a recorded tenure holder and also that the demarcation had already taken place but in the garb of the present proceedings, the petitioners are trying to grab the land alleging it to be a Park, which in fact it is not.

6. The State officials have filed a counter affidavit through the Tehsildar Sadar, Lucknow. The relevant extracts of which read as under:- "It is relevant to mention here that on 12.02.1990, one of the aforesaid brothers namely Sri Ram Khelawan, executed a Sale Agreement of half portion of the aforesaid land rakba 1.671 i.e. 0.8355 hectare, in favour of Sri Puran Singh Bisht, S/o Jeet Singh Bisht, and sold the same to the society namely Priya Sahkari Grih Nirman Samiti

of Sri Bisht by executing a sale deed on 27.06.1992, mentioning therein that seller is not a member of scheduled caste. Similarly, the other brother namely Sri Ram Awatar, also sold remaining half portion of the land in question i.e. 0.8355 hectare in favour of Kailash Vihar Sahkari Awas Samiti by executing a sale deed on 25.04.1992 stating therein that the seller is not a member of Scheduled Caste. It is relevant to mention at this juncture that due to violation of Section 157A of the U.P. Z.A. L.R. Act, 1950 in execution of the aforesaid sale deed executed in favour of Kailash Vihar Sahkari Awas Samititi Ltd., case no. 1/1/2012-13 was instituted in the court of Deputy Collector, Revenue and order dated 07.11.2013 was passed, copy of which is being filed herewith as Annexure No.C.A.3 to this counter affidavit. As a matter of fact, the Gurukul Vidyapeeth established by the petitioner is a part of the land (alleged park) purchased by Kailash Vihar Sahkari Awas Samiti hence, the land over which Gurukul Vidyapeeth has been constructed and as well as the alleged park belongs to the State Government over which the petitioner has illegally encroached and carried out construction. Similarly, regarding the land areas 0.8355 hectare purchased by the Priya Sahkari Awas Samiti, case under the proceedings of U.P. Z.A. & L.R. Act, 1950 has been initiated before the court of Sub Divisional Magistrate, Sadar, Lucknow.

It is also relevant to mention here that due to the sale deed of the aforesaid 0.8355 hectare of land executed in favour of Priya Sahkari Samiti not coming into light, the said land could not be recorded in favour of the State Government and remained recorded in the name of Sri Ram Khelawan and after his death was recorded in the name of his son namely, Dilip Kumar and his widow namely, Vindheshwari Devi. Thereafter sale deed of 0.0466 hectare of land each was executed in favour of Sri Ram Saran i.e. opposite party no.8 and of 0.0255 hectare of land in favour of Smt. Rekha i.e. opposite party no.9. As a matter of fact, as Sri Ram Khelawan, has already sold 0.8355 hectare of land to Priya Sahkari Awas Samiti before his death, hence, no land was deemed to be in favour of his legal heirs namely, Dilip Singh and Vindheshwari Devi, hence, the transfer of the entitlement of the aforesaid land in favour of opposite party nos. 8 and 9 is invalid as per law.

Hence, from the aforesaid facts, it is crystal clear that the land Gata no. 3-Sa/1.671 hectare, situated at village Khargapur, has been sold to Kailash Vihar Sahkari Samiti by one co-account holder but the said sale deed being executed in violation of the provisions of Section 157A of the U.P. Z.A. L.R. Act, 1950, the has been vested with the State Government and similarly the other portion of the land which had been sold by other co-account holder to Priya Sahkari Awas Samiti by executing sale deed in violation of the provisions of Section 157A of the U.P. Z.A.L.R. Act, 1950, the proceedings for vesting the said land with the State Government are in process. Thus, the land over which the Gurukul Vidyapeeth has been constructed and the land which has been purchased by opposite parties nos. 8 and 9 by executing a sale deed, is actually the land of the State Government which land has not been declared as a Park by any competent authority nor the petitioner or the opposite party nos. 8 and 9 are titled owners

of the said land. Hence, the administrative order dated 05.02.2015 passed by the opposite party no.6 is valid and justified.

