
(1974) 08 AHC CK 0007

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 5895 of 1970 and 19 of 1971

Mstsukhdei

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 13-08-1974

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4, 5, 5(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 195, 197, 198, 198(1), 198(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 173, 174, 174(A), 174(AA), 175

Citation : (1975) AWC 82

Hon'ble Judges : K.N. Singh, J; Amitav Banerji, J

Bench : Division Bench

Advocate : Girish Chandra, for the Appellant; K.B. Garg and S.C., for the Respondent

Judgement

Amitav Banerji, J.—Two questions have been referred by a learned single Judge. The questions are:

1. Whether a lease executed by Gaon Sabha in contravention of the statutory provisions contained in the U.P. Zamindari Abolition and Land Reforms Act and the rules framed thereunder is void or voidable?
2. In case, it is voidable, do the consolidation authorities have jurisdiction to adjudicate upon its validity?

2. Learned Single Judge has, in his referring order referred to the apparent conflict between the two decisions of this Court, namely, Rasala v. Deputy Director of Consolidation 1970 AWR 112 and Rameshwar Sahai v. Deputy Director of Consolidation 1973 AWR 238. In the former case it was held that leases executed in favour of a party by a Gaon Sabha were voidable and it could be cancelled only by the Sub-Divisional Officer u/s 198(3) of the U.P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the "Act"). It was held

therein that the consolidation authorities did not have any jurisdiction to cancel the allotment made in favour of the Petitioners of that case, In the latter case, it was held that the consolidation authorities had jurisdiction to go into the question of the validity of the lease deed and cancel the allotment as well.

3. In the instant case the Consolidation Officer passed an order cancelling the allotment suo motu on 24-2-1967. It will, therefore, be necessary to consider relevant provisions of the Act, as it existed then.

4. Section 195 provides that the Land Management Committee shall have the right to admit a person as sirdar to certain lands enumerated therein Similarly, Section 197 provides that the Land Management Committee shall have the right to admit any person as Asami to the lands mentioned therein, which need not be enumerated here. Section 198 provides for the order of preference in admitting persons to land under Sections 195 or 197. The relevant provision of Section 198 reads as follows:

* * * * *

5. It may be mentioned here that by the U.P. Land Laws Amendment Act, IV of 1969 the words "Assistant Collector Incharge of the Sub-division" were substituted by the word "Collector". Since this amendment is subsequent to the impugned order, it will not be necessary to refer to "Collector" in this judgment. The view taken by us would be applicable even where the impugned order is passed after 24-2- 969, but instead of Sub-Divisional Officer, the word "Collector" may be read in that case.

6. It will, therefore, be evident that whenever there is a land which is vacant and which is vested in the Gaon Sabha, or has come in the possession of the Land Management Committee, it can be let out to any person as sirdar or asami provided he comes within the category of the persons mentioned in Sub-section (1) of Section 198, The proviso to the said Sub-section also stipulates that the total area of land possessed by such a person shall not exceed 6-1/4 acres If he is a landless person, then he shall be given not less than 3-1/8 acres land and not more than 6-1/4 acres of land. Sub-section (2) of Section 198 provides that the Assistant Collector Incharge of a Sub-Division, that is, a Sub-Divisional Officer, may on his own motion or on the application of any person aggrieved by an order of the Land Management Committee enquire into an allotment made under Sub-section (1). If he is satisfied that the Land Management Committee has acted with substantial irregularity or contrary to the provisions of the Act, he shall have the power to pass such orders as he thinks fit. This would include his power to cancel the lease. Where such an order of cancellation of an allotment is passed the right, title and interest of the allottee shall cease and he shall be liable to ejectment Sub-section (4) provides that whenever an order of cancellation is passed, the aggrieved person may institute a suit to establish his right and the order of cancellation would then in the case be subject to the result of such a suit.

7. It would be worthwhile now to refer to the relevant provisions in the rules. Under Rule 173, the Land Management Committee has to announce by beat of drum in the circle of Gaon Sabha, in which the Land is situate, the number of plots, their areas and the date on which admission is to be made. Under Rule 174 on the date of the meeting, the Land Management Committee shall prepare a list of such persons who are present and express their desire to be admitted to the land. In the same meeting announcement as regards the revenue or the rent is to be made as also names of the persons included in the list. Rules 174(A), 174(AA) and 175 provide order of preference to be given to certain persons or class of persons. Under Rule 175 the expression "landless agricultural labourer" had been defined. Under Rule 176 any person who is admitted to the land shall be entitled to a certificate and a receipt for the premium paid by him, and the Land Management Committee has to execute in duplicate the agreement in respect of leases, licenses or contracts, and a copy there has to be given to the lessee, licensee or the other party. Rule 177 requires registration where the actual revenue of the land exceeds Rs. 100/-. Under Rule 178(A) whenever an order of the Land Management Committee passed u/s 198(1) of the Act is challenged by a person aggrieved or when the Sub-Divisional Officer intends to take suo motu action, he is empowered to pass a suitable interim order also. In the proceedings before the Sub-Divisional Officer under Sub-section (2) of Section 198, the Land Management Committee and the allottee are required to be made parties and opportunity of being heard is also required to be given before the final orders are passed. These are the material provisions which have to be complied with in admitting a person to the land of the Gaon Sabha.

