

(2013) 11 AHC CK 0135

Allahabad High Court

Case No: First Appeal No. 790 of 2008 and Civil Miscellaneous Writ Petition No"s. 58555, 58702 and 61630 of 2005

New Okhla Industrial
Development Authority and
Others

APPELLANT

Vs

Kendriya Karamchari Sahkari
Grih Nirman Samiti Ltd. and
Others

RESPONDENT

Date of Decision: Nov. 19, 2013

Citation: (2013) 10 ADJ 741 : (2014) 2 AWC 1327 : (2014) 122 RD 1

Hon'ble Judges: Dilip Gupta, J; Arun Tandon, J

Bench: Division Bench

Advocate: Ramendra Pratap Singh, Ajai Kumar Misra, R.K. Mishra, M.D. Singh Shekhar and Ashwani Mishra, for the Appellant; R.D. Tiwari, J.P. Pandey, J.P. Sharma, Surendra Sharma, Suresh C. Sharma and K.N. Tripathi, for the Respondent

Final Decision: Dismissed

Judgement

1. Heard Sri Keshari Nath Tripathi, learned Senior Advocate assisted by Sri J.P. Pandey, Advocate, on behalf of the petitioner-Kendriya Karmchari Sahkari Awas Samiti Ltd., Sri Ashwani Kumar Mishra, learned Senior Advocate assisted by Sri Ramendra Pratap Singh, Advocate on behalf of New Okhala Industrial Development Authority and learned Standing Counsel on behalf of State-respondent. Writ Petition No. 58555 of 2005, Writ Petition No. 58702 of 2005 and Writ Petition No. 61630 of 2005 had been connected, under the earlier order of this Court, with First Appeal No. 790 of 2008 filed by the New Okhala Industrial Development Authority (hereinafter referred to as the "NOIDA") against the order of the Civil Judge (Senior Division), Gautam Budh Nagar made in Original Suit No. 273 of 2006 dated 10th September, 2008.

2. The basic issue involved in these matters is with regard to the interpretation of Sections 154, 163, 166 and 167 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the "Act, 1950"), as amended from time to time. On the interpretation to the aforesaid provisions is dependent the finding on the crux of the matter i.e. as to what total area of land of the Kendriya Karmchari Sahkari Grah Nirman Samiti Ltd. had been acquired vide notifications issued in exercise of powers of Sections 4 and 6 of the Land Acquisition Act, so that 40% of the same may be calculated and be allotted to members of the petitioner society after development by NOIDA as per its policy decision.

3. Orders impugned in the writ petitions are the orders passed by the Collector in exercise of powers u/s 154 read with Sections 166 and 167 of the Act, 1950 and the orders of the Board of Revenue dismissing the revisions filed by the society. In the said orders, it has been held that because under various sale-deeds, the petitioner society has acquired more than 12.50 acres of land, these sale-transactions were void in view of Section 154 of Act, 1950 and as a consequence thereto the land has vested in the State Government u/s 167 of Act, 1950. Because of said vesting of the land in the State Government, the total area of the land acquired, as claimed by the society to be its own, stands reduced.

4. From reading of the orders impugned, it is apparent that both the authorities have only considered as to whether provisions of Section 154 of Act, 1950 are attracted to a cooperative society or and as to whether cooperative societies answer the description of a "person", as referred to in Section 154 of Act, 1950.

5. We were taken to the provisions of Act, 1950 specifically Sections 154, 163, 166 and 167 of Act, 1950 including the amendments affected from time to time, by the learned counsel for the parties and after going through the aforesaid provisions, the legal position, as emerges there-from, need be stated by us.

6. Act No. 1950 was enforced vide U.P. Act No. 1 of 1951, which was published in official gazette on 26th January, 1951. The original act did not contain any restrictions in the matter of transfer of land holding by the Bhumidhar.

7. vide U.P. Act No. 37 of 1958, for the first time, a restriction was introduced on the right to transfer, his land holding by Bhumidhar, to Section 154 of Act, 1950. The amended Section 154 reads as follows:

[154. Restrictions on the transfers by a bhumidhar.--No bhumidhar shall have the right to transfer, by sale or gift, any land other than tea gardens to any person (other than an institution established for a charitable purpose) where such person shall, as a result of the sale or gift, become entitled to land which together with land, if any, held by himself or together with his family, will, in the aggregate, exceed 121/2 acres in Uttar Pradesh.

