

(2013) 08 AHC CK 0194
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 41485 of 2013

Smt. Raj Kumari	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 02-08-2013

Acts Referred:

Citation : (2013) 8 ADJ 34 : (2013) 120 RD 760

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

Bench : Single Bench

Advocate : S.S. Pandey and R.C. Singh, for the Appellant; Rakesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—Heard Sri R.C. Singh, learned counsel for the petitioner and Sri Rajes Kumar, learned Standing Counsel for the respondent Nos. 1 and 2 and Sri Rakesh Kumar, learned counsel for the respondent No. 3, who has filed his Vakalatnama today. This petition raises a pure question of law and Sri R.C. Singh contends that the impugned orders deserve to be set aside as they proceed on a totally incorrect application of the legal provisions contained in the U.P.Z.A. & L.R. Act, 1950. The petitioner applied for mutation in proceedings under Sections 34 /35 of the Land Revenue Act. The undisputed facts are that one Budhhan was the asami lease holder of the disputed holding with Bhumidhari rights having accrued in his favour by virtue of the prescription as provided u/s 131-B of the U.P.Z.A. & L.R. Act. After having become Bhumidhar, Budhan sold the land in dispute on 29.6.2010 in favour of the respondent No. 3.

2. The petitioner contends that she had advanced a certain sum of money to the respondent No. 3 against which the said disputed holding was mortgaged in favour of the petitioner by the respondent No. 3. Since the mortgage was usufructuary and possession has been handed over, the petitioner claims that the said transaction amounted to transfer u/s 164 of the 1950 Act and, therefore, she applied for mutation u/s 34 of the U.P. Land Revenue Act, 1901.

3. Sri. Singh contends that the transfer was under the deeming provision of Section 164 of U.P.Z.A. & L.R. Act read with Section 154 thereof. He submits that there was no restriction in terms thereof and that the respondent No. 3 did not suffer from any infirmity so as to further mortgage the said land or transfer her rights as the Bhumidhar. In the absence of any such restrictions provided u/s 164, the refusal to mutate the name of the petitioner is unjust and without any basis. He therefore contends that the impugned orders deserve to be set aside with a direction to the Competent Authority to mutate the name of the petitioner treating her to be a valid transferee in terms of Section 164 of the 1950 Act. Sri. Rajesh Kumar, learned Standing Counsel contends that admittedly Budhan was the Bhumidhar in whose favour rights had accrued in terms of Section 131-B of the 1950 Act. Budhan had executed a sale-deed in favour of the respondent No. 3 on 29.6.2010. Thus the respondent No. 3 was transferee prohibited from transacting the said holding keeping in view the provision of Section 157-AA(5). He submits that a transferee from a Bhumidhar u/s 131-B is restricted from transacting the land for a further period of ten years from the date of said purchase.

4. The same argument has been adopted by Sri Rakesh Kumar, learned counsel for the respondent No. 3.

5. I have heard learned counsel for the parties at length and perused the aforesaid provisions.

6. The first argument of Sri R.C. Singh is that Section 164 of the Act does not indicate any such restriction in relation to the transfer by a Bhumidhar under the said provision, except Section 154 and Section 163. He contends that since Section 157-AA does not find mention in Section 164, the provisions of Section 157-AA would not be attracted at all. He further submits that the legislature had no intention to place any such restriction on the transferee of the Bhumidhar, who had acquired rights u/s 131-B. His further argument is that sub-section-1 of Section 157-AA also indicates the applicability of sub-section-5 thereof only in relation to the Bhumidhar, who has acquired rights u/s 131-B and, therefore, the said restriction was applicable only in relation to Budhan, who had acquired the said rights and not in relation to his transferee. He further submits that the said restriction cannot be read into so as to defeat the purpose of Section 164. The legislature will be presumed to have excluded such restriction in Section 164.

7. Sri Singh has relied on a couple of decisions of this Court namely Smt. Bhagwatia Vs. Deputy Director of Consolidation and Others, and Sati Prasad and Another Vs. The Deputy Director of Consolidation and Others, , to support his submission. The said decisions have been approved by the Apex Court in the case of Smt. Rama Devi Vs. Dilip Singh, .

8. Having considered the aforesaid submissions, I am unable to agree with the said proposition suggested by Sri Singh inasmuch as sub-section-5 of Section 157-AA uses the word "transferee". In the instant case, the transferee is

respondent No. 3, who had purchased the property from Budhan on 29.6.2010. The said respondent, therefore, had no authority to execute the sale-deed for a further period of ten years or enter into any such transaction amounting to transfer for the said period as any such act would amount to clandestinely defeat the provisions of sub-section-5 of Section 157-AA. The transfer being completely, prohibited for a period of ten years, this circumvented method of entering into a mortgage, which also may amount to a transfer u/s 164 is, therefore, clearly prohibited. Any other interpretation would violate the provisions of Section 157-AA. The Legislature has clearly placed a restriction on a transferee from a Bhumidhar u/s 131-B, who in future cannot transfer the land for a period of ten years. The reason appears to be to save the holdings of the oppressed classes from being fragmented and bartered away as the intention to confer Bhumidhari rights u/s 131-B is to ensure retention of land for whom such rights were created and conferred. The restriction on future transfer is also to deter unscrupulous buyers from alluring the members of the oppressed classes to negotiate their holdings. Thus the arguments advanced by Sri R.C. Singh have to be repelled. The objection raised by the learned Standing Counsel Sri. Rajesh Kumar is accordingly upheld.

9. Sri R.C. Singh further submits that the consequences of a transaction being against the provisions of the Act being void is provided for u/s 166. He submits that the provisions of Section 166 would not apply in a transaction relating to Section 164. There is no dispute with this proposition as Section 164 permits a transaction entered into with the consequences provided thereunder. The decision of the Apex Court in the case of Smt. Rama Devi (*supra*) clearly holds that such a transaction would amount to a deemed sale, but the question is provided such a transaction is not prohibited. The express prohibition contained u/s 157-AA(5) does not allow the initiation of any such transaction. This provision was not under consideration in the cases relied on by the learned counsel for the petitioner. There is no dispute that if the transaction was not hit by the provision aforesaid, it had to be acknowledged as a deemed sale.

10. In the instant case the facts are entirely different. Here the petitioner has entered into a transaction, which is in violation of sub-section-5 of Section 157-AA. In the circumstances, the provisions of Section 166 would be directly attracted in the present case. The writ petition lacks merit and is dismissed.