8. At this stage it will be relevant to refer to the distinction between the words "void" and "voidable". "Void" is one of the strictest words in legal terminology, and that it has a well-defined meaning. In *Corpus Juris Secundum*, the word "void" has been defined in the strict sense as "null and incapable of confirmation or ratification; of no force or binding effect; having; no legal or binding force; incapable of being enforced by law; of no legal force or effect whatever; ineffectual; nugatory; unable in law, to support the purpose for which it was intended." The "voidable" on the other hand has been defined as meaning capable of being avoided or confirmed, not absolutely void but the thing involved may be avoided; that which has some force or effect, but which may be set aside or annulled for some error or inherent vice or defect. It has been further stated therein: The natural meaning of the word "voidable" imports a valid act which may be avoided, rather an invalid act which may be confirmed, and thus that which is voidable operates to accomplish the thing sought to be accomplished until the fatal vice in the transaction has been judicially ascertained and declared. Things are "voidable" which are valid and effectual until they are avoided by some act; a "voidable" act takes effect as intended, and continues to be effectual to all intents and purposes until it is set aside or nullified as to all or some part of the persons or things which were, affected by it. The word implies that there is a party who may avoid."

9. The distinction between "void" and "voidable" has been stated as "a thing is void which was done against law at the very time of doing it, and no person is bound by such act; but a thing is only voidable which is done by a person who ought not to have done it, but who nevertheless cannot avoid it himself after it is done. Whenever the act done takes effect as to some purposes, and is void as to persons who have an interest in impeaching it, the act is not a nullity, and therefore, in a legal sense, is not utterly "void", but merely "voidable"." It has also been pointed out that What is void can always be assailed in any proceeding; what is voidable can be assailed only in a direct proceeding instituted for that purpose and of a void act or deed every stranger may take advantage, but not of a voidable one.

10. We have to judge the provisions of this Act in the light of the distinction pointed out above. If any one is aggrieved he can certainly initiate proceedings for a declaration that the order of allotment made in favour of another party is void as it does not comply with the requirements of law. It is open to a third party to agitate that the rules have not been complied with and that the allotment is contrary to law. Every allotment does not become void merely because the requirement of law has not been followed. It will have to be so proved. This can only be done in some proceeding initiated for the purpose. There must be some action before an allotment could be said to be void. It will require investigation and ultimate satisfaction by the authority that it was bad for the non-compliance of the Act and the Rules.

11. Further, there is no provision in the Act or the Rules that where an allotment is made contrary to the provisions of Section 198, or the relevant rules the lease or the allotment shall be ipso facto void. Even Section 198 does not state that an allotment which is made contrary to the said provisions shall be null and void. Sub-section (3) makes it clear that whenever a lease is cancelled the allottee shall cease to have any right therein and he will be deemed to be a person who has encroached upon such land and shall be liable to ejectment. Sub-section (2) of Section 198 stipulates that the Sub-Divisional Officer may either suo motu or on the application of an aggrieved person pass suitable orders including an order of cancellation of lease granted by the Land Management Committee. It, therefore, becomes clear that the lease can be cancelled only at the instance of an aggrieved party or on the own motion or action of the Sub-Divisional Officer. It is, therefore, obvious, in the absence of any provision declaring a lease null and void, even though granted in contravention of Sub-section (2) of Section 198 of the Act, a lease granted by the Land Management Committee must remain binding unless it is set aside in the manner prescribed under Sub-section (2). In our opinion, therefore, a lease granted in contravention of the Act and the Rules is not void but voidable, it can, however, be cancelled at the instance of a party or on the suo motu action of the Sub-Divisional Officer. We answer the first question accordingly.

12. The second question relates to the competence of the Consolidation

Authorities to cancel such a lease. A plain reading of the provisions of Section 198 makes it clear that it is the Sub-Divisional Officer who can cancel a lease granted by the Land Management Committee. This power is not given to any other officer under the Act nor is the power given to the Land Management Committee. In view of the applicability of the provisions of Consolidation of Holdings Act in various parts of this State a question frequently arises regarding the scope of the powers of the consolidation authorities in respect of cancellation of sale deeds etc. The question consequently arises as to whether a suit for cancellation of a sale deed in respect of agricultural land in an area where the Consolidation of Holdings operations have commenced are to be abated or allowed to proceed. The provisions of Consolidation of Holdings Act stipulate that where the provisions are made applicable, all proceedings and suits in respect of agricultural land and rights therein are to be decided by the consolidation courts. This was thought necessary and expedient in the interests of speedy settlement of the dispute and for the implementation of the scheme of the consolidation. The question arose as to the scope of Section 5 of the Consolidation of Holdings Act (hereinafter referred to as the "Holdings Act"). In decision of *Jagar Nath Shukla v. Sita Ram Pandey* 1969 AWR 435, a Division Bench of this Court held that a suit for cancellation of sale deed in respect of agricultural plots pending on the date of Notification u/s 4 has to be abated u/s 5(2) of the Holdings Act. Setting out the reasons for getting such matters decided by the consolidation courts, the Division Bench observed that the legislature has entrusted many questions and matters to the decision of the consolidation authorities which were previously being decided by civil and revenue courts. Ultimately it observed:

We can see no reason why the Legislature should exclude decisions of such questions as to whether a sale deed has been obtained by fraud, undue influence or misrepresentation from the jurisdiction of consolidation authorities.

