

(2007) 07 AHC CK 0005
In the Allahabad High Court
Case No : C.M.W.P. No. 12110 of 2007

Jai Karan

APPELLANT

Vs

Additional Commissioner, Meerut Division and Others

RESPONDENT

Date of Decision : 10-07-2007

Acts Referred:

Contract Act, 1872 — Section 23
Uttar Pradesh Land Laws (Amendment) Act, 1982 — Section 5
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 154,
154(1), 154(2), 157, 157A

Citation : (2007) 6 AWC 5962 : (2007) 103 RD 206

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : R.C. Singh and Rajesh Singh, for the Appellant; S.K. Tyagi, K.K. Arora, Ram Saran Sharma and S.C., for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard Shri R. C. Singh, for the Petitioner and Shri Ram Saran Sharma for Respondent No. 4, Shri Gajraj. Learned standing counsel appears for Respondent Nos. 1 to 3.

2. The Petitioner Jai Karan was bhumidhar of 3.557 hectares of land cultivated by him in village Gadina, Distt. Meerut. He purchased 4.325 hectares of agricultural land in village Palla, Tehsil Dadri by a registered sale deed dated 19.7.1968, making his total holding to be over 5.057 hec. (12.50 acres), which is the ceiling prescribed by Section 154 of the U.P. Zamindari Abolition and Land Reforms Act, 1951 (the Act).

3. One Shri Gajraj son of Roop Chandra resident of village Palla, Tehsil Dadri, Distt. Gautam Budh Nagar made a complaint on 11.12.2003 before the Collector, Gautam Budh Nagar u/s 154, 166, 167, U.P.Z.A. and L.R. Act, stating that the Petitioner Jai Karan had acquired more than 12.5 acres of land in U.P. and thus an order should be passed directing the excess land to be vested in the State.

4. An enquiry was made by the Tehsildar confirming the facts. The Petitioner filed objections that he had purchased the land in the year 1968. At that time sale was not void but was voidable for which a suit could be filed by Gaon Sabha within six years from the date of sale. The Gaon Sabha did not file any suit. The amendment in Section 164 on 3.6.1981 will not affect his rights and that Shri Gajraj as stranger has no right to initiate the proceedings.

5. The Collector, Gautam Budh Nagar held that an application u/s 163 of the Act can be filed by any person. If the facts were found to be correct, the proceedings could be taken by the Collector suo motu and that since in the State of U.P. a person cannot hold more than 2.824 hec. of land (12.50 acres), the entire land in excess thereof is liable to be vested in the State. The Collector directed that the land purchased by sale deed dated 19.7.1968 in Khet No. 59 area 2.94 hec. and Khet No. 201 area 1.431 hec. total area 4.3 hec. will vest in the State and that the possession of the excess land be taken from Jai Karan.

6. The Petitioner preferred a Revision No. 59 of 2005-06, before the Addl. Commissioner, Meerut Division, Meerut, which was partly allowed on 13.2.2007 only to the extent that the land be measured accurately and thereafter the excess land be vested in the State. Aggrieved by the orders the Petitioner filed this writ petition.

7. Shri R. C. Singh, learned Counsel for the Petitioner submits that the law as prevalent in the year 1968 would apply to the case. Prior to deletion of Section 163 of U.P.Z.A. and L.R. Act by Section 5 of U.P. Land Laws (Amendment) Act No. 20 of 1982, w.e.f. 3.6.1981, the consequence of a transfer and contravention of Section 154 or 157A were that such a person was liable for ejectment from such excess holding or part on the suit by the Gaon Sabha, without prejudice to the right of transferor to realize the whole or portion of the price remaining unpaid or the right of any person other than the transferee to proceed against such holding. Sub-section (2) of Section 163 provided that in every suit for eviction the transferor should be made party and decree may direct the ejectment of the bhumidhar from the whole or part of the holding as the Court may, having regard to the circumstances of the case, direct. Section 154 as it existed before its substitution by Act No. 34 of 1974 and Section 163 before its deletion read as follows:

[Section 154. Restriction on transfer by a bhumidhar.- (1) Save as provided in Sub-section (2), no bhumidhar shall have the right to transfer by sale or gift, any land other than tea gardens to any person where the seller shall, as a result of such sale or gift, become entitled to land which together with land, if any, held by his family will in the aggregate, exceeds 5.04 hectares (12.50 acres) in Uttar Pradesh.

