

(1983) 05 AHC CK 0004

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7854 of 1980

Smt. Bhagwati

APPELLANT

Vs

Deputy Director Consolidation and Others

RESPONDENT

Date of Decision : 04-05-1983

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12, 4(2), 5, 5(2), 52
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 154

Citation : (1983) RD 201

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : Murlidhar, Pradeep Kumar and Prakash Chandra, for the Appellant;
D.P.S. Chauhan and S.C., for the Respondent

Judgement

K.P. Singh, J.—This writ petition arises out of proceedings u/s 12 of the U.P. Consolidation of Holdings Act (hereinafter referred to as the Act). The contesting opposite parties Nos. 4 to 6 in the present writ petition being transferees of the disputed land applied for their names to be mutated over the same. The Petitioner contested their claim on the ground that the sale deed was bad in law as no permission was sought for the execution of the sale deed in favour of the contesting opposite parties under the provisions of Section 5(c)(ii) of the Act. The aforesaid provision reads as below:

Upon the publication of the notification under Sub-section (2) of Section 4 in the official Gazette, the consequences, as hereinafter set forth, shall, subject to the provisions of this Act from the date specified thereunder till the publication of notification u/s 52 or Sub-section (1) of Section 6, as the case may be, ensue in the area to which the notification under Sub-Section 4(2) relates; namely.

(a)....

(b)....

(c) Notwithstanding anything contained in the UP ZA and LR Act, 1950 no tenure

holder, except with the permission in writing of Settlement Officer (Consolidation), previously obtained shall.

(i)....

(ii) Transfer by way of sale, gift or exchange his holding or any part thereof in the consolidation area.

2. Relying upon the aforesaid provision it has been contended before me that the consolidation authorities have patently erred in giving effect to the sale deed in favour of the contesting opposite parties. It has been emphasized that the sale deed was executed by the Civil Court in favour of the contesting opposite parties on behalf of the Petitioner, hence it was incumbent upon the Civil Court to have obtained necessary permission u/s 5(c)(ii) of the Act.

3. All the consolidation authorities have negated the contention raised on behalf of the Petitioner in this regard.

4. While construing the provisions of Section 154 of the UP ZA and LR Act, Division Bench of this Court in *Mst. Janatun Nisan v. Mustafa Husain Khan* 1955 ALJ 242 observed as below:

...It is doubtful whether the restriction contained in Section 154 is applicable to an execution sale....

5. In *Gaon Sabha Village Sikri Buzurg v. D.D.C.* 1968 RD 168 a single Judge of this Court as he then was, has observed as below:

...The right of the State to acquire is not trammled by Section 154. Similarly that section does not deal with the situation which may arise by attachment and sale of the holding in execution proceedings. The Court puts up in auction the interest of the Bhumidhar in land. The Court is not subjected to the condition which has been imposed upon the Bhumidhar, in respect of his right of disposal as an owner. These circumstances show that Section 154 places a personal restriction upon the Bhumidhar himself in relation to his right of transfer voluntarily. That restriction is not applicable to compulsory sales. The authorities below were right in holding that the execution sale was not illegal.

6. To my mind the restriction contained in Section 5(c)(ii) of the U.P. Consolidation of Holdings Act relates to a voluntary sale by the, tenure holder. If the tenure holder refuses to execute sale deed in pursuance of an agreement to sell and the Civil Court is called upon to execute necessary sale deed in favour of the decree holder, it would be too much to expect that the Civil Court should seek permission of the Settlement Officer of Consolidation for executing the necessary sale deed in favour of the decree holder. If the contentions raised on behalf of the Petitioner are accepted, there are chances that the decree passed by the Civil Court would become Ineffective if the Settlement Officer of Consolidation refuses to grant permission. The provisions of Section 5(2) of the Act do not apply to suits for specific performance of a contract to sell as is

evident from several decisions of this Court. If the bar contained in Section 5(c)(ii) is imposed upon the Civil Court, the net result would be that an unwilling tenure-holder can get an opportunity to thwart the civil court decree in an undesirable manner.

7. Mere reading of Section 5(c)(ii) of the Act indicates that the bar contained in the aforesaid section is only upon the tenure holder. If the Civil Court executes a sale deed against the Will of the tenure holder it would not at all be necessary for the Civil Court to seek permission of the Settlement Officer of Consolidation under the provisions of Section 5(c)(ii) of the Act.

8. However, in view of what has been said above, I am not prepared to hold that the consolidation authorities have patently erred in recognizing the sale deed executed by the Civil Court in favour of the contesting opposite parties without permission u/s 5(c)(ii) of the Act.

9. In the result, the writ petition fails and is accordingly dismissed. Since none has appeared on behalf of the contesting opposite parties, I direct the parties to bear their own costs.