
(1997) 01 AHC CK 0121
In the Allahabad High Court
Case No : C.M.W.P. No. 4554 of 1980

Rajkumar (Decd.) through L.Rs. and Another	APPELLANT
Vs	
Deputy Director of Consolidation and Others	RESPONDENT

Date of Decision : 09-01-1997

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 45A(2), 4C, 5, 5(1)
Uttar Pradesh Land Laws (Amendment) Act, 1991 — Section 2, 3, 4

Citation : (1997) 01 AHC CK 0121

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : H.S. Nigam, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—The sole question involved in the writ petition is whether the permission was required by the Petitioners from the Settlement Officer Consolidation when the vendors of the Petitioners executed sale-deed in their favour on 20.9.1971.

2. One Sankatha was tenure-holder of khata Nos. 1103 and 1108, measuring 12 Bigha 7 Biswa 13 Biswansi and 6 Bigha 10 Biswa 5 Biswansi, situate in village Mahuli, Pargana. Tehsil and district Kanpur. He was allotted two chaks during consolidation which were of Khata Nos. 1103 and 1108. The Petitioners purchased entire land of chak allotted on Khata No. 1108 under a registered sale-deed dated 20.9.1971 from the tenure-holder, Sankatha. The Petitioners applied for mutation of their names. One of the sons of Sankatha, filed objection before the Assistant Consolidation Officer to the said mutation application. The matter was referred to the Consolidation Officer. The Consolidation Officer by order dated 4.7,1977 held that Sankatha had not obtained permission from the Settlement Officer Consolidation to execute the sale-deed as provided u/s 5(1)(c) (ii) of Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act) and, as such, the sale-deed was invalid. The Petitioners filed appeal before the

Settlement Officer Consolidation. The appeal was dismissed and the order was affirmed by Respondent No. 1 in revision vide order dated 3.5.1980. The Petitioners have challenged these orders in the present writ petition.

3. Sri H. S. Nigam, learned counsel for the Petitioners, contended that Section 5(1)(c)(ii) of the Act was amended by U.P. Act No. 34 of 1974. Prior to the enforcement of the amending Act the provision was as follows:

(c) Notwithstanding anything contained in U.P. Zamindari Abolition and Land Reforms Act, no tenure-holder except with the permission in writing of the Settlement Officer Consolidation, previously obtained shall:

(ii) transfer by way of sale, gift or exchange any part of his holding in the consolidation area.

After its amendment by U.P. Act No. 34 of 1974, which came into force with effect from 2nd December, 1974, it reads as under:

(c) Notwithstanding anything contained in Zamindari Abolition and Land Reforms Act, 1950 no tenure-holder, except with the permission in writing of the Settlement Officer Consolidation previously obtained shall:

(ii) transfer by way of sale, gift or exchange his holding or any part thereof in the consolidation area.

The effect of the amending Act came into consideration in Riasat Khan and Others Vs. The Deputy Director of Consolidation and Others, , wherein it was held that prior to enforcement of the amending Act the sale of any part of the holding was invalid but after the enforcement of the amending Act whether transfer is in respect of the entire holding or any part thereof, previous permission in writing of the Settlement Officer Consolidation was necessary to be obtained.

4. The Petitioners rely upon the sale-deed executed prior to the enforcement of the amending Act. The sale of any part of the holding by his vendor Sankatha will be invalid.

5. The next submission of learned counsel for the Petitioner is that during the consolidation proceedings Sankatha was allotted two chaks, one at Khata No. 1108 and another at Khata No. 1103. Both the chaks were separate and the Petitioners had purchased the entire chak which was existing at Khata No. 1108 and as the entire chak was transferred, it was not necessary to obtain any permission from the Settlement Officer Consolidation u/s 5(1)(c)(ii) of the Act. The language of the provision, as then existed, clearly Indicated that the transfer by way of sale, gift or exchange of any part of holding in the consolidation area by the tenure-holder was prohibited. Sankatha had his holding in two Khatas namely Khata Nos. 1103 and 1108. These two Khatas are to be taken as one holding under the law. The holding has been defined u/s (4C) of the Act which is as follows:

(4C) "Holding" means a parcel or parcels of land held under one tenure by a tenure-holder singly or jointly with other tenure-holders.

The two Khatas constituted one holding of Sankatha. He has sold a portion of the holding to the Petitioners. This transfer will be in contravention of the provision of Section 5(1)(c)(ii) of the Act.

6. Another limb of the argument of learned counsel for the Petitioners is that the basic purpose of restraining a tenure-holder from executing the sale-deed is to avoid fragmentation. He has placed reliance upon a decision of the Full Bench in Smt. Ram Rati and Others Vs. Gram Samaj, Jehwa and Others, , wherein the following observation was made:

If one has regard to the object underlying the provisions in question it becomes quite clear as to why the ban in clauses (i) and (ii) is not coextensive. The object underlying Clause (i) is to preserve the land for agricultural purposes and that is why a complete ban has been placed on the use of the land for non-agricultural purposes. A ban on a part of the land only would not have served the purpose. Under Clause (ii) the ban was intended to prevent the fragmentation of holdings and as such, it was placed only on a transfer of a part of the holding. There could be no objection to the transfer of the holding as a whole because it would not involve fragmentation but would involve only a change in ownership.

The above observation was made in the context of the argument raised on behalf of the Petitioners that a tenure-holder can execute a sale-deed in respect of the entire holding as that will not cause any fragmentation. This argument was accepted. There was, however, no argument that even a part of the holding can be sold by a tenure-holder.

7. Sankatha, might have been allotted two chaks but if he executed the sale-deed in respect of one chak which was allotted to him by the Consolidation Authorities, still it will be a part of his holding and the transfer of such land shall be in contravention of Section 5(1)(c)(ii) of the Act.

8. The next submission of learned counsel for the Petitioner is that the Act was amended by U.P. Land Laws (Amendment) Act, 1991. Section 5 of the said Act deleted Sub-clause (ii) of Clause (c) of Sub-section (1) of Section 5 of the Act. It is contended that the provision for obtaining the permission was only procedural and it shall be deemed to have retrospective effect. This question does not arise in the present case as Sub-section (2) of the amending-Act, 1991 itself provides that Sections 2 to 4 shall be deemed to have come into force from February 19, 1991 and the remaining provision shall come into force at once. If any specific date has been provided in an amending Act for enforcement of the provision of the Act, the provision will be deemed to have come into force from the said date and the question as to whether it is a procedural or substantive law, will have no relevance. The Petitioners obtained the sale-deed on 20.9.1971, the provision of Section 5(1)(c)(ii) as then existed was applicable and the vendor was required to obtain permission from the Settlement Officer Consolidation.

9. The last submission of learned counsel for the Petitioner is that the sale-deed shall not be treated as void. It can be only treated as unenforceable under law. He has placed reliance upon Sub-section (2) of Section 45A of the Act which provides that a transfer made in contravention of the provisions of Section 5(1)(c) (ii) shall not be valid or recognised; anything contained in any other law for the time being in force to the contrary notwithstanding. This provision itself makes clear that the transfer cannot be treated as valid under law. The Petitioners had filed an application for mutation on the basis of the sale-deed obtained by them. The permission of the Settlement Officer Consolidation having not been obtained, such transfer shall be invalid and cannot be enforced by the Consolidation authorities.

10. In view of the above, there is no merit in this writ petition. It is accordingly dismissed.

The parties shall, however, bear their own costs.