
(2001) 07 AHC CK 0142
In the Allahabad High Court
Case No : C.M.W.P. No. 25819 of 2001

Oswal Fats and Oil Ltd.

APPELLANT

Vs

Additional Commissioner (Admn.), Bareilly and others

RESPONDENT

Date of Decision : 16-07-2001

Acts Referred:

Constitution of India, 1950 — Article 227, 38
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 152, 154, 154(1), 154(2), 166

Citation : (2001) 3 AWC 2248 : (2001) 92 RD 643

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : Vijay Kumar Rai, Dr. Vinod Kumar Rai and Sankatha Rai, for the Appellant;

Final Decision : Dismissed

Judgement

R. R. Yadav, J.—Heard learned counsel for the petitioner Sri Sankatha Rai at length.

2. Perused the order dated 30.5.2001, passed by Additional Commissioner (Administration), Bareilly Division, Bareilly (Annexure-1 to the writ petition) and the order dated 24.5.1993, passed by Collector, Pilibhit (Annexure-2 to the writ petition), whereby both the courts below have passed orders making petitioner company entitled up to 12.50 acres land in Uttar Pradesh and the excess of 12.50 acres land have been declared to have vested in the State Government free from all encumbrances.

3. It is urged by the learned counsel for the petitioner that the Additional Commissioner and Collector, respondent Nos. 1 and 2, have based their findings on the affidavit of Sri T. R. Sharma, General Manager of the Company dated 19.5.1993 (Annexure-7 to the writ petition), but neither Sri T. R. Sharma has any authority of the Company under resolution dated 14.10.1991 passed by the Board of Directors of the Company (Annexure-10 to the writ petition) to enter

into compromise and giving consent to relinquish the land in dispute in favour of the State Government nor any such consent has been given in the affidavit to relinquish the land in excess of 12.50 acres in favour of the State Government, therefore, the findings of the Commissioner and Collector are perverse and liable to be set aside on this ground.

4. For the reasons given hereinbelow, the aforesaid argument of the learned counsel for the petitioner is not acceptable.

5. It is to be noticed that the State Legislature has enacted Section 152 of U. P. Zamindari Abolition and Land Reforms Act (hereinafter referred as U. P. Act No. 1 of 1951) that the interest of a bhumidhar with transferable rights shall subject to the conditions enumerated in subsequent provisions of the said Act, would be transferable. Sub-section (1) of Section 154 of the said Act imposes restriction on transfer by a bhumidhar and provides that same as provided in sub-section (2) no bhumidhar shall have the right to transfer by sale or gift any land other than tea gardens to any person where the transferee, as a result of such sale or gift, becomes entitled to land, which together with land, if any, held by his family will, in the aggregate, exceed 12.50 acres in Uttar Pradesh. Subsection (2) of the aforesaid Section provides that subject to the provisions of any other law relating to the land tenures for the time being in force, the State Government may, by general or special order, authorise transfer in excess of limit prescribed in sub-section (1) of Section 154 of U. P. Act No. 1 of 1951 provided if State Government is of opinion that such transfer is in favour of a registered Co-operative Society or an Institution established for charitable purpose which does not have land sufficient for its needs or that the transfer is in the interest of general public. It is further to be noticed that Section 166 of the said Act provides that every transfer made in the contravention of the provision of U. P. Act No. 1 of 1951 shall be void. Section 167 of the said Act provides consequences, which ensue in respect of every transfer, which is void by virtue of Section 166 of the Act.

6. A combined reading of Sections 152, 154, 166 and 167 of U. P. Act No. 1 of 1951 leads towards an irresistible conclusion that no bhumidhar shall have the right to transfer by sale or gift any land in excess of 12.50 acres in Uttar Pradesh and in those cases where such transfer exceeds 12.50 acres, the transferee, as a result of such sale or gift, becomes entitled to land which, together with land, if any, held by his family in aggregate does not exceed 12.50 acres unless the land transferred by a bhumidhar by sale or gift is tea gardens or the State Government by general or special order authorises transfer in excess of the limit prescribed provided the State Government is of the opinion that such transfer is in favour of registered Co-operative Society or an Institution established for charitable purpose which does not have land sufficient for its needs or that the transfer is in the interest of general public.

7. Learned counsel for the petitioner Sri Sankatha Rai fails to bring the case of the petitioner company within any one of the exceptions enumerated

hereinabove to make the petitioner company entitled to hold land in excess of 12.50 acres in Uttar Pradesh. It is apparent on face of record that petitioner company has no authorisation either general or special to hold land in excess of 12.50 acres by State Government. Indisputably, the petitioner company is not a Co-operative Society registered under the Co-operative Societies Act nor petitioner company is established for charitable purposes. Nothing is brought to my notice that the present company is established in the interest of general public. Contrary to it, there are overwhelming materials on record and also from attending circumstances, it is inferable that the petitioner company is an establishment established with profit orientation for its shareholders. It is pertinent to mention here that the petitioner company has not produced its certificate of registration under the Companies Act. During the course of argument, articles of association of Nuskar Enterprises Ltd. is produced by the learned counsel for the petitioner. It is not understandable as to why the certificate of registration under the Companies Act is not produced before the Court. It is also not understandable as to how the Articles of Association of Nuskar Enterprises Ltd. has nexus with the petitioner Company. I am of the view that even if the affidavit dated 19.5.1993 (Annexure-7 to the writ petition) of the General Manager of the petitioner company giving consent to relinquish the land in excess of 12.50 acres in favour of State Government is ignored, even then the findings of respondent Nos. 1 and 2 are sustainable for the reasons given hereinabove.

8. It is next contended by the learned counsel for the petitioner that the expressions "family" and "person" used u/s 154 of U. P. Act No. 1 of 1951 are attracted to the petitioner company.

