(2005) 09 AHC CK 0267

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 58239 of 2005

Smt. Ayasha Khatun		APPELLANT
	Vs	
State of U.P. and Ram Dhani		RESPONDENT

Date of Decision: Sept. 1, 2005

Acts Referred:

- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 12, 156, 48(3)
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 157A, 166, 167

Citation: (2006) 1 AWC 121 : (2005) 99 RD 532 : (2005) 2 RD 532

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

Bench: Single Bench

Advocate: Shyam Sunder Mishra, for the Appellant; S.N. Srivastava and S. Srivastava and S.C., for the Respondent

Final Decision: Dismissed

Judgement

S.N. Srivastava. J.

1. Impugned herein is the order dated 4.7.2005 passed by Collector/District Deputy Director Consolidation, Fatehpur passed in exercise of power u/s 48 (3) of the U.P. Consolidation of Holdings Act whereby the authority concerned set aside the order dated 28.5.1998 passed in favour of the petitioner in exercise of powers u/s 12 of the U.P. Consolidation of Holdings Act on the ground that transfer in favour of the petitioner was sans permission of the Collector as envisaged in Section 156 of the U.P. Consolidation of Holdings Act.

2. It would transpire from the record that the petitioner is a transferee who has purchased the land in question by means of sale deed dated 28.2.1997 from Ramdhani, a member of scheduled caste and on the basis of the same the Consolidation officer passed order dated 28.5.1998 mutating the name of transferee. The attention of the Collector/District

Deputy Director Consolidation was drawn to this aspect who by means of order dated 7.2.2003 set aside the order in exercise of power u/s 48 (3) of the U.P.C.H. Act as stated supra. In writ petition No. 18437 of 2003, this Court vide judgment dated 1.11.2004 quashed the said order dated 7.2.2003 and remitted the matter to the Collector for decision afresh by reckoning with the rival claims of the parties within one month. While quashing the order of the Collector, this Court quintessentially indicated that petitioner cannot derive any right on the land in dispute.

3. The learned counsel for the petitioner canvassed that at the time of transfer, the transferor conveyed to him that he had already obtained permission for transfer of the land in question. He further canvassed that the order-dated 28.5.1998 passed by the Consolidation officer has attained finality and the impugned order passed by Collector/District Deputy Director Consolidation Fatehpur is not sustainable in law. I have also heard the learned Standing counsel in opposition.

4. In the above perspective, Section 157A of the U.P.Z.A. & L.R.Act may be adverted to which clearly envisages that no Bhumidhar or asami belonging to a Scheduled Caste shall have right to transfer any land by way of sale, gift, mortgage or lease to a person not belonging to a scheduled Caste except with the previous approval of the Collector. Concededly, the petitioner is not a member of Scheduled Caste while transferor is a member of a scheduled caste and in the circumstances, the transfer made in contravention of the provisions of this Act would be void as envisaged in Section 166 of the Act and the necessary consequences of void transfer would be that as envisaged in Section 167 of the Act, the subject matter of transfer shall with effect form the date of transfer, be deemed to have vested in the State Government free from all encumbrances.

5. The second argument advanced across the bar by the learned counsel for the petitioner is that the order 28.5.1998 has attained finality and Section 48 (3) of the U.P.C.H. Act cannot be invoked in aid. The argument of the learned counsel for the petitioner does not commend to me for acceptance for twin reasons; firstly that the Deputy Director Consolidation is fully competent to call for the record of any proceeding after giving opportunity of hearing and pass appropriate orders in accordance with law and secondly that the matter was slugged out earlier before this Court and this Court directed Collector/Deputy Director Consolidation to decide the matter in accordance with law. In the above perspective, no ground for interference is made out in writ jurisdiction of this Court.

6. As a result of foregoing discussion, the petition fails and is dismissed in limine.