
(2011) 07 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 48154 of 2003

Smt. Vinesh Rani

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

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

Citation : (2012) 1 ADJ 427 : (2012) 4 AWC 3727

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record.

2. This writ petition has been filed challenging the validity and correctness of the orders dated 23.3.2002 passed by Assistant Collector/ Paragna Adhikari as well as the orders date, 31.3.2003 and 27.8.2003 passed by Additional Commissioner (Admn.), Moradabad Division Muradabad.

3. The facts of the case are that Diwani S/o Gulab, R/o Mohammadpur Patti Tehsil, Pargana Dhanoura, District Jyotiba Phuley Nager was Bhumidhar and owner in possession of the Gata No. 74 area about 0.231 hectare. It is stated that the vendor, Sri Diwani transferred his entire plot Gata No. 74 total area about 0.231 hectare to two persons namely Smt. Vinesh Rani, the petitioner vide sale-deed No. 6343 and the other sale-deed No. 6244 in the name of Smt. Gango (Respondent No. 7) in the writ petition.

4. It is averred that two sale-deeds were executed and registered on 13.12.2001 instead of one on a wrong advise of the scribe while actually the entire plot was sold to the aforesaid two purchasers on the same day.

5. According to the petitioner in this manner, there was only a single transaction

of the total area of Gata No. 74 by which aforesaid plot was transferred in the name of two persons on the same day, hence there was no contravention of the provision of Section 168-A of U.P. Z.A. & L.R. Act. The relevant provisions of Section 167-A and 168-A of the Act reads thus:

167. Consequence of void transfers.--(1), the following consequences shall ensure in respect of every transfer which is void by virtue of Section 166, namely:

(a) the subject-matter of transfer shall, with effect from the date of transfer, be deemed to have vested in the State Government free from all encumbrances;

(b) the tree, crops and wells existing on the land on the date of transfer shall, with effect from the said date, be deemed to have vested in the State Government free from all encumbrances;

(c) the transferee may remove other movable property or the materials of any immovable property existing on such land on the date of transfer within such time as may be prescribed;

2. Where any land or other property has vested in the State Government under sub-section (1), it shall be lawful for the Collector to take over possession over such land or other property and to direct that any person occupying such land or property be evicted therefrom. For the purposes of taking over such possession or evicting such unauthorized occupants, the Collector may use or cause to be used such force as may be necessary.

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 hereby 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.

6. It is alleged that the Gaon Sabha only in order to harass the petitioner, preferred Case No. 10 of 2002 under Sections 166, 167 and 168-A of the U.P. Z.A. & L.R. Act and another Case No. 11 of 2002 under Sections 166, 167 and 168-A of the U.P. Z.A. & L.R. Act against her and Smt. Gango respectively before the Assistant Collector (First Class) Pargana Adhikari, Jyotiba Phuley Nagar. Both these cases were allowed, directing that since the Provisions of Section 168-A of U.P. Z.A. & L.R. Act aforesaid have been violated, the land would now vest in the State. The petitioner as well as Smt. Gango filed appeal Nos. 71 of 2001-02 and

appeal No. 70 of 2001-02 respectively before the Commissioner which too were dismissed vide his order dated 31.3.2003 holding the finding of the Assistant Collector First Class/ Pargna Adhikari. In these circumstances, the petitioner as well as Smt. Gango preferred review applications, which were numbered as 187 of 2002-03 and 186 of 2002-03, respectively. The review application filed by Smt. Gango was allowed whereas Review application filed by petitioner was dismissed vide order dated 27.8.2003 to which the petitioner has assailed the order on the ground that the Commissioner has on one hand allowed the review application of Smt. Gango on the ground of single transaction whereas has dismissed the review application of the petitioner, hence he has committed an illegality and his order is arbitrary for giving preferential treatment to one of the litigant in same facts and circumstances.

7. It is argued by the counsel for the petitioner that plot No. 74 was admittedly transferred by way of two sale-deeds on the same day, therefore it does not fall within the definition of fragmentation contained in Section 168-A of the U.P.Z.A. &L.R. Act hence the petitioner has not contravened any provisions of under Sections 168-A of the aforesaid Act as such orders passed by the Court below are perverse, illegal and against the evidence on record and are liable to be quashed.

8. Per contra learned standing counsel submits that the sale-deed of the petitioner was executed first hence there was a fragmentation of plot No. 74 whereas in the case of Smt. Gango the remaining plot on the part of plot No. 74 was transferred by way of 2nd sale-deed and not part of it hence there was no fragmentation in so far as the case of Smt. Gango is concerned.

9. After hearing the learned counsel for the parties, the admitted fact is that plot No. 74 was transferred by way of two separate and independence sale-deed executed on the same day hence to two different set of persons there was a fragmentation in total area of the plot No. 74 as soon as a part of it was sold to the petitioner first whereas the remaining whole of the property was sold to the Smt. Gango by means of second sale-deed and not part of the remaining area hence the Court below has rightly come to the conclusion that there was fragmentation in so far as the petitioner was concerned. There appears to be no illegality or infirmity in the reasoning in orders passed by the Courts below. The orders passed by the Courts below therefore need no interference by the High Court under Article 226 of the Constitution.

10. For all the reasons stated above, the writ petition is dismissed. No orders as to costs.