Therefore, the present writ petition filed by the petitioner on his behest as Public Interest Litigation being devoid of merits, deserves to be dismissed in the interest of justice."

7. Apart from the above, in paragraph 8 of the counter affidavit the State officials have said that the petitioner has illegally constructed the building of the institution over the land owned by the State Government and that the land in dispute which is alleged to be a Park is not covered under the provisions of the U.P. Parks Playgrounds and Open Spaces (Regulation and Control) Rules, 2005 nor the said land has been declared as a Park by any competent authority. In paragraph 15 it has been said that vide order dated 05.02.2015, impugned in this writ petition, no declaration has been made in favour of Smt. Vindheshwari Devi but only directions have been issued to the Station House Officer, Gomti Nagar, to maintain law and order over the spot/land in question.

8. From what has been mentioned hereinabove, it is apparent that intricate questions of title and possession over the land in dispute are involved. The State Officials themselves are disputing the existence of a Park in terms of U.P. Parks Playgrounds and Open Spaces (Preservation & Regulation) Act, 1975 and the Rules, 2005 made thereunder. The petitioner herein also admits to the fact that half of the land was the share of Sri Ram Autar and remaining half was of Sri Ram Khelawan both sons of Budha the original tenure holder. The petitioners also say that both the brothers sold of their land to a society Kailash Vihar Awas Samiti and Priya Sahkari Awas Samiti, respectively, and also admit to the fact that the sale deed executed by Ram Autar is violative of Section 157A and 167 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and consequently the land has vested in the State Government, therefore, the question arises how the petitioner is in possession of part of the said Gata in question over which they allege to have constructed their building for the institution being run thereon as admittedly the petitioners land and that on which the alleged Park exists were part of the share sold by Ram Autar. No explanation has been given in this regard. Moreover as is evident from the counter affidavit of the State Officials the sale deed of Sri Ram Khelawan suffers from the same error as the sale deed of Sri Ram Autar wherein an incorrect assertion had been made that the vendors did not belong to the scheduled caste whereas they did, consequently, proceedings for vesting of the land sold of by Sri Ram Khelawan had also been initiated in terms of Section 157-A and 167 of the Act, 1950 and were in process till the filing of the counter affidavit by official respondents, therefore, the question does arise as to how Smt. Vindheshwari Devi could have sold of the land, if the same had already been sold of by her husband, and how the opposite party no.8 could have purchased the said land, but, the result of these proceedings under Section 167 etc. of Act, 1950 pertaining to land sold by Ram Kelawan are not on record, therefore, no conclusive opinion can be formed in this

regard. Moreover it appears from the counter affidavit of the State that the land in dispute over which a Park is alleged was part of the land sold of by Sri Ram Autar, which is said to have vested in the State. If it is so, the State authorities would obviously keep this in mind and take appropriate action accordingly as per law, therefore, in these circumstances, as already stated, intricate and complicated questions of title and possession including factual disputes are involved which cannot be gone into in summary proceedings under Article 226 of the Constitution of India. The existence of a valid Park having been so declared under the Act, 1975 and the Rules, 2005 made thereunder is itself suspect and no such document has been filed by the petitioner to show that it has been so declared and the State is itself in denial, nevertheless, without drawing any conclusive opinion on any of the issues referred hereinabove, obviously on account of constraints of summary jurisdiction exercised by this Court under Article 226 of the Constitution and leaving it open for all the parties concerned to agitate their claim before such competent authority or Court, as may be permissible in law, this writ petition is disposed of with the observation that the order of the Sub Divisional Magistrate dated 05.02.2015 shall be treated only as a direction to the Station House Officer, Gomti Nagar for maintenance law and order and the said order by itself will not be made the basis for claiming or granting title or possession over the disputed land in question.