

(1982) 09 AHC CK 0053

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6548 of 1979

State of Uttar Pradesh and Another

APPELLANT

Vs

Prahlad Singh and Another

RESPONDENT

Date of Decision : 10-09-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 10(4), 26, 27(1), 33

Citation : (1982) 09 AHC CK 0053

Hon'ble Judges : M.P. Mehrotra, J

Bench : Single Bench

Advocate : A.P. Singh, for the Appellant;

Final Decision : Allowed

Judgement

M.P. Mehrotra, J.—This petition under Article 226 of the Constitution is directed against the appellate order dated 11-5-79 passed by the appellate authority Saharanpur, u/s 33 of the Urban Land (Ceiling and Regulation) Act, 1976.

2. The facts, in brief, are these:

The Petitioner is the State of U.P. before me. The Respondent No. 1 Sri. Prahlad Singh sought permission from the competent authority Saharanpur to mortgage 2000 sq. meters of vacant land the application was rejected by the Competent Authority by his order dated 28-3-79, a true copy of which is annexed to the petition. Thereafter the said Respondent No. 1 Prahlad Singh filed an appeal u/s 33 of the said Act and the same was allowed by the appellate court by the aforesaid impugned order dated 11-5-79. The permission sought for was granted by the appellate court. A certified copy of the appellate order is on the record.

3. Feeling aggrieved, the State has now come up in the instant petition and in support thereof, I have heard the learned Standing Counsel. No one has appeared to contest the petition. It seems that Respondent No. 1 Prahlad Singh

submitted a statement u/s 6(1) of the Act. Thereafter the Competent Authority prepared a draft statement u/s 8 and the same was served on Sri. Prahlad Singh u/s 8(3) of the Act. It seems that the proceedings have been still pending before the competent authority and admittedly no notification u/s 10(1) has been published. The Competent Authority rejected the application for permission to mortgage the vacant land on the ground that Section 26 under which the permission had been sought was not applicable. It should be seen that u/s 26 no permission is required. Only a notice is given to the Competent Authority regarding the intended transfer. There is no provision of any permission being granted by the Competent Authority u/s 26. The provision of permission is contained in Section 27(1) of the Act. However, the said provision comes into play only when any urban or urbanisable land with a building or portion of a building is sought to be transferred. Admittedly in the instant case it is the mortgage of the land alone which is in the picture and no building or portion thereof is involved. Therefore, Section 27(1) does not apply. Section 26, as I have stated above, was not applicable. The same did not provide for any permission whatsoever. For the time being I am not going into the point which was emphasized by the Competent Authority that Sri. Prahlad Singh could not be said to be covered by Section 26 because he was not a person holding the vacant land within the ceiling limit. In this view of the matter, in my view, the application for permission made by Sri. Prahlad Singh was not maintainable in law and it was rightly rejected by the Competent Authority. The Competent Authority also was right in placing reliance on Section 5(3) and Section 10(4) of the Act. These prohibitory provisions disentitle Respondent No. 1 Prahlad Singh from transferring the land by way of a mortgage during the pendency of the ceiling proceedings. In any case, whether the said prohibitory provision applied or not to the case of the Respondent No. 1, one thing is very clear that there is no provision in the Act which could enable Sri. Prahlad Singh to seek permission to mortgage the land in question.

4. This petition is accordingly allowed and the order passed by the appellate court dated 11-5-79 is hereby quashed. In the circumstances, there will be no order as to costs.