Explanation--For the purposes of this section a family shall include the transferee himself, his wife, or husband, as the case may be and his minor children.]

8. The amended Section 163 provided for ejectment from the land transferred in violation of Section 154 by a suit to be brought by the Gaon Sabha. For ready reference, amended Section 163 is quoted herein below:

163. Transfer in contravention of this Act.--(1) Where a transfer of any holding or part thereof has been made in contravention of the provisions of Section 154, the transferee shall, notwithstanding anything contained in any law, be liable to ejectment from such holding or part on the suit of the [Gaon Samaj] which shall thereupon become vacant land; but nothing in this section will prejudice the right of the transferor to realize the whole or portion of the price remaining unpaid, or the right of any other person other than the transferee to proceed against such holding or land in enforcement of any claim thereto.

(2) To every suit for ejectment under this Section the transferor shall be made a party.

9. It is also worthwhile to refer Section 166, as it then stood, which declared the transfers affected by sirdar or asami to be void. For ready reference amended Section 166 is quoted herein below:

166. Transfer made in contravention of this chapter to be void.--Any transfer, made by or on behalf of a sirdar or asami in contravention of the provisions of this chapter shall be void.

10. Section 167 provided for the consequence of such void transfer. Section 167 is quoted herein below:

167. Consequence of void transfers.--(1) Where a sirdar or asami has made any transfer in contravention of the provisions of this Act, the transferee and every person who may have thus obtained possession of the whole or part of the holding shall be liable to ejectment on the suit of the [Gaon Samaj] or the land-holder, as the case may be.

[(2) A decree for ejectment under sub-section (1) may direct the ejectment of the sirdar or asami from the whole or part of the holding as the Court may, having regard to the circumstances of the case, direct.]

11. The legal position, which emerged under the U.P. Act No. 37 of 1958 was that it prohibited transfer of land by a bhumidhar in a manner that it may result in total area of the transferee to be more than 12.5 acres and Section 163 provided that in respect of such transfer in violation of Section 154, eviction would be affected from the land on a suit being made by Gaon Sabha and not otherwise. Transfer by a bhumidhar contrary to Section 154 was not declared as void. Therefore, even if there had been violation of Section 154 in the matter of transfer by the bhumidhar,

such transfer was not declared to be void nor it resulted in automatic vesting of the land in the State Government.

12. Vide U.P. Act No. 35 of 1976, subsection (2) was added to Section 154, which conferred a power upon the State Government to permit transfer of land by bhumidhar, to a society/institution even if it made the total holding of the transferee more than 12.5 acres in certain circumstances.

13. For ready reference, sub-section (2) to Section 154 as amended in 1976, is quoted herein below:

(2) Subject to the provisions of any other law relating to the land tenures for the time being in force, the State Government may, by general or special order, authorise transfer in excess of the limit prescribed in sub-section (1) if it is of the opinion that such transfer is in favour of a registered cooperative society or an institution established for a charitable purpose, which does not have land sufficient for its need, or that the transfer is in the interest of general public.

Explanation.....for the purposes of this section, the expression "family shall mean the transferee, his or her, wife or husband (as the case may be) and minor children, and where the transferee from the State Government, unless he is an Indian citizen.

14. Amendments were also made in Section 163 by U.P. Act No. 35 of 1976, which conferred a power upon the Assistant Collector First Class to declare the transfer in violation of Section 154 as void and then under sub-section (2) of Section 163, the land is deemed to have vested in the State Government.

15. For ready reference Amended Section 163 reads as follows:

163. Consequences of void transfers by bhumidhars.--(1) Where any holding or part thereof has been transferred in contravention of Section 154 or Section 154A or Section 157A, then notwithstanding anything contained in any law for the time being in force or any contract, decree or order of any Court, the Assistant Collector First Class may either suo moto or on the application of any person, and after making such inquiry as he thinks fit, by order declare such transfer to be void:

Provided that no order under this sub-section shall be made without affording an opportunity of hearing to the transferor as well as to the transferee.

