
(2009) 11 AHC CK 0148
In the Allahabad High Court
Case No : Writ Petition No. 5836 (M/S) of 2009

Mahadev

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 11, 143, 167(2), 168A, 3(8)(a)(b)

Citation : (2009) 11 AHC CK 0148

Hon'ble Judges : Yogendra Kumar Sangal, J

Judgement

Y.K.Sangal, J.—Heard learned counsel for the petitioner as well as learned Standing Counsel for the respondent nos. 1 to 4 and perused the record.

2. Undisputed facts of the case are that one Lala son of Brij was recorded tenure holder as Bhumidhar of the land of plot no. 47 are 3 Bigha 11 Bishwa relating to Khata No. 165 village Lohramau, pargana and district Lucknow. The land was already covered with the definition of fragment under Section 38 (a)(b) of the U.P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as "the Act") Only 2 bigha land of this plot was sold by Lala in favour of the petitioner vide sale deed dated 06.11.1991. Name of the petitioner was mutated in the revenue record in place of Lala on whole of the land of the plot which is admitted, wrongly, to the petitioner as he should have been recorded as cotenant with Lala because only 2 bigha land was purchased and so said by him in paragraph 6 of the writ petition and that he remained in possession of only 2 bigha land of the plot. It is also not disputed that the land situates in consolidated area and petitioner was not having any contiguous land of this plot and he was also not cosharer in the Khata.

3. On a complaint made by some Ruma dated 01.09.2007, a report of Tehsildar was called for by the Sub Divisional Officer (S.D.O.) and on the report of Lekhpal objections from the petitioner were invited and after considering his objections vide order dated 29.09.2008, S.D.O., held that it was a transfer of fragment

prohibited under Section 168A of the Act and it was void transaction under the provisions of Section 168A of the Act and also ordered for vesting the land in the State. Under Section 167 of the Act, as a consequence of such void transaction the land will vest in State Government free from encumbrances and it shall be lawful for the Collector to take possession over such land and to direct an eviction of any person occupying such land under Section 167 (2). A revision was filed before the Commissioner, the same was also dismissed. Against that order, the instant writ petition has been filed.

4. First argument raised by the learned counsel for the petitioner is that land was purchased in the year, 1991 and village in which the land situates was within the limit of Lucknow Nagar Nigam since the year, 1987 and the provisions of the Act were not applicable on the date of purchase. A certificate issued by the Nagar Nigam annexure 7 of the writ petition was also referred. Learned Standing Counsel not disputed the correctness of this certificate but argued that only due to this fact that village was in the limit of Nagar Nigam on the date of sale, it cannot be accepted that the provisions of the Act become inapplicable. He referred law on the point 1975 AWC 23 Avtar Krishna vs. Gaon Sabha, where it was held by this Court that even if land situates in Municipal area, the provisions of the act and also of U.P. Consolidation on Land Holdings Act continued to apply. No law in reply was cited on behalf of the petitioner. Copy of the sale deed is also available on the writ file showing that sale of agricultural land was made to the petitioner. No declaration under Section 143 of the Act was sought. Still nowhere, it is said that the land is being used for other than agricultural purposes. In view of the law laid down and above discussions, petitioner is not entitled for any relief on this ground.

5. Second argument raised by the learned counsel for the petitioner is that vide U.P. Act No. 27 of 2004, w.e.f. 23.08.2004 provisions of Section 168A of the Act were omitted, hence now no such order of vesting and declaring the deed void can be passed. This argument is also of no help to the petitioner. Sale deed was executed in the year, 1991. The provisions of Section 168A of the Act were in force at that time. Section 168A itself declares that such transaction is also void and the consequence of the same are given in Section 167 of the Act that on the date of transfer, the land stand vested in the State Government. No such declaration of the court is required in the matter. If due to mistake of an employee of the revenue department, or other reason name of the petitioner was mutated on the basis of this void deed and he remained in possession for 18 to 19 years, on the basis of such void sale deed and the entry, consequences given under Section 167 of the Act will not be treated to be ceased. There cannot be any estoppel against the statute. As shown under Section 167 of the Act, property was vested in the State. Possession of the petitioner on the property became illegal and he became trespasser. The District Magistrate is free to order of his ejectment and under the provisions of Section 167 of the Act, even if force is required for the ejectment of the occupier that can be used by the District Magistrate. No such provisions shown on behalf of the petitioner that by such

lapse of time the petitioner acquired any right and title on the property in dispute. In these circumstances, if now provisions of Section 168A of the Act are omitted, it will have no effect on the facts of the case.

