
(2010) 05 AHC CK 0017
In the Allahabad High Court
Case No : C.M.W.P. No. 5531 (M/S) of 1989

Ravi Kant and another

APPELLANT

Vs

Chief Revenue Officer, Sultanpur and others

RESPONDENT

Date of Decision : 25-05-2010

Acts Referred:

Uttar Pradesh Bhoodan Yagna Act, 1952 — Section 15A

Citation : (2011) 114 RD 439

Hon'ble Judges : Yogendra Kumar Sangal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Yogendra Kumar Sangal, J.—This writ petition was filed by the petitioners to issue a writ, order or direction in the nature of certiorari quashing the judgment and order 28.1.1989 contained in Annexure No. 5 of the writ petition.

2. Heard learned Counsel for the petitioners, learned Standing Counsel for respondent No. 1 and perused the record. As per petitioners' case they were granted land measuring 1 Bigha 1 Biswa of Plot No. 927 situated in village Sarayan, pargana Barasua, Tehsil and district Sultanpur by means of a document of gift dated 5.12.1983 issued by District Bhudan Committee, Sultanpur. Petitioners came into possession of the land. Respondent Nos. 2 to 9 filed objection u/s 15-A of the U.P. Bhudan, Yozana Act, 1952 (hereinafter referred to as "the Act"). Copy of their objections is annexed to the writ petition is Annexure No. 2. From perusal of these objections, it reveals that they have challenged the alleged Gift in favour of the petitioners that petitioners' Father and Grand-father are rich persons. Violating the provisions of the Act alleged Gift was made in their favour by the Committee. They were not landless agriculture. No publication of this Gift was made. No list landless persons was prepared. Objectors are in possession of the land and trees planted in it exist from the time of their fore-fathers. This does not belong to Bhudan Samiti and Samiti never came in its possession. Petitioners never remained in possession of the property.

Consolidation proceedings commenced in the area where the land situates. Petitioners raised objection before the Consolidation Officer, the same was decided by respondent No. 1 and he has cancelled the alleged Gift in favour of the petitioners. Aggrieved by this order, this writ petition has been filed.

3. The main objection raised on behalf of the respondents was that when the alleged Gift was made in favour of the petitioners by the Committee, both the petitioners were minor and in favour of minor no such Transfer can be made under the provisions of law. Another objection was that land was not of such nature that agriculture was possible there. It was surrounded by the trees and the alleged Gift Deed is a void deed. Giving detailed reasons, respondent No. 1 after affording opportunity of hearing to both the parties and considering the evidence made available by them and after going through the record passed the impugned.

4. Learned Counsel for the petitioners argued that u/s 15-A of the Act, only Collector of the district was authorized to dispose of such objections but the respondent No. 1 was not Collector of the district so proceedings before him to cancel the Gift-deed were not according to law. Learned Standing Counsel argued that when the proceedings were going on before the respondent No. 1, never petitioners have raised this question of jurisdiction. This shows that they had given consent to the proceedings before the respondent No. 1. This also amount that they had waived this plea of jurisdiction at that time. Only when the case was decided against him by the respondent No. 1, this plea with the help of legal mind was raised, which cannot be permitted under the provisions of Law at this stage. Learned Counsel for the petitioners failed to explain why this plea was not raised before the respondent No. 1 when the proceeding was going on before him. This argument of the learned Standing Counsel cannot be said without force that this plea was not pressed by them at this stage and now when the case was decided by the respondent No. 1 against them, they are not entitled for any relief on the basis of this plea. Moreover, record shows that objections were filed by the respondents before the District Collector. It is clear from the Annexure-2 filed on behalf of the petitioners itself. Learned Standing Counsel argued that District Collector had authorized to respondent No. 1 for disposing of this case and transferred the case to him then this plea is also of no help to the petitioners. Again this argument is also not without force and no help can be given to the petitioners on this objection raised on their behalf at this stage of the case.

5. Undisputedly, petitioners were minor when the alleged Gift was made in their favour by Bhudan Samiti, it was in the shape of Gift. It is established that transfer by Gift cannot be deemed complete till it is not accepted by the Donee. Who had accepted this Gift on behalf of the minor petitioners, it is not clear from the record. Moreover, copy of the alleged Gift Deed Annexure 1 is filed on behalf of the petitioners, original Gift-deed was not filed. Learned Standing Counsel argued that as there was addition and alteration in the original Gift-deed to conceal this fact, the original Gift-deed was not filed. From perusal by the naked

eyes, this photostat copy reveals that words "Sarankshak Satya Narayan" are added by different ink and different hand-writing. When the father of these minors was alive at that time, why his name was not shown as Guardian of these minors, it is not sufficiently explained on behalf of the petitioners. How and when they obtained possession on this property to support there facts, no documentary evidence was filed on their behalf.

6. Learned Counsel for the petitioners argued that main Karinda of the Samiti was not produced before the Court who can support their case. If it was so why the petitioners have not examined him or get him summoned it is also not explained on their behalf. Respondent No. 1 in its judgment has observed that the person, who was examined on behalf of Bhudan Samiti stated on oath before him that name of the petitioners is not entered in the record of Samiti and there is no mention of such Gift deed in the record of Samiti. Factual finding of the respondent No. 1 is that agriculture is not possible on the land in dispute. It is surrounded by the trees. Disputed facts are not decided by this Court in writ jurisdiction, it is also established law. This all shows that giving detailed and sufficient reasons, respondent No. 1 has finally held that the alleged Gift in favour of the petitioners was not legal and valid and also not established. In the facts and circumstances of the case, he had rightly cancelled the same. It is established law that in register.

7. Seeing the facts and circumstances of the case, considering the arguments of the parties' Counsel there appears no sufficient ground for interference of this Court in the correctness of the orders challenged on behalf of the petitioners through this writ petition. It is not evident that the writ petition has been filed bona fide and the petitioners have approached this Court with clean hands. It is established law that in the Writ Jurisdiction, this Court should not act like an appellate Court on the orders passed by the subordinate courts. Interference of this Court in the writ jurisdiction should be exercised in grave cases where the Subordinate Courts act wholly without jurisdiction and in excess or it was in violation of Principle of Natural justice or refused to exercise jurisdiction vested in it or there is apparent error resulting in manifest injustice.

8. Writ petition has no force and it is accordingly, hereby dismissed.