(2) Subject to the provision of any other law relating to the land tenures for the time being in force, the State Government may authorize a transfer in excess of the limit prescribed in Sub-section (1), if it is of the opinion that such transfer is

in favour of a registered cooperative society or an institution established for a charitable purpose, which does not have land sufficient for its needs, or that the transfer is in the interest of general public.

Explanation.-For the purpose of this section, the expression "family" shall mean that the transferee, his or her wife or husband (as the case may be) and minor children, and where the transferee is a minor, also his or her parents].

[163. Transfer in contravention of this Act.-Where a transfer of any holding or part thereof has been made in contravention of the provisions of [Section 154 or 157A], the [transferee and every person who may have thus obtained possession of the whole or part of the holding] shall, notwithstanding anything in any law, be liable to ejectment from such holding or part on the suit of the [Gaon Sabha], which shall thereupon become vacant land ; but nothing in this section will prejudice the right of the transferor to realize the whole or portion of the price remaining unpaid or the right of any other person other than the transferee to proceed against such holding or land in enforcement of any claim thereto.

(2) To every suit for ejectment under this section the transferor shall be made a party.

(3) A decree for ejectment under Sub-section (1) may direct the ejectment of the bhumidhar from the whole or part of the holding as the Court may having regard to the circumstances of the case, direct].

8. Shri R. C. Singh has relied upon the judgment in Kripashanker v. Director of Consolidation and Ors. 1979 RD 80, in support of his submission that prior to its deletion Section 163 indicated that such contravention would entail ejectment at the instance of Gaon Sabha and thus the transfer by contravention of Section 157 of the Act is not void but voidable at the instance of Gaon Sabha only to the extent of contravention. He further relies upon Hasan Raza Khan and Ors. v. Board of Revenue, and Ors. 1996 (87) RD 165, in which it was held that u/s 163 of the Act proceedings could only be initiated by Gaon Sabha and no one else.

9. Learned Counsel for Respondent No. 4 submits that no one can hold more than 12.50 acres of land in the State of U.P. This ceiling is applicable to all individuals and that anyone can bring this fact to the notice of Collector, who may take action either on the complaint or suo motu, for declaring the transfer in excess of the ceiling limit to be void, and consequently the excess land will vest in the State. It is not material whether the sale deed was executed before the deletion of Section 163 of the Act as the ceiling limit is applicable even after its deletion. The ejectment is not subject to the discretion of the Gaon Sabha and that the power to allow a person to possess more than 12.50 acres is only with the State Government, if a person complied with the requirements notified under the proviso to Section 154 or Sub-section (2) of Section 154 of the Act. He has also relied upon the judgment in Kripashanker's case and Smt. Shanti Devi v. State of U.P. and Ors. 1998 (1) AWC 574 (SC) Mahesh Chand Vs. Ajai Sood and Others, and Shiv Ram Vs. Ram Veer, in which it was held that auction sale of

agricultural land by which purchaser would exceed the limit prescribed u/s 154 and the contract of sale of land in violation of Section 154 cannot be enforced as in such case the contract would be in contravention of the law and public policy and would be void u/s 23 of the Contract Act.

10. The facts are not disputed. The counsels have addressed the Court only on the question of law as to whether a stranger to the transaction can make a complaint and in such case whether the Collector can take cognizance or proceed suo motu ; and further whether the transfer by which transferee comes to acquire more than 12.50 acres of land in U.P. made before omission of Section 163 of the Act w.e.f. 3.6.1981 will deprive the transferee to hold the property beyond the ceiling limit and in such case the property will without any action of ejectment in the State.

11. Section 154 of the Act falls in the chapter of "Transfers" in the Act. It prohibits except as provided in Sub-section (2), any transfer by bhumidhar by way of sale or gift, any land other than tea gardens to any person where the transferee shall, as a result of such sale or gift, become entitled to land which together with land if any, held by his family, will, in the aggregate exceed 5.0586 hectares (12.50 acres) in Uttar Pradesh. The Explanation to the section provides that word "person" includes a "Co-operative Society" on June 15, 1976 and that in Sub-section (2) the State Government may, by general or special order, authorise transfer in excess of the limit prescribed in Sub-section (1), if it is of the opinion that such transfer is in favour of a registered cooperative society or an institution established for a charitable purpose, which does not have land sufficient for its need or that the transfer is in the interest of general public. The "family" has been defined in Explanation to Sub-section (2) to include "wife" or "husband" and "minor children".

