

(1988) 03 AHC CK 0049

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 13041 of 1975

Mukund Lal

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 15-03-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1956 — Section 176, 179, 64

Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Rules, 1958 — Rule 159, 159B

Citation : (1988) 1 AWC 685

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : G.N. Verma, for the Appellant; N.C. Rajvanshi and S.C., for the Respondent

Final Decision : Dismissed

Judgement

K.P. Singh, J.—This writ petition has been directed against the judgment of Shri G.S. Lal, I.A.S. Member, Board of Revenue, dated 30-8-1975 in Second Appeal No. 105 (z) of 1971-72.

2. On 16-7-1971 the trial court ordered the sale of the disputed land in favour of the plaintiff opposite party as is evident from Annexure VI attached with the writ petition. Against the judgment of the trial court the defendant petitioner preferred an appeal which was allowed by the lower appellate court through its judgment dated 10-1-1972 contained in Annexure VII attached with the writ petition. Thereafter the plaintiff opposite party preferred a second appeal which was allowed by the learned Member through the impugned judgment dated 30-8-1975. Aggrieved by the judgment of the second appellate court the defendant petitioner has approached this Court under Article 226 of the Constitution.

3. The learned Counsel for the petitioner has contended before me that the defendant petitioner was not a co-tenure holder in the facts and circumstances of the present case, therefore, the Respondent No. 1 has patently erred in restoring the judgment of the trial court. In this connection the learned Counsel for the petitioner has tried to impress that the defendant petitioner was absolute owner of the disputed land being purchaser from the Ministry of Rehabilitation.

4. Second contention raised on behalf of the petitioner is that the petitioner is purchaser of the area and share in the disputed land but he would not be a co-tenure holder, therefore, Rule 159 of the UP ZA and LR Act would not apply to the facts and circumstances of the present case. The second appellate court has patently erred in applying the provisions of Rule 159 of the UP ZA and LR Act.

5. Third contention raised on behalf of the petitioner is to the effect that that half of the area was purchased by the plaintiff Respondent for a sum of Rs. 10,000/- whereas equal area is being acquired by the plaintiff opposite party for a paltry sum of Rs. 1483/- and odd. Therefore, the order passed by the trial court and maintained by the second appellate court is wholly inequitable and deserves to be quashed.

6. The learned Counsel for the contesting opposite parties has tried to support the impugned judgment passed by the second appellate court and it has been submitted that the impugned judgment is quite in consonance with the Rule 159 of the UP ZA and LR Act, therefore, it is not amenable to interference in writ jurisdiction by this Court. Second submission of the learned Counsel for the contesting opposite parties is to the effect that equity will yield to law, therefore, even if the plaintiff Respondent is getting the remaining area for a paltry sum of Rs. 1483/- and odd the impugned judgment cannot be interfered with so long as the rule is not amended.

7. I have considered the contentions raised on behalf of the parties. I have failed to appreciate the contention of the learned Counsel for the petitioner that the defendant would not be a co-tenure holder in the facts and circumstances of the present case. To my mind, the property purchased by the defendants would be in the nature of Bhumidhari land, in view of the provisions of Section 64 of U.P. Act No. 9 of 1957 read with the provisions of Chapters VIII and X of the U.P. Act No. I of 1951. It is clear that the provisions relating to partition of a holding under U.P. Act No. I of 1951 would be attached to the agricultural land in the urban area, therefore, on the facts narrated in the impugned judgments as well as the allegations in the writ petition it is evident that the defendant petitioner would be tenure holder of the area purchased in the disputed plots. Thus a co-tenure holder of the plots. The contention of the learned Counsel for the petitioner that the defendant would not be a co-tenure holder in the facts and circumstances of this case is not correct. Bhumidhari right is a kind of tenure contemplated by the provisions of U.P. Act No. I of 1951, therefore, being a sharer in Bhumidhari land the defendant would be nothing but a co-tenure holder, therefore, I am not agreeable to accept the contention of the learned Counsel for the petitioner that

the defendant would not be a co-tenure holder in the present case. The contention of the learned Counsel for the petitioner that the defendant petitioner being purchaser from the Ministry of Rehabilitation would be an absolute owner of the area purchased is wholly misconceived in the facts and circumstances of the present case. The land purchased by the petitioner would be only bhumidhari land which is nothing but a kind of tenure contemplated under the provisions of U.P. Act No. I of 1951.

8. As regards the second contention the plaintiff opposite party had filed a suit for partition u/s 176 of the UP ZA and LR Act. His share was determined as half in the preliminary decree and this writ petition arises out of a proceeding for preparation of final decree, therefore, the parties are bound by the preliminary decree which was passed u/s 176 of the UP ZA and LR Act and the plaintiff is entitled to the area in dispute in view of the provisions of UP ZA and LR Act and the rules framed thereunder. The contention of the learned Counsel for the petitioner that Rule 159B would not be attracted to the facts of the present case is not tenable. Rule 159-B reads as below:

159-B. The following shall be order of preference for sale to co-tenure-holders u/s 179:

(a) co-tenure-holder, who does not hold any land in the circle other than his interest in the holding in suit.

(b) a co-tenure holder, who is asami in the circle but does not hold any land as bhumidhar other than his interest in the holding in suit; and

(c) a co-tenure holder, holding land less than 3.125 acres in area in the circle as bhumidhar other than his interest in the holding in suit.

9. To my mind, the defendant petitioner is a co-tenure holder and the above Rule 159-B is fully attracted to the facts and circumstances of the present case, therefore, the impugned judgment of the second appellate court dated 30-8-1975 does not suffer from any error of law much less an error apparent on the face of the record. The contention of the learned Counsel for the petitioner in this regard fails.

10. As regards the last contention no doubt the impugned order is a little inequitable and is working hardship upon the petitioner but the impugned order is quite in consonance with Rule 159-B of U.P. Act No. I of 1951. It is well known that equity yields to law, therefore, I am unable to interfere with the impugned judgment of the second appellate court in the facts and circumstances of the present case. So long as Rule 159-B is on the Statute Book, the impugned judgment cannot be characterized as suffering from any error of law much less an error apparent on the face of the record.

11. In the result, all the contentions raised on behalf of the petitioner fail, therefore, this writ petition is devoid of merits and is accordingly dismissed. Since the impugned works a little hardship upon the petitioner, the parties are

directed to bear their own costs.