

(2007) 08 AHC CK 0219

Allahabad High Court

Case No: None

The State of U.P. and The
Prescribed Authority/S.D.O.

APPELLANT

Vs

Ist Additional District Judge and
Others

RESPONDENT

Date of Decision: Aug. 27, 2007

Acts Referred:

- Transfer of Property Act, 1882 - Section 53A

Citation: (2008) 1 AWC 745

Hon'ble Judges: S.U. Khan, J

Bench: Single Bench

Final Decision: Allowed

Judgement

S.U. Khan, J.

Heard learned standing counsel for the petitioner and Sri Rahul Sahai, learned Counsel for the contesting respondents. Counter affidavit on behalf of contesting respondents has also been filed.

2. This writ petition is directed against judgment and order dated 06.12.1985 passed by 1st A.D.J., Gorakhpur in Misc. Ceiling Appeal No. 133 of 1983.

3. Ceiling proceedings under U.P. Imposition of Ceiling on Land Holdings Act were initiated against tenure-holder respondent No. 2-Smt. Sharada Devi. The case on the file of Prescribed Authority, S.D.O. Maharajganj was registered as case No. 26/33, State v. Smt. Sharada Devi. The matter was decided by the Prescribed Authority on 24.02.1983 and certain area of land belonging to respondent No. 2 was declared as surplus land. Against the said judgment and order, four appeals were filed, one by the tenure holder and the other three by her transferees. The appeal in question, i.e. Misc. (Ceiling) Appeal No. 133 of 1983 was filed by respondents No. 3 to 5, Virendra Bahadur Singh and Ors. v. State of U.P. and Anr. They had purchased 21.63 acres of

land from respondent No. 2. In the appeal in question only that portion of judgment of the Prescribed Authority was challenged through which sale-deed in favour of respondents No. 3 to 5 executed by the respondent No. 2 was ignored. The sale-deed was executed on 18.01.1974. It appears that in the sale-deed, it was mentioned that some agreement for sale had earlier been executed on 19.01.1971 and possession in pursuance of the said agreement had also been delivered. The Prescribed Authority held that as sale-deed was executed after 24.01.1971 as well as after 08.06.1973, hence it was liable to be ignored. The Appellate Court placing reliance upon an authority of this Court reported in State of U.P. v. District Judge 1980 AWC 439 held that as agreement had been executed before 24.01.1971 and possession in pursuance of the said agreement had also been delivered, hence the said land by virtue of Section 53A of Transfer of Property Act, 1882, could not be treated to be held by the transferor. In my opinion, the said authority is not applicable to the facts of the instant case. In the aforesaid authority, no sale-deed was executed while in the instant case, sale deed was executed on 18.01.1974. Moreover, in the instant case, admittedly mutation was affected after execution of sale-deed dated 18.01.1974, which clearly shows that possession was delivered after execution of the sale-deed. The Appellate Court unnecessarily drew the presumption without any basis that "The sale-deed was subsequently executed probably because the funds amounting to Rs. 42,000/-, could not be arranged on 19.01.1971." Copy of objections filed by respondents No. 3 to 5 before the Prescribed Authority has been annexed as Annexure CA-2 to the counter affidavit. In the said objections, no such plea was taken. In Para-2 of the said objections, it was mentioned that the objectors were in possession since the date of execution of the sale-deed. However, in Para-4 of the objections, it was stated that the objectors were in possession since date of execution of agreement for sale. Absolutely nothing was stated as to why mutation was not got affected after execution of agreement for sale and delivery of possession thereunder. Mutation is a very strong evidence of possession. The fact that the mutation was got affected after execution of sale-deed dated 18.01.1974 clearly proved that possession was delivered after execution of the said sale deed.

4. Accordingly, I am of the opinion that the aforesaid authority of [State of U.P. Vs. District Judge and Others](#), is not applicable to the facts of this case. The Appellate Court wrongly held that sale-deed dated 18.01.1974 could not be ignored. By virtue of Section 5(8) of the Ceiling Act, sale-deed executed after 08.06.1973 and issuance of notice u/s 9(2) of the Act is void.

5. Accordingly, writ petition is allowed. Judgment and order passed by the Appellate Court is set aside. Judgment and order passed by Prescribed Authority in so far as/ relates to the sale-deed dated