

(2012) 02 AHC CK 0369

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6446 of 2012

Rakesh Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 14, 14A, 15, 3(4)
Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1976 —
Section 166, 167
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 154, 157A,
163, 166, 167
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 151

Citation : (2012) 5 ADJ 551 : (2012) 116 RD 69

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Rishikesh Tripathi, for the Appellant;

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—Petitioner in this writ petition has called upon the Court to answer the following question: Who is competent authority to declare a deed of transfer void u/s 166 of the U.P. Z.A. & L.R. Act, 1950?

The brief facts giving rise to the above question would suffice the purpose.

2. Petitioner purchased the land in question vide sale-deed dated 1.1.1988. It appears that the Naib Tehsildar submitted a report that the aforesaid sale deed is hit by section 157A of the Act. The report was accepted by the Assistant Collector First Class vide order dated 25.3.2010 and an order vesting the land in the Gaon Sabha was passed. The aforesaid order was challenged by the petitioner by means of an appeal before the Additional Commissioner - I, Chitrakoot Dham Division, Banda. The appeal has been allowed vide order dated 27.8.2010 and the matter has been remanded to the Collector for decision afresh. Petitioner moved application for modification of the above remand order contending that

the competent authority to decide the matter is Assistant Collector First Class and, therefore, the remand to the Collector is not proper and requires modification. The application has been rejected vide order dated 4.11.2011.

3. It is in the above background that the present writ petition has been filed raising the above question.

4. Section 166 of the Act provides that transfer made in contravention of the provisions of the Act shall be void. The consequences of void transaction have been enumerated u/s 167 of the Act and it is provided that the land covered by such transaction would vest in the State Government and that Collector would be entitle to take possession of the same. The Act, however, does not contain any provision as to the authority competent to declare any transfer to be void u/s 166 of the Act.

5. Ordinarily, there is no necessity for getting any transaction to be declared void. The party asserting the transaction to be void can establish it in proceedings in which reliance upon such a transfer is being placed and even in collateral proceedings.

6. Section 331 of the Act provides for the Courts which are competent to take cognizance of any suit, application or proceedings. It provides that Courts mentioned in column 4 of the Schedule II of the Act shall be the competent Court to take cognizance of any suit, application or proceedings based upon cause of action specified in Column 3 of Schedule II of the Act. Item No. 15 of Schedule II provides that proceedings u/s 167 of the Act read with section 201 or 202(a) of the Act for the ejectment of a transferee of a Bhumidhar with non-transferable rights or Asami shall lie before the Assistant Collector First Class. Ejectment of a transferee of a bhumidhar or an Asami is also a consequence of a void transfer. The aforesaid provision though does not specifically provides that the Assistant Collector First Class is competent to declare the transfer void u/s 166 of the Act but when he has been conferred with the power to make a consequential order of eviction of the transferee/ it means that in such eviction proceedings he is also competent to declare the transaction to be void and thereafter to order for eviction.

7. In this view of the matter, Assistant Collector First Class appears to have both the powers of declaring a transfer to be void and to order eviction of the transferee.

8. In this connection my attention has also been drawn to Rule 151 of the Rules framed under the Act. The aforesaid Rules provide that it shall be the duty of the Lekhpal to report to the Assistant Collector First Class through the Tehsildar, all cases of transfers made in contravention of the provisions of sections 154 and 157A of the Act, whereupon Assistant Collector First Class is enjoined upon to obtain information, make enquiry and to issue a show-cause notice to the person concerned and after hearing the parties to pass necessary orders. Thus, the aforesaid Rule empowers the Assistant Collector First Class to pass an order

declaring a transfer to be void if it happens to be in contravention of sections 154 and 157A of the Act.

9. In view of both the above provisions contained in section 331 of the Act read with item No. 15 of Schedule - II and Rule 151 of the Rules, Assistant Collector First Class is the competent authority to declare a transfer void.

10. Previous to the insertion of sections 166 and 167 of the Act, there was section 163 in the Act. It had the same effect as sections 166 and 167 of the Act. The aforesaid section 163 of the Act, which was omitted vide U.P. Act No. 20 of 1982 w.e.f. 3.6.1981 is quoted below:

163. Consequences of void transfers by bhumidhars.--(1) Where any holding or part thereof has been transferred in contravention of section 154 or section 157A, then notwithstanding anything contained in any law for the time being in force or any, contract, decree or order of any Court, the Assistant Collector First Class may, either suo motu or on the application of any person, and after making such inquiry as they thinks fit, by order declare such transfer to be void:

Provided that no order under this sub-section shall be made without affording any opportunity of hearing to the transferor as well as to the transferee.

(2) Where the transfer of any holding or part has been declared to be void under sub-section (1) the following consequences shall cause namely:--

(a) the subject-matter of transfer shall, with effect from the date of such order, be deemed to have vested in the State Government free from all encumbrances;

(b) the trees, crops and wells existing in the holding on the date of the order shall with effect from the said date be deemed to have been vested in the State Government free from all encumbrances;

(c) the transferee may remove other movable property or the materials of any immovable property existing on the holding on the date of the order, within such time as may be prescribed.