9. The aforesaid contention raised by the learned counsel for the petitioner is attractive, but fallacious. The expressions "family" and "person" both are to be interpreted in the light of Explanation added to Section 154 of Act No. 1 of 1951. The Explanation added u/s 154 of the said Act provides that for the purposes of this Section, the expression "family" shall mean the transferee, his or her wife or husband, as the case may be, and minor children, and where the transferee is a minor also his or her parents. Thus, the expressions "family" and "person" used in Section 154 of the Act are to be made applicable to human beings alone and these expressions are not extendable to a registered company which is an inanimate entity and to whom juristic personality is attached by legal fiction, it is held that such a company having juristic personality by legal fiction is not capable to have wife or husband or minor children as explained by the State Legislature itself in the Explanation appended to Section 154 of U. P. Act No. 1 of 1951, therefore, these two expressions are not extendable to the petitioner company.

10. It is to be imbibed that whenever any Act is passed or any Section is amended by Parliament or State Legislature, it intends to remove some anomalies. Here in the present case, the solemn object of Sections 152. 154.

166 and 167 of U. P. Act No. 1 of 1951 is to check the transfer by sale or gift a bhumidhar, any land other than tea garden in excess of 12.50 acres and another object is that no one should be made entitled to acquire bhumidhari land more than 12.50 acres in Uttar Pradesh unless such transferee brings his/her/its case within any one of the exceptions mentioned hereinabove in extenso. To my mind, the aforesaid interpretation of Sections 152, 154, 166 and 167 of U. P. Act No. 1 of 1951, in the present case, is in consonance with Article 38 of the Constitution, which provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of national life. The State is to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. The petitioner company is a fats and oil producing establishment with profit orientation to its members/shareholders has purchased land by several sale-deeds between January, 1992 to April, 1992 against the letter and spirit of the aforesaid Sections of U. P. Act No. 1 of 1951 and both the courts below have committed no error in passing the impugned orders vesting the land in dispute in the State of Uttar Pradesh free from all encumbrances.

11. The learned counsel for the petitioner relied upon a decision rendered by learned Judges constituting Division Bench in Civil Misc. Writ Petition No. 7111 of 1988, *Kasturi Sanyukt Sahkari Krishi Samiti Ltd., Sultanpur v. State of U. P. and others*, decided on 16.3.1989, a copy whereof is filed and marked as Annexure-12 to the writ petition, and the decision rendered by learned Judges constituting another Division Bench in Civil Misc Writ Petition No. 20518 of 1998, *Lokpriya Housing Cooperative Society Ltd. v. State of U. P. and others*. Learned counsel for the petitioner has invited my attention to a decision rendered by Supreme Court in Civil Appeal No. 1618 of 1989, *State of U. P. and others v. Kasturi Sanyukt Sahkari Krishi Samiti Ltd.*, wherein the Supreme Court affirmed the decision rendered by Division Bench in Civil Misc. Writ Petition No. 7111 of 1988, decided on March 16, 1989.

12. There is no quarrel with the proposition of law laid down by the learned Judges constituting Division Bench in case of *Kasturi Sanyukt Sahkari Krishi Samiti Ltd. (supra)*, affirmed by Apex Court in S.L.P., and decision rendered by another Division Bench of this Court in case of *Lokpriya Housing Co-operative Society Ltd. (supra)*, but the facts of the aforesaid cases are distinguishable to the facts and circumstances of the present case. The aforesaid cases cited by the learned counsel for the petitioner fall within one of the exceptions enumerated under subsection (2) of Section 154 of U. P. Act No. 1 of 1951 whereas the learned counsel for the petitioner fails to bring the case of the petitioner company within the four corners of any one exceptions enumerated under subsection (2) of the said section.

13. I have gone through the orders passed by Additional Commissioner

(Administration), Bareilly Division, Bareilly dated 30.5.2001 and the order passed by Collector, Pilibhit dated 24.5.1993. In my considered opinion, the aforesaid two orders are just and proper and do not require interference under limited jurisdiction of Article 227 of the Constitution. I am of the opinion that by the impugned orders, material justice has been done between the parties, therefore, I decline to make these orders impugned ineffective by issuing a prerogative writ under Article 227 of the Constitution, which is expected to be exercised by this Court on recognised lines evolved by various Judicial pronouncements of High Courts and Supreme Court.

14. In the present case, it is apparent on the face of record that all the transfers had been made in favour of the petitioner company between January, 1992 to April, 1992. It is to be noticed that prior to 3.5.1981 for evicting the transferees, who occupied the land on the basis of sale or gift in excess of 12.50 acres in Uttar Pradesh, the Collector was required to file a suit for eviction, but aforesaid provisions had been deleted and subsection (1) of Section 167 is substituted providing that if the land is in excess of 12.50 acres, it is to vest in the State Government free from all encumbrances. Now since it is admitted that the transfer made in favour of the petitioner company, is in excess of 12.50 acres in the State of Uttar Pradesh therefore, without filing suit for eviction by Collector, surplus land of more than 12.50 acres shall vest in the State Government free from all encumbrances and an argument, contrary to it, is not acceptable.

As a result of aforesaid discussion, the present writ petition is hereby dismissed in limine.

Office of the Registry of this Court is hereby directed to send a copy of this order to the Chief Secretary, State of Uttar Pradesh, Lucknow to ensure to take over possession of excess land of more than 12.50 acres from petitioner company, which is vested in State Government free from all encumbrances through Collector, Pilibhit to avoid further delay to take over possession from the petitioner company, which is illegally occupying the land of the State Government for more than nine years against the mandatory provisions of U. P. Act No. 1 of 1951 and also against the constitutional philosophy enshrined under Article 38 of the Constitution.