
(2011) 08 AHC CK 0106

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 45926 of 2011

Kanti Prakash Mittal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143, 157A, 166, 167, 167(1)

Citation : (2011) 9 ADJ 142 : (2011) 6 AWC 5879 : (2011) 114 RD 775

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—Heard learned counsel for the petitioner and perused the records.

2. The petitioner claims to have purchased the land through a sale-deed from one Hari Singh on 5.10.1981. Alongwith the petitioner one Anand Prakash also purchased land through a similar sale-deed from Khem Chand. The respondent No. 5 moved a complaint that the said sale-deed was without prior permission from the Assistant Collector as required u/s 157-A and was therefore a void transaction u/s 166 of the U.P.Z.A. &L.R. Act, 1950. This complaint was moved in 2004.

3. This petition had been adjourned on 12th August, 2011 after framing the questions to be answered by the learned counsel. The order is quoted herein below:

Supplementary-affidavit filed today, is taken on record.

Heard learned counsel for the petitioner.

The petitioner contends that the action taken is barred by limitation and secondly once the land had been acquired in the year 1996 and other rights have intervened, there could not have been a declaration that the subject matter of

transfer was void in terms of Section 166 read with Section 167 of the U.P. Zamindari Abolition & Land Reforms Act.

The undisputed position is that the action has been taken on a complaint that the sale, which is subject matter of dispute, was in violation of Section 157-A of the Act. Learned counsel contends that this transaction was subsequently followed by other transactions coupled with the acquisition of the land and, therefore, in such circumstances, rights having been transferred in the manner aforesaid, the proceedings u/s 167 are without jurisdiction.

Learned Standing Counsel submits that Section 167 is peremptory in nature and if the transaction is void and in violation of Section 157-A, then according to Sub-section (1)(a) of Section 167, the subject matter of transfer shall with effect from the date of transfer, be deemed to have been vested in the State Government free from all encumbrances and, as such, any other consequential declaration of right or intervention of right will not bar the proceedings, as there cannot be a estoppel against statute.

In the instant case, the transaction is of 5.10.1981 and the amendment in the provisions of Section 167 to the aforesaid effect were already brought into force w.e.f. 3.6.1981.

Learned counsel for the petitioner wants to further study the matter. Put up on Tuesday next.

4. Learned counsel for the petitioner insisted that the land was not in the nature of a cultivable land and it was Abadi land. The argument is preposterous, inasmuch as, there is nothing on record to indicate that the land was ever converted from agricultural to non-agricultural or there is any declaration u/s 143 of the U.P.Z.A. & L.R. Act, 1950 to that effect. Merely because the respondent No. 7 is developing a colony and the land had been purchased by the petitioner for residential purpose in no way changes the nature of the land for the purpose of Section 157-A.

5. One of the arguments raised by the learned counsel for the petitioner is that the order dated 25th January, 2005 invoking the provisions of Section 167 of the 1950 Act was in violation of principles of natural justice. Suffice it to say, that the petitioner had ample opportunity before this Court to demonstrate that his vendor was not a schedule caste. As noted above, by merely taking a ground relating to the status of caste of the vendor without filing any evidence in support thereof even before this Court, such a ground cannot be permitted to be raised and the petition cannot be entertained in the absence of any such material.

6. Learned counsel for the petitioner raised this additional contention without there being any supporting evidence relating to the caste of Khem Chand and Hari Singh to the effect that they were not schedule castes.

7. No material has been filed with the writ petition nor was there any material before the Courts below to indicate that they were not schedule castes. This new

argument therefore on a question of fact cannot be permitted to be taken more so in the absence of any evidence having been brought on record in view of the law laid down by the Apex Court in the case of Bharat Singh and Others Vs. State of Haryana and Others,

8. The findings which have been recorded are categorical and the questions which were framed on 12th August, 2011 remain unanswered. The petitioner purchased land from a schedule caste without permission as warranted u/s 157-A of the 1950 Act, as such the transaction as per Section 166 thereof is void. The consequences therefore u/s 167 have to follow.

9. The writ petition lacks merit and is accordingly dismissed.