
(2016) 10 AHC CK 0061
In the Allahabad High Court
Case No : Writ C. No. 47236 of 2016

Kanwar Pal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 157-A,
Section 166, Section 167

Citation : (2016) 133 RD 816

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : C.S.C, for the Respondent; Utpal Chatterji, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J. - Heard Shri Utpal Chatterji, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. The instant writ petition arises out of proceedings under Section 166, 167 of the U.P. Zamindari Abolition and Land Reforms Act and seeks quashing of the order dated 31.10.2011 passed by the Additional District Magistrate (Administration), Saharanpur and the order dated 30.03.2016 passed by the Additional Commissioner (Administration), Saharanpur Division, Saharanpur.

3. The dispute in the writ petition pertains to several plots details whereof are enumerated in the impugned orders. These were recorded in the name of one Ghaseetu as its bhumidhar with transferable rights. The said Ghaseetu, who belonged to the scheduled caste, executed a registered power of attorney on 03.06.1988 in favour of one Ramji Das son of Deshraj. The power of attorney holder executed a registered sale deed in favour of one Harish Chandra Chhabra on 26.08.1988, which was registered on 29.08.1988.

4. It appears from the record that four sets of mutation cases were instituted. One case was instituted by Harish Chandra Chhabra claiming mutation on the basis of registered sale deed in his favour. Another case was filed by the petitioner Kanwar Pal alleged grand son of Ghaseetu, claiming on the basis of a will. The third mutation case was filed by Smt. Jamni, alleged daughter of Ghaseetu, claiming succession to his land. The fourth case was filed by Abdul Waheed etc. also claiming on the basis of registered will in their favour.

5. The Tehsildar while hearing these mutation cases found that there was violation of Section 157A of the U.P. Zamindari Abolition and Land Reforms Act, as Ghaseetu had sold the land in question through his power of attorney holder, without having obtained prior permission contemplated in Section 157A of the U.P. Zamindari Abolition and Land Reforms Act. He therefore referred the issue whereupon proceedings under Section 166 and 167 of the Act wherefrom the instant writ petition arises was registered and the impugned orders have been passed.

6. The contention of learned counsel for the petitioner is that a civil dispute is pending wherein the will setup by the petitioner, allegedly executed by Ghaseetu, is in issue. Besides, it is also in issue whether the power of attorney executed by Ghaseetu in favour of Ramji Das was a valid document or not, in proceedings before the Civil Court. The pendency of the civil litigation was necessarily required to be examined and taken into consideration before passing the impugned orders. This has not been done and, therefore, the orders impugned cannot be sustained.

7. Additionally, learned counsel for the petitioner has submitted that another writ petition, also directed against the orders impugned in this writ petition, has already been entertained by this Court and, therefore, the instant writ petition is also liable to be entertained.

8. Learned Standing Counsel has supported the impugned orders.

9. I have considered the submissions made by learned counsel for the parties and have perused the record.

10. At the very outset, it would be relevant to note that the writ petition filed by Sanni Mehta, which has been entertained by this Court is clearly distinguishable on facts. The writ petition no. 32350 of 2016 was entertained because the petitioner therein claimed on the basis of an agreement to sell in his favour. A suit for specific performance was filed, which was decreed and on its basis a sale deed was executed. The entire proceedings were complete before incorporation of Section 157A in the statute book. However, ignoring this fact, even the land which was subject matter of the sale deed in favour of Sanni Mehta, executed in pursuance of the decree in the suit for specific performance, was also ordered to vest in the State. The situation in the instant writ petition is entirely different. The petitioner claims on the basis of a will deed allegedly executed in his favour by Ghaseetu on 28.05.1992.

11. The Courts below have rightly observed that the sale deed in favour of Harish Chandra Chhabra had been excepted on behalf of Ghaseetu, in the year 1988. It was a sale deed of his entire land. This transaction was without obtaining prior permission, contemplated in Section 157A and was therefore, a void transaction. Therefore, the land, subject matter of this sale transaction, vested in the State free from by encumbrances, in accordance with the provisions contained in Section 166 and 167 of the U.P. Zamindari Abolition and Land Reforms Act. Thereafter, Ghaseetu was not possessed of any land and hence no question of succession, thereto, arose.

12. I am in complete agreement with the finding and the reasoning given in the impugned orders.

13. It would also be relevant to note that Ghaseetu, during his life time, never disputed the sale deed executed in the year 1988 through his power of attorney, which itself was a registered document.

14. Accordingly I do not find any merit in the submission that the respondents should have taken into account the civil suits which are pending consideration. In my considered opinion, the civil suits pending, have no relevance in the facts and circumstances of the instant case.

15. In view of the foregoing discussion, the writ petition lacks force and is accordingly dismissed.