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The State of U.P. and The Prescribed Authority/S.D.O. Vs Ist Additional District Judge and Others

None

Court: Allahabad High Court

Date of Decision: Aug. 27, 2007

Acts Referred:

Transfer of Property Act, 1882 â€" 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 field 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 61 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