12. In Kripashanker's case, the Supreme Court held in context when Section 163 was available in the statute book, that the transfer in contravention of Section 154 is voidable. Hon'ble the Supreme Court said that Sub-section (1) of Section 154 merely places a restriction on transfers by a bhumidhar but does not deal with the effect of a deed executed in breach of the restriction imposed. The effect is specified in Section 163 and all that Section 163 provides is that where such a transfer is in contravention of Section 154, the transferee shall be liable to ejectment. It was held that reading Sections 154 and 163 together, it seems to be clear that any transfer by a bhumidhar in contravention of Section 154 is not void but voidable at the instance of Gaon Sabha, only to the extent of the contravention, that is to say, only to the extent of excess over and above the prescribed limit. Section 189 deals with the extinction of interest of a transferor bhumidhar who has effected a transfer in contravention of Section 154 and has no bearing on the question as to how and to what extent the transferee is affected by the contravention.

13. In Kishan Pal Singh v. Babu Lal (C. A. No. 1333 of 1966), decided on September 8, 1969, the Supreme Court observed that the object of legislation u/s

154 of the Act is to place a ceiling on the land holding. For the purpose of Section 163 the ejectment contemplated is only in respect of excess land over and above the prescribed limit that the transfer shall be deemed to have been made in contravention of the section.

14. In *Smt. Shanti Devi v. State of U.P. and Ors.* (supra), the Supreme Court held in para 23 as follows:

We may here point out that after *Kirpa Shankar's* case (supra) in 1979, Section 163 permitting Gaon Sabha to take over the excess land was deleted by U.P. Act 20 of 1982 w.e.f. 3.6.1981 and Section 166 was introduced w.e.f. 3.6.1981 which said that: "Every transfer made in contravention of the provisions of this Act, shall be void". Obviously, *Kirpa Shankar's* case, cannot apply to post 3.6.1981 sales. The case before us deals with a sale dated 25.2.1982 and confirmation dated 2.8.1982. We do not, however, propose to go into this aspect because it is sufficient for the Appellant to rely upon the duty cast on the confirmation authority in Rule 285J to take Section 154 into account and prove that duty was not discharged.

15. Prior to 3.6.1981 sale in excess of the ceiling limit was voidable at the instance of Gaon Sabha, which had to resolve to file a suit for ejectment, and in such case the excess land from which the transferee was ejected would have vested in Gaon Sabha. After deletion of Section 163, w.e.f. 3.6.1981 such transfers were declared to be void u/s 166 with the consequences provided in Section 167 namely that the land shall be deemed to have vested in the State Government free from all encumbrances. Section 167 was amended by the same amendment Act that is U.P. Act No. 20 of 1982 w.e.f. 3.6.1981. Section 189 provided for extinction of the interest of transferor bhumidhar with transferable rights. The words "transferable rights" were added by U.P. Act No. 8 of 1977, w.e.f. 28.1.1977 and that Sub-section (aa) was added by Section 50 of U.P. Act No. 37 of 1958. According to Sub-section (aa) when the holding or part thereof has been transferred or let out in contravention of the provisions of this Act, the interest of such bhumidhar in his holding or any part thereof shall be expunged. Section 189 deals with interest of the transferor and not the transferee of the bhumidhari holding.

16. Reading the provisions of Section 154 and Sections 163, 166 and 167 together before and after its amendments w.e.f. 3.6.1981 clearly demonstrates that the consequence of void transfer u/s 154 were the ejectment by an action taken by the Gaon Sabha. It is only after the person was ejected that the portion could vest in the State. The limitation for filing a suit for ejectment of a transferee bhumidhar from the excess land by Gaon Sabha in Appendix III made under Rule 338 is six years. It is admitted that Gaon Sabha did not file any suit for ejectment of the Petitioner and as such the transfer, which was voidable at the instance of Gaon Sabha was not declared to be void, attracting the consequence u/s 167 of U.P.Z.A. and L.R. Act, 1950. The offending sale will attract the law as it stood on the date of such sale. The amendments and

deletions in the Act will not affect the consequences of the sale. The Petitioner Jai Karan may hold land in excess of 12.5 acres, but he cannot be ejected from the excess land as the transfer was not void on the date of sale i.e., on 19.7.1968 and the Gaon Sabha did not choose to resolve and eject him from the excess land within six years of sale. The Act was amended much after the limitation expired.

17. In the circumstances, leaving the question as to whether stranger can make a complaint in such case, it is held that the Petitioner is not liable to be ejected from the land in excess of the ceiling limit acquired by him by registered sale deed on 19.7.1968.

18. The writ petition is allowed. The judgment and order passed by Addl. Commissioner, Meerut dated 13.2.2007 (Annexure-5) and the order dated 1.6.2006, passed by the Collector, Gautam Budh Nagar are set aside.