
(2003) 12 AHC CK 0140
In the Allahabad High Court
Case No : C.M.W.P. No. 51239 pf 2003

Syed Mazhar Hussain

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-12-2003

Acts Referred:

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

Citation : (2004) 2 AWC 1265 : (2004) 96 RD 211

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : Shamimul Hasnain and A.N. Verma, for the Appellant; Ramendra Asthana, S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.N. Srivastava, J.—Present petition has been instituted assailing the judgment dated 6.10.2003 passed by the Additional Commissioner (Administration). Bareilly Division. Bareilly whereby operation of the order passed by the trial court was stayed :

2. The brief resume of necessary facts is that the trial court in a suit filed by the petitioner u/s 229D of the U. P. Z. A and L. R. Act for declaration of Bhumidhari rights over property comprising in Khasra No. 326 admeasuring 5-3-0 situated in village Jagatpur Lala Begum Pargana and Tehsil Bareilly, District Bareilly initially granted interim order dated 23.7.2003 directing the parties to maintain status quo and also restraining the parties not to alter the nature of the land or alienate the land in question. The aforesaid order received affirmance of the trial court vide order dated 16.9.2003 on subsequent hearing and in consequence, it was allowed to hold good. Aggrieved by the order, a revision came to be filed before the Additional Commissioner (Administration) Bareilly Division, Bareilly and by means of the impugned order dated 6.10.2003, the effect and operation of the order passed by trial court was stayed. It is in the above background that the present petition has come to be filed,

3. The facts constituting grievance of the petitioners are that the predecessor-in-interest of the petitioner had died on 19.4.1976 and the property in question demised down to them. The assertion in the petition is that he gained knowledge of the fact on 4.11.2000 upon receipt of certified copy of the Khatauni that the defendants had got their names recorded as enure holders in the revenue record. On the other hand, from perusal of the written statement filed by the contesting defendants, the case spelt out is that Abrar Hussain and Mukhtar Hussain were the original tenure holders of the land in question who executed sale deed in favour of defendants and it was on the basis of the aforesaid sale deed that their names came to be recorded in the revenue records on 8.10.1976 and further that during all these years, nobody came forward to raise objection and it was for the first time that the plaintiff moved application for correction of revenue records which was rejected on 31.8.2001. It was further spelt out that plaintiff never challenged the sale deed executed by his predecessor-in-interest during all these years. It was further asserted that the land in question now forms part of Abadi of the village on which constructions have been erected.

4. I have heard learned counsel for the petitioner and also learned counsel representing the opposite parties. Having regard to the nature of controversy, reference may be made to the provisions of Section 229D, which envisages the premises for grant of injunction. Section 229D is abstracted below for ready reference :

"Provision for injunction.--(1) If in the course of a suit under the provisions of Sections 229B and 229C it is proved by an affidavit or otherwise :

(a) that any property, tree or crops standing on the land in dispute is in danger of being wasted, damaged or alienated by any party to the suit; or

(b)

(c) that any party to the suit threatens or intends to remove or dispose of the said property, trees or crops in order to defeat the ends of justice, the Court may grant a temporary injunction, and, where necessary, also appoint a receiver."

5. The aforesaid provisions of the U. P. Zamindari Abolition and Land Reforms Act have close resemblance to the provisions contained in the CPC and as such the principles envisaged in the CPC will mutatis mutandis come into play for application in relation to applications filed u/s 229D of the U. P. Z. A and L. R. Act. It brooks no dispute that injunction can be granted if prima facie case is made out by the plaintiff or that the balance of convenience leans in favour of grant of such injunction or also considering that non-grant of injunction would occasion irreparable injury to the plaintiff. It is in the twilight of the aforesaid premises that propriety of grant of injunction as ordered by the trial court can be assayed. In the present case, the sale deed was executed by the predecessor-in-interest of the plaintiff which formed the basis of mutation of the names of the contesting respondents in the revenue record on 8.10.1976 as Bhumidhar and ever-since then, neither the veracity of sale deed nor mutation of their names in

the record was ever canvassed in any arena and it is now not comprehensible that the petitioner was indeed ignorant of goings-on. In the set of facts and circumstances, it is beyond comprehension that the petitioner had no knowledge or that he came to know only upon receipt of certified copy of the khatauni. Thus, the plea of ignoramus cannot be lapped up when it is borne out from the record that the veracity of sale deed. In question or the mutation of the names of respondents were not assailed upto 20 years. Turning to the finding recorded by the trial court in granting the interim order, it is obvious from a bare perusal that the trial court has not assigned any finding of existence of any of the ingredients enumerated in Section 229D of the U. P. Z. A and L, R. Act. The order passed by the trial court is a laconic order bereft of reasons as to what prevailed with the trial court in passing the order or how equity, or balance of convenience leaned in favour of grant of injunction. A cryptic order has its genesis from non-application of mind, which is writ large from a bare perusal of the order. Having reckoned with the matter in all its ramifications, I am of view that there could be no valid justification for grant of interim order as the trial court has done qua the materials on record. The petitioner does not appear to be equipped with any clinching evidence to prop up his claim over the property nor any such evidence has been adduced or pressed into service before this Court and in the facts and circumstances, it is more appealing to reason that the plea of petitioner being ignoramus for a period spanning over 25 years is nothing but make belief which has been brought to bear to bolster up his failing case. The claim of the petitioner that he gained knowledge of the mutation of the names of contesting respondents on 4.11.2000 when he obtained certified copy of the khatauni does not lend itself to acceptance. In my considered view, the Additional Commissioner (Administration) rightly passed the order impugned herein thereby staying operation and effect of the order of the trial court. Even otherwise, the learned counsel has not been able to point out any infirmity or illegality permeating the impugned order. Since the revision is still lingering decision before the Additional Commissioner, ends of justice would be best attained if the authority concerned in seisine of the revision is directed to decide the revision expeditiously on merit after assigning reasonable opportunity of hearing to the parties concerned. Before parting, it may be observed that the concerned authority shall proceed to decide the revision on merit untrammelled by any observations made in the body of this judgment.

6. in the result, the petition fails and is accordingly dismissed.