(2011) 07 AHC CK 0049

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6074 of 2003

Robin Lal APPELLANT

Vs

Addl. Commissioner Gorakhpur Division and Others RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Citation : (2011) 7 ADJ 370 : (2011) 6 AWC 5457 : (2011) 114 RD 100

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon''ble A.P. Sahi, J.—Heard Sri P.K. Mishra, learned counsel for the petitioner and the learned Standing Counsel.

Acounter affidavit has been filed through the Tahsildar, Chaurichaura, District Gorakhpur.

2. The petitioner''s holding over the land in dispute has been treated to be surplus in the hands of Sardar Satyajeet Singh Majithia-respondent No. 4 from whom the petitioner''s mother is stated to have obtained the property through an agreement to sale dated 25.2.1969 and subsequently through a sale-deed dated 23.2.1972. The land was included in the holding of the respondent No. 4 on the ground that as on the appointed date of the Ceiling Act i.e. 24th January, 1971, the said land stood in the name of respondent No. 4 and therefore the same forms part of his holding and has been rightly declared as surplus.

3. The petitioner''s predecessor in interest in whose favour the sale-deed has been executed namely Smt. Betti Lal, filed objections to the effect that the land had been purchased through a valid sale-deed for which an agreement to sale had already been entered into on 25.2.1969 prior to the appointed date. It was further contended that the transaction was valid and bona fide as the consideration so paid was as per the then market value available for such land in the year 1969. The sale-deed and the agreement to sale both were placed on

record. The Prescribed Authority rejected the objections. Hence, an appeal was preferred. The appeal was also dismissed against which writ petition No. 33310 of 1996 and other connected writ petitions were filed. The petitioner was one of the petitioners in the said writ petitions. The writ petition was allowed on 8th July, 1997 with the following observations:

Legally the Prescribed Authority is bound to consider the evidence on record oral & documentary produced by the parties before it and to examine the same critically and thereafter to record the findings on the issue/question involved in the cases. From the orders passed by the authorities below, it is apparent that oral & documentary evidence produced by the petitioners has not been considered and has been ignored by the authorities below. Learned counsel for the petitioners invited the attention to the oral evidence, which was on the record before the Prescribed Authority as well as the appellate authority. Copies of the statement of the witnesses have been filed as Annexures to the writ petitions. In the orders passed by the authorities below the oral evidence has not at all been referred to and has not been considered. It has totally been ignored. On the other hand, reference was made to the report of Revenue Inspector as well as the statement of Lekhpal, which were not relevant for deciding the question in controversy. The appellate authority has observed that the consideration paid by the petitioners for the land was not adequate although on the ground of in adequacy of sale consideration the transaction of sale-deed can not be discarded.

Thus the Prescribed Authority has recorded the findings on the question of bona fide nature of sale-deeds relied upon by the petitioners, ignoring the material evidence relied upon and filed by the petitioners. The appellate authority has also erred in law in affirming the findings recorded by the Prescribed Authority without considering the evidence on record. Thus the orders passed by the authorities below are apparently illegal.

4. After remand, the Appellate Authority has again focussed only on the consideration part of the sale-deed to hold it to be a Benami transaction without deciding anything further.

5. A counter affidavit has been filed reiterating the said stand taken therein.

6. Sri P.K. Mishra, learned counsel for the petitioner submits that the impugned order nowhere takes into consideration the observations made by this Court in the judgment dated 8th July, 1997 and neither the oral evidence nor the other material evidence including the agreement to sale has been even noticed by the Appellate Authority. The question as to whether the transaction was bona fide or not had to be gone into as per the amended provisions of the Ceiling Act and as interpreted by the Division Bench of this Court in the case of Om Prakash Agarwal Vs. First Additional District and Sessions Judge and Others, in which it has been held that the transaction entered into up to 8th March, 1973 have to be considered and in case they are bona fide, the benefit of exemption has to be

allowed. The appellate Court according to the petitioner has not entered into the said issues.

7. Learned Standing Counsel submits that a finding has been recorded with regard to the inadequacy of consideration and, therefore, in the absence of any evidence that such land was available at the rates purchased by the petitioner in 1972, and there being no evidence led, the sale-deed was not bona fide.

8. Having considered the aforesaid submissions raised, in order to dislodge a tenure holder from his holding, the burden is on the State to demonstrate that the land was being sold at higher rates and that the consideration amount as reflected was not proportionate or does not co-relate to the rates as were prevalent in 1969 when the agreement to sale was made. The High Court, as indicated in the judgment extracted above, and underlined in bold, had made it clear that the sale-deed could not be discarded on the ground of inadequacy of consideration.

9. Apart from this, the directions of this Court in the judgment 8th July, 1997 were categorical and none of those issues have been touched by the Appellate Authority in the impugned order dated 16th December, 2002. The appeal has been dismissed only on the ground of alleged inadequacy of consideration money which in the opinion of the Court could not have been the sole ground to treat the transaction to be a Benami transaction in the light of the observations hereinabove.

Accordingly, the order dated 16th December, 2002 is unsustainable. The same is quashed. The writ petition is allowed.

It shall be open to the appellate authority to decide the appeal in accordance with the observations made by this Court in the judgment dated 8th July, 1997 as also in the light of the observations made hereinabove.