6. Another argument was that this transfer not covered with the definition of transfer of fragment. Copy of the sale deed is available on the record which shows that transferor was in possession of the land of 3 bigha 11 Biswa which was itself a fragment. He has not transferred the whole of the land and also not of his any defined and definite share in this land. He has transferred the specific area of the land i.e. two bigha which is covered by the definition of transfer of the fragment and the same is prohibited under Section 168A of the Act. Learned Standing Counsel referred the law laid down by Hon"ble Supreme Court in Mithilesh Kumari vs. Fateh Bahadur Singh 1991 (RD) 184 :

" the object of the section is to prevent fragmentation of land situated in a consolidated area and transfers that would result in fragmentation as further fragmentation shall be void and to such transfer section 167 will mutatis mutandis be applicable. The section comes into play only when a fragment situated in a consolidated area is transferred. If transfer of a fragment is made in favour of tenure holder who has a plot contiguous to the fragment, the purpose of law is not defeated in as much as it will be consolidated with the contiguous plot of the transferee . When the land held by a person in a consolidated area is already a fragment then as was provided previous to the amendment in 1961, the whole of the plot to which the fragment pertained was to be transferred. After the amendment, the invalidity and applicability of Section 167 is limited to a case where the transfer is not in faovur of any such tenure holder and to the whole or so much of the plot in which the person has bhumidhari rights which pertains to the fragment is thereby transferred. If the transferor had bhumidhari rights on the whole of the fragment the whole has to be transferred. If the person has bhumidhari rights only in a part of the plot that part on which he has bhumidhari rights can be transferred. There is no doubt that under subsection (2) transfer any contrary to the provisions of section (1) shall be void and under subsection (3) the provisions of section 167 shall mutatis mutandis apply."

7. In the above circumstances and law laid down no force is there in this argument also of the learned counsel for the petitioner.

8. It was further argued on behalf of the petitioner that special provisions were made in this regard by Section 11 of the U.P. Act No. 27 of 2004

" Special Provisions It is hereby declared that transfer of a fragment which had become void under Section 168A as it stood before the commencement of this Act shall be deemed to have been voidable (sic) and any person ma get such transfer validated by depositing such fee and within such time and in such manner as may be notified by the State Government :

Provided that the above provisions shall cease to be in force after expiry of one year from the date of commencement of this Act."

9. However, again a subsequent amendment Act (U.P. Act No. 13 of 2005), which received the assent of the Governor on March, 24, 2005 and published in U.P. Gazette on 29th March, 2005 was brought in effect.

10. Section 4 of the Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 2005 reads as under :

Special provision (1) It is hereby declared that any transfer of such fragment as had become void under Section 168A as it stood before the commencement of the Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 2004 (U.P. Act NO. 27 of 2004) and had not been entered in revenue records in favour of State Government shall be deemed to have been voidable and any person may get such transfer validated by depositing such fee and within such time and in such manner as may be notified by the State Government:"

Provided that the provisions of this subsection shall cease to be in force after expiry of one year from the date of commencement of this Act.

(2) Section of the Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 2004 (U.P. Act No. 27 of 2004) shall be omitted.

11. In the terms of the aforesaid amendment the saledeed dated 06.12.1991 executed by landlord Lala son of Birji in favour of the petitioner became voidable and as the transfer of such fragment not entered in the revenue record in favour of the State Government, such transfer may be get validated .

12. From the above provisions, it is clear that within the prescribed period after depositing the prescribed fees, the petitioner will be free to get validated the sale transaction . Both the above provisions are now not in force. Petitioner has ever taken any steps to get validated the saledeed in the light of the provisions made above, it is nowhere claimed on his behalf. It was also not shown that required fees was deposited by him.

13. In these circumstances, no benefit of the above provisions can be allowed to the petitioner. Land already vested in the State and petitioner was liable to be ejected from the land under the provisions of Section 167 (2) of the Act. No other arguments were raised on behalf of the petitioner.

14. From the above all discussions, it is clear that there is no illegality, invalidity and impropriety in the impugned order passed by the courts below. No interference in the writ jurisdiction by this Court is warranted in the matter. Writ Petition has not been filed bonafidely and the petitioner has not approached this Court with clean hand. This writ petition is hereby dismissed accordingly.