
(1997) 02 AHC CK 0121
In the Allahabad High Court
Case No : C.M.W.P. No. 4991 of 1997

Ram Prakash

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 28-02-1997

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 163A, 167(1), 168A

Citation : (1997) RD 354

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Gyan Prakash, for the Appellant; V.K. Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.H. Zaidi, J.—Heard learned Counsel for the Petitioner and perused the record.

2. By means of this petition, Petitioner challenges the validity of the order dated 24.9.1996 passed by the Respondent No. 1.

3. It appears that on a complaint, proceedings u/s 168A of U.P. Zamindari Abolition and Land Reforms Act were initiated on the basis of the sale-deeds alleged to have been executed by Shakuruddin on 9.1.1989 and 20.10.89 in favour of Ram Prakash, the Petitioner. From the evidence on the record, it was proved that Shakuruddin did transfer fragment and not his entire holding or his entire Bhumidhari Land, in favour of Petitioner, therefore, the Respondent No. 2 passed the order and vested the land in dispute in the State.

4. Feeling aggrieved a revision was filed by the Petitioner before the Commissioner. The Commissioner made a recommendation to the Board of Revenue for setting aside the order passed by the Respondent No. 2. The Board of Revenue rejected the recommendation made by the Commissioner and upheld the validity of the order passed by the Respondent No. 3.

5. The Commissioner while making the reference has taken the view that Shakuruddin was a co-tenure-holder and his share was not partitioned, therefore, Section 168A of the Act will have no application in the present case.

6. The view taken by the Commissioner was apparently erroneous inasmuch as undivided share, or fragment thereof can be transferred. Section 168A of the Act reads as follows:

Section 168A. Transfer of fragments. -- (1) Notwithstanding the provisions of any law for the time being in force no person shall transfer whether by sale, gift or exchange any fragment situate in a consolidated area except where the transfer is in favour of tenure-holder who has a plot contiguous to the fragment or where the transfer is not in favour of any such tenure-holder, the whole or so much of the plot in which the person has bhumidhari rights, which pertains to the fragment is hereby transferred.

(2) The transfer of any land contrary to the provisions of Sub-section (1) shall be void.

(3) When a Bhumidhar has made any transfer in contravention of the provisions of Sub-section (1) the provisions of Section 167 shall, mutatis mutandis, apply.

A reading of the aforesaid provision reveals that in a Consolidated area sale of fragment of the holding, is prohibited, except in favour of a tenure-holder having contiguous plot. Transfer of entire holding or entire bhumidhari plot is not prohibited. A reference in this regard may be made to Bhuri v. Balwant Singh 1980 ALJ 344.

7. Learned Counsel for the Petitioner in support of his submission that the sale-deed in question was not hit by provisions of Section 168A of the Act, placed reliance upon a decision in Bibhuti v. Kasi Ram and Anr. 1977 RD 313. In the said case, following question was referred to a Division Bench for decision:

Whether the sale of his entire share in the Bhumidhari by a co-tenure-holder, where the total area of Bhumidhari land is less than the prescribed area is hit by the provisions of Section 168A of U.P. Zamindari Abolition and Land Reforms Act.

The Division Bench after considering the relevant provisions of the Act, replied the said question as under:

Our answer to the question referred is that the sale of his entire share in the Bhumidhari by a co-tenure-holder where the total area of Bhumidhari land is less than the prescribed area is not hit by the provisions of Section 168A of the U.P. Zamindari Abolition and Land Reforms Act.

8. In the present case, vide sale-deed dated 9.1.89 the entire share in the Bhumidhari land was not transferred by Shakuruddin in favour of the Petitioner, but only a fragment of the said holding was transferred. The remaining share of other fragment was transferred by the sale deed dated 20.10.89. It was not proved that the Petitioner had his plot contiguous to the fragment of the land in

dispute, which is admittedly situated in consolidated area, therefore, the aforesaid decision does not support the arguments advanced by the learned Counsel for Petitioner.

9. The Addl. Commissioner, Bareilly has taken the view that since the holding in question was not partitioned, therefore Section 163A of the Act will have no application in the present case. For the purposes of the present case question of partition of the holding was wholly irrelevant. The view taken by the said Commissioner was, therefore, manifestly erroneous and illegal. The Respondent No. 1 did not commit any error of law in rejecting the reference made by the Commissioner and in upholding the orders passed by the trial court-Respondent No. 2.

10. The writ petition is devoid of merit and is dismissed in limine.