
(2012) 07 AHC CK 0259

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2849 of 2000

Suraj Sahai Sharma

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229A

Citation : (2012) 8 ADJ 106

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : J.P.S. Chauhan and V. Singh, for the Appellant; Mukhtar Alam, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Sunil Hali, J.—The petitioner claims himself to be in possession of the land situate in plot No. 769 measuring an area 3 biswas and 7 biswansi. The petitioner states that the said land has been allotted to him on lease by the S.D.O. Dhampur on 23.5.1979. Thereafter, according to the petitioner, on 9.7.1984 he became bhumidhar with non-transferable rights and, subsequently, on 21.7.1990 he became bhumidhar with transferable rights over the said land. The petitioner executed sale-deed of this plot. A suit was filed u/s 229A of the U.P.Z.A. & L.R. Act by the Nagar Palika-respondent to cancel the allotment issued in favour of the petitioner and the said land be recorded as reserved for public utility. The trial Court, vide its order dated 14.11.1995, recorded a finding that suit u/s 229A can only be filed when tenant occupies the premises even after being evicted there from and, accordingly, it dismissed the suit on the ground that the same was not maintainable.

2. Aggrieved by the aforesaid order, the Nargar Palika preferred revision. The revisional Court, after hearing the parties, found that the allotment issued in favour of the petitioner was in violation of the Act. Any allotment of the land belonging to the Gaon Sabha has to be preceded by a recommendation by the

Gaon Sabha which is required to be considered by the S.D.O. In the present case, admittedly, there was no recommendation made by Gaon Sabha in favour of the petitioner. Therefore, the said allotment of the land is void and illegal. Second ground for allowing the revision was that the land was reserved for public utility. Therefore, it could not have been allotted to the petitioner as it is specifically barred by Section 132 of the Act. A reference in this regard was made by the revisional Court to the Board of Revenue. The Board of Revenue concurred with view taken by the revisional Court and, accordingly, the revisional Court allowed the revision. Under these circumstances, the present petition has been filed.

3. The grievance of the petitioner is that allotment order was issued in his favour by the S.D.O. and in pursuance of that he was put in possession over the land. He was declared as bhumidhar with non-transferable rights in the year 1984 and subsequently, he was declared bhumidhar with transferable rights in the year 1990. He states that the revisional Court has exceeded its jurisdiction in setting aside the order of the trial Court.

4. On the other hand, the stand of the learned counsel for the respondents is that even though the nomenclature of the suit shows that the same has been filed u/s 229A of the Act but the nature of the suit would depend upon prayer clause. The respondents have filed the suit seeking relief to delete the entry made in favour of the petitioner and thereafter the property may be recorded as reserve for public utility.

5. I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner has not placed before this Court any order to show that lease has been granted to him by the S.D.O. Section 195 of the Act specifically provides that the land management committee with the previous approval by the Assistant Collector in charge of the sub-division shall have the right to admit any person as bhumidhar with nontransferable rights to any land other than land being in any of the classes mentioned in Section 132 of the Act. Admittedly, there is no recommendation for allotment in favour of the petitioner by the Land Management Committee. He relies upon an order passed by the S.D.O. who is not competent to pass such an order u/s 195 of the Act without there being approval of the Land Management Committee. It is also not in dispute that the land in question is reserved for public utility as such no allotment could have been made in this behalf.

Another contention of the petitioner is that he was declared bhumidhar with non-transferable rights in the year 1984 and transferable rights in the year 1990 which is not supported by any document. Moreover, the petitioner could not have been conferred transferable rights in the year 1990 as on his own showing he was declared bhumidhar with non-transferable rights in the year 1984 which period is less than ten year for conferring upon him transferable rights. As such sale of the said land in question is void and illegal. Thus, both the revisional

Court and the Board of Revenue have decided the matter in accordance with law. I do not find any infirmity or illegality in decision making process by the both the Courts below.

With the aforesaid observations, the writ petition is dismissed.