(3) Where any holding or part thereof or other property has vested in the State Government under sub-section (2), and any person is in un-authorized occupation thereof, it shall be lawful for the Collector to direct that such person be evicted therefrom and for that purpose he may use or cause to be used such force as may be necessary.

11. The aforesaid provision is a combination of sections 166 and 167 of the Act. It clearly provides that where any holding or any part of it is transferred in contravention of section 154 or section 157A, the Assistant Collector First Class may, on his own or on the application of any person declare such transfer to be void with consequences mentioned therein. The aforesaid provision clearly provided that power to declare a transaction/transfer to be void vests with the Assistant Collector First Class. The aforesaid provision has been deleted and substituted by sections 166 and 167 by the same very Amending Act. In the

substituted provision though the Assistant Collector First Class has not been specifically conferred with the power to declare such transaction/transfer to be void nonetheless as no other authority under the Act has been given the said power whereas the Rules and the Schedule II to section 331 of the Act continues to be the same it means that he is still authorised to declare a transfer to be void under the amended/substituted provisions.

12. Section 3(4) of the Act defines "Collector" to mean an officer appointed as Collector under the provisions of the U.P. Land Revenue Act, 1901 and includes an Assistant Collector First Class who is empowered by the State Government by a notification in the Gazette to discharge all or any of the functions of a Collector under this Act

13. Section 3(4) of the Act, containing definition of "Collector" reads as under:

(4) "Collector" means an officer appointed as Collector under the provisions of the U.P. Land Revenue Act, 1901 and includes an Assistant Collector of the first class empowered by the State Government by a notification in the Gazette to discharge all or any of the functions of a Collector under this Act.

14. In view of the above definition, Collector includes an Assistant Collector First Class.

15. Section 15 of the Land Revenue Act authorises the State Government to appoint Assistant Collector First Class or Second Class for each district and that such Assistant Collectors shall be subordinate to the Collector. Section 15 of the Land Revenue Act reads as under:

15. Assistant Collectors.--(1) The State Government may appoint to each district as many other persons as it thinks fit to be Assistant Collectors of the first or second class.

(2) All such Assistant Collectors, and all other revenue officers in the district, shall be subordinate to the Collector.

16. Section 14 of the U.P. Land Revenue Act provides that Government has power to appoint a Collector for each district who shall exercise all the powers and duties conferred and imposed upon him by the said Act or any other law in force.

17. Additional Collectors are appointed by Government to exercise and discharge such powers of the Collectors as may be assigned as provided in section 14-A of the U.P. Land Revenue Act.

18. Sections 14 and 14-A of the Land Revenue Act are quoted herein below:

14. Collector of the district--The State Government shall appoint in each district an officer who shall be Collector of the district and who shall, throughout his district, exercise all the powers and discharge all the duties conferred and imposed on a Collector by this Act or any other law for the time being in force.

14-A. Appointment, powers and duties of Additional Collectors.--(1) The State Government may appoint an Additional Collector to a district or in two or more districts combined.

(2) An Additional Collector shall hold his office during the pleasure of the State Government.

(3) An Additional Collector shall exercise such powers and discharge such duties of a Collector in such case or classes of cases as the Collector concerned, may direct.

(4) This Act and every other law for the time being applicable to a Collector shall apply to every Additional Collector, when exercising any powers or discharging any duties under sub-section (3), as if he were the Collector of the district.

19. The Collector as such includes Additional Collector who is an authority at par with the Collector vide Full Bench of this Court *Brahm Singh Vs. Board of Revenue and Others*, .

20. A plain and simple reading of section 3(4) of the Act and sections 14, 14-A and 15 of the U.P. Land Revenue Act makes it clear that the Collector includes Additional Collector as well as Assistant Collector and is authorised to discharge the powers and duties conferred upon him under the Act or in any other law in force. The aforesaid Acts do not confer upon the Collector the power to declare a transaction to be void u/s 166 of the Act being violative of section 154 or 157A of the Act. Such power is vested only in the Assistant Collector First Class who may be authorised by the State Government to discharge all or any of the functions of the Collector but converse to it is not permitted. The duties and functions assigned therein to the Assistant Collector First Class under law are not to be discharged by the Collector even though he may be the controlling authority of the Assistant Collectors First Class. He is not authorised to take over the functions assigned to the Assistant Collectors. Thus, Collector is not supposed to discharge the functions specifically assigned to the Assistant Collectors under the above two Acts including that of declaring a transfer to be void.

21. Apart from the above the initial order which was challenged in appeal before the Additional Commissioner was passed by the Assistant Collector First Class and, therefore, also on the order being set aside in appeal, the matter ought to have been remanded to the Assistant Collector First Class.

22. Accordingly, I answer the question by holding that the Assistant Collector First Class is the competent authority to declare any transaction of agricultural land void u/s 166 of the Act, if it is in contravention of sections 154 and 157A of the Act or as a matter of fact, of any other provision of the Act.

23. In such a situation, the Additional Commissioner committed an error of law in remanding the matter to the Collector. The writ petition is accordingly allowed and the order of the Additional Commissioner dated 27.8.2010 is modified to the extent that the matter stands remanded to the Assistant Collector First Class in

place of the Collector as directed.