(2) Where the transfer of any holding or part has been declared to be void under sub-section (1) the following consequences shall ensue, namely:-

(a) the subject-matter of transfer shall, with effect from the date of such order, be deemed to have vested in the State Government free from all encumbrances;

(b) the trees, crops and wells existing in the holding on the date of the order shall with effect from the said date be deemed to have been vested in the State Government free from all encumbrances;

(c) the transferee may remove other movable property or the materials of any immovable property existing on the holding on the date of the order, within such time as may be prescribed.

(3) Where any holding or part thereof or other property has vested in the State Government under sub-section (2), and any person is in unauthorised occupation thereof, it shall be lawful for the Collector to direct that such person be evicted therefrom and for that purpose he may use or cause to be used such force as may be necessary.

16. Thus, under the law as amended by U.P. Act No. 35 of 1976, the Assistant Collector was conferred a power to declare the transfer made in violation of Section 154 as void, it is only then that the land would vest in the State Government, meaning thereby that unless a declaration is issued by the Assistant Collector declaring the transfer in violation of Section 154 to be void, the land will not vest in the State Government.

17. Third stage of amendments was introduced on 3rd June, 1981 by U.P. Act No. 20 of 1982. Section 163 was deleted and Section 166 was amended wherein it was declared by operation of law that transfers in violation of the provisions of the Act, 1950, which will include Section 154 would also be void and the consequences of such void transfers were provided for u/s 167, which declares that the land covered by such void transfers could vest in the State Government. Therefore, it is only subsequent to the amendments affected by U.P. Act No. 20 of 1982 i.e. 3rd June, 1981 that the transfers affected contrary to Section 154 were declared to be void by operation of law and the land was declared to have vested in the State Government u/s 167.

18. For ready reference amended Sections 166 and 167 read as follows:

166. Every transfer made in contravention of the provisions of this Act, shall be void.

167. (1) The following consequences shall with effect from the date of transfer which is void by virtue of Section 166, namely-

(a) the subject-matter of transfer shall with effect from the date of transfer, be deemed to have vested in the State Government free from all encumbrances;

(b) the trees, crops and wells existing on the land on the date of transfer shall, with effect from the said date, be deemed to have vested in the State Government free from all encumbrances; and

(c) the transferee may remove other moveable property or the materials of any immovable property existing on such land on the date of transfer within such time as may be prescribed.

(2) Where any land or other property has vested in the State Government under sub-section (1), it shall be lawful for the Collector to take over possession over such

land or other property and to direct that any person occupying such land or property be evicted therefrom. For the purposes of taking over such possession or evicting such unauthorized occupants, the Collector may use or cause to be used such force as may be necessary.

19. The other amendment relevant for our purposes is the amendment made vide U.P. Act No. 20 of 1997 whereby for the purposes of clarification, an explanation was added to Section 154, whereby it was declared that the word "person" in Section 154 includes a "Cooperative Society". This amendment was given retrospective affect by providing that such inclusion would be deemed to be so since 15th June, 1976 i.e. when the U.P. Act No. 35 of 1976 was introduced.

20. For ready reference, explanation added to Section 154(1) vide U.P. Act No. 20 of 1997 is quoted herein below:

154....

Explanation.--For the removal of doubt it is hereby declared that in this sub-section the expression "person" shall include and be deemed to have included on June 15, 1976 a "Co-operative Society....

21. On behalf of the petitioner-Kendriya Karamchari Sahkari Grah Nirman Samiti Ltd. it has rightly been submitted before us that even if the amendments made by U.P. Act No. 20 of 1997 is retrospective in nature and the word "Co-operative Society" is deemed to be included within the meaning of the word "person". Other statutory provisions as were applicable prior to 3rd June, 1981 and noticed above by us, remain unchanged. The legal position, as reflected from the provisions after U.P. Act No. 37 of 1958 and U.P. Act No. 35 of 1976, remain unaffected by such inclusion of "cooperative society" within the meaning of a "person" u/s 154.

