
(2012) 09 AHC CK 0284

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25624 of 2000

Shodan Singh and Another

APPELLANT

Vs

Additional Commissioner, (Administration) and Others

RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 166, 167, 168A, 333

Citation : (2013) 1 ADJ 505 : (2013) 2 AWC 1166

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : V.K. Singh, A.K. Rai and S.N. Singh, for the Appellant;

Final Decision : Allowed

Judgement

B. Amit Sthalekar, J.—By means of this petition the petitioner is challenging the order dated 23.12.1999 passed by the respondent No. 2, the Additional Collector (Administration) Meerut and the order dated 26.4.2000 passed the Additional Commissioner (Administration), Meerut Division, Meerut. The facts of the case, in brief, are that the petitioners are the Bhumidhars of plot No. 199 measuring area 0.506 hectares. The petitioners purchased the said plot through a registered sale-deed comprising half share of one Charan Singh, who was the sole Bhumidhar of the said plot. When the petitioners applied for mutation of their names in the Revenue Records, the Tehsildar made a complaint on 31.7.1999. Proceeding against the petitioners u/s 166 /167 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (the "Act 1950") was initiated. The complaint was that the purchase made by the petitioners was hit by the provisions of Section 168-A (since repealed) of the Act, 1950. After notices were issued to the petitioners, they filed their objections and asserted that the said purchase was not hit by the provisions of Section 168-A of the Act, 1950 and there was no violation of the said proviso. However, it is stated that the Additional Collector (Administration), Meerut, the competent authority by the impugned order dated 23.12.1999 has

held that the land, in question, was purchased by the petitioners in violation of the provisions of Section 168-A of the Act, 1950 and, therefore, no right accrued to the petitioners in such land and has further held that the land, in question would, therefore, vest in the State Government.

Aggrieved by the said order, the petitioners filed a Revision u/s 333 of the Act, 1950, which too was dismissed by the Revisional Authority by its order dated 26.4.2000.

2. I have heard Sri. V.K. Singh, learned counsel for the petitioners and Sri. Mata Prasad, learned Additional Chief Standing Counsel appearing for the State-respondents.

The submission of learned counsel for the petitioners is that the land, in question, was purchased through a valid sale-deed from Charan Singh, who was the co-bhumidhar of a portion of the plot No. 199 and, therefore, the sale by Charan Singh in favour of the petitioners could not be said to be hit by the provisions of Section 168-A of the Act, 1950.

3. On the other hand learned Additional Chief Standing Counsel submitted that the sale of the plot could have been made only if Charan Singh was the Bhumidhar of the entire plot No. 199 and since Section 168-A of the Act, 1950 specifically proscribed the sale or transfer of fragmented portion of any holding, the sale in favour of the petitioners was in violation of the provisions of Section 168-A of the Act, 1950. The provisions of Section 168-A of the Act, 1950 reads as follows:

168.A. Transfer of fragments.--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 thereby 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.

4. The provisions of Section 168-A of the Act, 1950 have also been interpreted by the Supreme Court in the case in Mithlesh Kumari and Another Vs. Fateh Bahadur Singh and Another, , has held as under-

the object of the Section is to prevent fragmentation of land situated in a consolidated area and transfers that would result in fragmentation or further fragmentation shall be void and to such transfers Section 167 will mutatis mutandis be applicable. The Section comes into play only when a fragment

situated in a consolidated area is transferred. If transfer of a fragment is made in favour of tenure-holder who has a plot contiguous to the fragment, the purpose of law is not defeated inasmuch; as it will be consolidated with the contiguous plot of the transferee. When the land held by a person in a consolidated area is already a fragment then as was provided previous to the amendment in 1961, the whole of the plot to which the fragment pertained was to be transferred. After the amendment, the invalidity and applicability of Section 167 is limited to a case where the transfer is not in favour of any such tenure-holder and to the whole or so much of the plot in which the person has bhumidhari rights which pertains to the fragment is thereby transferred. If the transferor had bhumidhari rights on the whole of the fragment the whole has to be transferred. If the person has bhumidhari rights only in a part of the plot that part on which he has bhumidhari rights can be transferred.....There is no doubt that under sub-section (2) transfer of any land contrary to the provisions of sub-section 3 the provisions of Section 167 shall mutatis mutandis apply.

5. The judgment of the Supreme Court was subsequently followed by this Court in the case in Goverdhan Singh and Others Vs. Board of Revenue and Others, . Considering the two impugned orders dated 23.12.1999 and 26.4.2000 in the light of interpretation of the provisions of Section 168-A of the Act, 1950 by the Supreme Court as also followed by this Court, it is amply demonstrated that two orders impugned herein are absolutely illegal and based on a misreading and misinterpretation of the provisions of Section 168-A of the Act, 1950 and are, therefore, liable to be quashed.

In the facts and circumstances of this case and the law laid down by the Supreme Court in the case of Mithlesh Kumari (supra) and of this Court in the case of Goverdhan Singh (supra), the writ petition stands allowed and the impugned orders dated 23.12.1999 and 26.4.2000 are quashed.

There shall be no order as to costs.