The language of the amended Section 5(2) is very wide. It provides for the abatement of suits not only "for declaration of rights or interests in any land" but also for suits in respect of declaration of rights or interests in any land. In consolidation proceedings, the question whether a sale deed is binding or not arises during the course of adjudication upon the rights of parties in the land. The decision of this question is in effect and substance, in respect of the declaration of the rights or interests of parties in the land. A suit for cancellation of a sale deed is filed to dispel the cloud on the right and title of the Plaintiff in the land; cancellation by itself is no relief-the real relief is that, in spite of the execution of the sale deed, the Plaintiff continues to be the tenureholder. What the Plaintiff really wants is that he should be declared to be the tenureholder-whether that is done by actually cancelling the sale deed or by declaring that the sale deed is not binding and is inoperative. In substance, the suit is in respect of declaration of rights or interests in the land. It thus appears to us that a suit for cancellation of a sale deed in respect of agricultural land is covered by Section 5(2) of the Act.

13. This decision of the Division Bench has found the approval from their Lordships of the Supreme Court in the case of *Gorakh Nath Dube Vs. Hari Narain Singh and Others*, . As observed by the Division Bench where a suit is in respect of a declaration of rights and interest in the land, such a matter is cognizable by the consolidation courts. The question whether a party has a right in a land in an area which has come under the consolidation of holdings operation is a matter which can be decided by the consolidation courts. A sale deed can be questioned by another party for it involves a declaration of the rights and interest of a party in the land. The same principles will apply in the case of a lease executed in respect of any land. A lease granted by the Land Management Committee will not be any different from that of a sale deed executed in respect of a plot of land.

14. It was urged that in view of the distinction pointed out in. the case of *Gorakh Nath Dube Vs. Hari Narain Singh and Others*, that unless the document was set aside it could not cease to have legal effect. The question that therefore, arises is, who can set aside the lease. Undoubtedly such a power has been given to the Sub-Divisional Officer u/s 198(2) of the Act. Since the matter regarding the declaration of rights and interest in the land is involved such a power also exists in the consolidation authorities. The only distinction will be that whereas the Sub-Divisional Officer has a suo motu power no such power is available to the consolidation authorities. The reason is this. Section 198(2) empowers specifically the Sub-Divisional Officer to act suo motu. That power is not available to any other officer, authority or court. The Court can decide a lis. There must be a dispute before a court can decide a matter. Where none of the parties raise a dispute it is not open to a Court to raise or decide such a question. The suo motu power is, therefore, confined only to the Sub-Divisional Officer u/s 198(2) of the Act and is not available to the consolidation courts or authorities. If a party were to raise a dispute that a particular lease had not been granted in accordance with the provisions of the Act it will in effect raise a dispute in respect of the declaration of rights or interest in the land. The consolidation courts would, therefore, have jurisdiction and competence to decide such a question. While a presumption can be raised that an official act must have been performed in a regular and proper way, there is also a duty cast on a court to see where a dispute is raised, that the official work has been performed in a regular and proper way. We are not able to subscribe to the view that a duty is cast on a Court to see if an official act has been performed in accordance with law. On its own as stated earlier, there must be a dispute, a lis, before a Court can decide the matter. We are, therefore, of the opinion, that although there is a power in the consolidation courts to decide a dispute as to whether a particular lease had been executed in accordance with law or not, it is however, precluded from doing so on its own. It is, therefore, necessary for a party to raise a dispute before the consolidation court. If no such dispute is raised it cannot take any suo motu action. We are firmly of the view that the Consolidation Officer has no jurisdiction to act suo motu, like that of the Sub-Divisional Officer who has been empowered by the statute itself.

15. We are, for the reasons given above unable to agree with the decision of the learned Single Judge in *Rasala v. Deputy Director of Consolidation* that the Consolidation Officer has no jurisdiction to cancel the allotment. The view taken in the case of *Major Rameshwar Sahai v. Deputy Director of Consolidation* represents the correct view point.

16. We, therefore, answer the first question by holding that such a lease is voidable and we answer the second question by holding that the consolidation authorities have jurisdiction to adjudicate upon the validity of the lease executed by the Gaon Sabha but that the consolidation authorities have no power to act suo motu in this regard. Let this opinion be returned to the learned Single Judge for further proceedings in the two petitions.