22. We are of the considered opinion that even after deeming introduction of "Cooperative Society" within the meaning of word "person" u/s 154 by U.P. Act No. 20 of 1997, the legal position with regard to the effect of transfers made in violation of Section 154 under U.P. Act No. 37 of 1958 and U.P. Act No. 35 of 1976, shall remain unaltered, as no corresponding changes have been introduced in the relevant provisions with retrospective effect. Therefore, we have no hesitation to hold that all transfers affected between 1958 till the introduction of U.P. Act No. 35 of 1976, in violation of Section 154, in favour of a Co-operative Society by Bhumidhar are not to be treated to be void and the land does not vest in the State Government automatically. Only a suit for ejectment from the land covered by such provisions in violation of Section 154 could be maintained by the Gaon Sabha for eviction. Our finding is supported by Section 166, as it then stood, which declared the transfers by Sirdar and Asami in violation of the Act, 1950 only as void. The transfers affected by bhumidhar in terms of the Act had not been so declared as void u/s 166.

23. We further record that for the period covered by U.P. Act No. 37 of 1958 till introduction of U.P. Act No. 20 of 1982 i.e. 3rd June, 1981, unless there was a declaration by the Assistant Collector in exercise of powers u/s 163 declaring the transfers to be void being contrary to Section 154(1). The land shall not be deemed to have vested in the State Government u/s 163(2). No declaration of the Assistant Collector declaring any of the sale-deeds executed in favour of the petitioner Kendriya Karamchari Sahkari Grah Nirman Samiti Ltd. during the period when the provisions of U.P. Act No. 35 of 1976 were in force, has been brought to our notice nor it is the case of the State Government or the NOIDA that any such orders were ever issued by the Assistant Collector, at least there is no material on record in that respect. Therefore, we have no hesitation to record that the land in respect of sale-deeds which have been executed in favour of the petitioner Kendriya Karamchari Sahkari Grah Nirman Samiti Ltd. between 13th November, 1976 to 3rd June, 1981 in violation of Section 154 as alleged by the State Government and the NOIDA, shall continue to be properties of the housing society and shall not be deemed to have vested in the State Government.

24. So far as the transfers affected between 3rd June, 1981 to 27th February, 1988 are concerned, there is an issue between the parties as to whether retrospective introduction of the "cooperative society" within the meaning of a "person" u/s 154 is valid or not. It is submitted that settled rights cannot be unsettled by introduction of a provision with retrospective effect. We shall examine this issue at the appropriate stage and no final opinion is being expressed by us at this stage.

25. We further finds that in respect of sale-deeds executed subsequent to 27th February, 1988, no benefit has been granted to the housing society by the Civil Judge (Senior Division), Gautam Budh Nagar under the order impugned in the first appeal. The merits of the cross-appeal shall be considered at the stage of hearing of the first appeal and the issues in that regard are also left open to be examined then.

26. Since under the orders subject-matters of challenge in Writ Petition No. 58555 of 2005, Writ Petition No. 58702 of 2005 and Writ Petition No. 61630 of 2005, the aforesaid legal aspects have not been examined. The facts with regard to the date of sale-deeds subject-matter of consideration and the law applicable on that date as noticed above, needs to be considered afresh.

27. It has become necessary for us to obtain a report from the District Magistrate, Gautam Budh Nagar to disclose the exact date of the sale-deeds giving rise to Case Nos. 22 of 1994, 29 of 2004 and 43 of 1992 subject-matter of challenge in writ petition No. 58702 of 2005, writ petition No. 61630 of 2005 and writ petition No. 58555 of 2005 respectively. The District Magistrate shall summon the original records and shall submit a report with regard to the exact date of the sale-deeds subject-matter of proceedings of the aforesaid three cases separately. He shall also indicate as to whether in light of what has been recorded above, any suit was filed by the Gaon Sabha for eviction u/s 167 as per the provisions of U.P. Act No. 37 of

1958 or any declaration was issued by the Assistant Collector u/s 163 referable to the provisions as were introduced under U.P. Act No. 35 of 1976 in respect of the said land covered by the sale-deeds of the relevant period or not. If any such suit/declaration had been made, a copy of the plaint/order of declaration shall be enclosed by the District Magistrate alongwith his report. The report shall be submitted by 19th December, 2013.

28. Put up this matter on 19th December, 2013 at 02:00 p.m. A certified copy of this order shall be issued to the learned Standing Counsel for being forwarded to the District Magistrate, Gautam Budh Nagar for necessary compliance.