
(2016) 10 AHC CK 0144
In the Allahabad High Court
Case No : Writ-C No. 30191 of 2016

Surjeet Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 25-10-2016

Acts Referred:

Limitation Act, 1963 — Section 5
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 157-A,
Section 166, Section 167

Citation : (2017) 121 ALR 688 : (2017) 134 RD 42

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : C.S.C, for the Respondents; Vineet Kumar Singh, Manu Singh and Ramakant Dubey, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J. - Heard Shri V.K. Singh for the petitioner, Shri Manu Singh for the Gaon Sabha and learned Standing Counsel for the State-respondents.

2. This writ petition arises out of proceedings under Section 166/167 of the U.P. Zamindari Abolition and Land Reforms Act and seeks quashing of the order dated 19.07.2010 passed by the Collector Etah, vesting plot no. 440C area 0.324 hectares situated in Village Harchandpur Kala, Tehsil and District Etah, in the State as also the order dated 13.09.2011 passed by the Additional Commissioner dismissing the consequential revision of the petitioner.

3. The petitioner obtained a sale deed on 21.03.2006 in his favour from one Nathu Ram of the land in issue and claimed mutation on its basis over 0.324 hectares of plot no. 440C having a total area of 0.809 hectares. The Tehsildar (Judicial), seized of the matter, finding that Nathu Ram, the vendor, belonging to the scheduled caste, had executed the sale deed in favour of the petitioner without obtaining the permission contemplated under Section 157-A of the Act

referred the matter.

4. The Collector, vide order dated 19.07.2010, finding that the vendor belonged to the scheduled caste while the vendee was an O.B.C. and the sale deed had been executed without obtaining the permission under Section 157-A, ordered the land, subject matter of the sale deed, to vest in the State.

5. The petitioner thereafter preferred a revision which has been dismissed on 13.09.2011 recording a finding that evidence on record showed that the vendor Nathu Ram belonged to the scheduled caste as a caste certificate had been issued by the Tehsildar, Etah in favour of his grand daughter Renu as belonging to the scheduled caste. The said Renu is daughter of Rajkumar the son of Nathu Ram.

6. The contention of learned counsel for the petitioner is that the complaint was made by respondent no. 5, who had no concern with the matter and the said complaint was malicious. He has further contended that the vendor should have been called upon to prove his caste, especially when the sale deed executed by him specifically stated that he did not belong to the scheduled caste or scheduled tribes. It is lastly contended that the objection of the petitioner not being considered and the evidence filed by him has not been alluded to.

7. Elaborating further, it has been submitted that the vendor was an O.B.C. as he was Chik by caste. The vendor had in his affidavit filed in proceedings under Section 34 from mutation, stated that he was Chik by caste. Even in the khatauni of 1359 fasli, his caste is recorded as Chik.

8. In support of his contention that a person belonging to the Chik caste is an O.B.C., Learned counsel for the petitioner has placed reliance upon the U.P. Public Services (Reservation for Scheduled Caste, Scheduled Tribes and Other Backward Classes) Act, 1994. He has referred to entry no. 21 in Scheduled I of this Act. The said entry is Chikwa, Qassab, Qureshi, Chak.

9. Learned Standing Counsel as also counsel appearing for the Gaon Sabha have supported the impugned orders.

10. Two points emerge for consideration in this writ petition. The first is that the petition suffers from laches of 4 years 169 days. The second question is whether a person whose caste is Chik belongs to the scheduled caste or the other backward classes, as is case of the petitioner.

11. Reliance has been placed on a U.P. Act to canvass that a person who is Chik by caste, belongs to the Other Backward Classes. This contention in my considered opinion cannot be accepted. Even if the State Act is accepted, the entry at Sr. No. 21 of the Ist Schedule does not mention a Chik. It mentions a Chikwa or a Chak. There is nothing on record to show that Chik is same as Chak or Chikwa.

12. Besides, it has been held by the Apex Court in the case of E.V. Chinnaiah v.

State of Andhra Pradesh, 2004 SCW 6419 that the State Government or has no jurisdiction to declare a caste to be a scheduled caste, scheduled tribe or belonging to other backward classes, and to tinker with the Presidential Notification issued under Article 341 of the Constitution.

13. Besides this Court in the case reported in 2005 3 AWC 2891 (Chandrapal Singh v. XIIth ADJ, Moradabad and others) has held that it is not by the courts to refer to glossaries etc. and to return a finding as to whether a person belongs to a particular caste. This is precisely what the court is called upon to do in this case because it has been submitted that Chik is equivalent to Chikwa or Chak.

14. On the question of delay, the explanation offered is to be found in paragraph 19 and 20 of the writ petition, wherein it has been stated that the petitioner was in jail and was bailed out vide order dated 27.04.2012. He was thereafter suffering from various ailments and was under medical treatment for a long time. A great setback was suffered by him on the death of his father on 18.06.2015. It has further been averred in paragraph 20 that the petitioner was facing huge financial crisis and it is on account of these reasons that the delay of 4 years 169 days has been occasioned.

15. In my considered opinion, the explanation offered is cursory. No specifics have been mentioned. The petitioner is alleged to have been bailed out in pursuance of the order dated 27.04.2012 and till 18.06.2015 he is stated to have been under medical treatment. However, no details in this regard have been furnished and in the absence of any specific details the explanation offered is not found to be convincing.

16. Accordingly and in view of the reasons given above, the impugned orders do not call for any interference.

17. The writ petition is accordingly dismissed.