

Chhotey Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Aug. 4, 2010

Acts Referred: Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 " Section 153, 157, 157A

Citation: (2010) 6 AWC 5864

Hon'ble Judges: Sanjay Misra, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Sanjay Misra, J.

Heard Sri Prakash Pandey holding brief of Sri Rahul Pandey learned Counsel for the Petitioner and learned standing

counsel for the State Respondents. Counter and rejoinder-affidavits have been exchanged between the parties.

2. The Petitioner who claims to belong to the Scheduled Caste category is aggrieved by the order dated 10.12.2007 passed by the Additional

District Magistrate (Finance) Kanpur Nagar as also the order dated 18.1.2008 passed by the Additional Commissioner (Administration) Kanpur

Nagar in Chhotey v. State of U.P. and Ors. Case No. 3 of 2008 u/s 210 of the Land Revenue Act.

3. According to Sri Pandey and the averments as contained in paragraph 4 to the writ petition the Petitioner has total agricultural land of 0.244

hectare situated in araji No. 130 village Garhi, district Kanpur Nagar. He proposes to purchase 0.359 hectare of land in neighbouring two villages

being village Sona and village Bhairampur by selling his original agricultural land having area of 0.244 hectare in Araj No. 130 situate at village

Garhi. In view of the provisions of Section 157A the Petitioner sought permission of the authority however the same has been refused by the

authorities to which learned Counsel for the Petitioner has submitted that the intended purchase would increase his holding from 0.244 hectare to

0.359 hectare and as such the impugned orders are liable to be set aside.

4. Learned standing counsel has referred to Section 157A of the U.P.Z.A. and L.R. Act and states that the Petitioner has admittedly got less than

1.26 hectare of land and even after selling his original agricultural land and purchasing agricultural land in other village his holding does not increase

more than 1.26 hectare. He submits that the provisions of Section 157A of the Act are in the form of restrictions of transfer of land by members of

the Scheduled Caste and therefore the impugned orders have rightly been passed refusing the permission.

5. Section 157A is quoted hereunder:

Restrictions on transfer of land by members of Scheduled Castes.-- (1) Without prejudice to the restrictions contained in Sections 153 to 157, no

bhumidhar, or asami belonging to a Scheduled Caste shall have the 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:

Provided that no such approval shall be given by the Collector in case where the land held in Uttar Pradesh by the transferor on the date of

application under this section is less than 1.26 hectares or where the area of land so held in Uttar Pradesh by the transferor on the said date is after

such transfer, likely to be reduced to less than 1.26 hectares.

(2) The Collector shall, on an application made in that behalf in the prescribed manner, make such inquiry as may be prescribed.

6. The aforesaid section clearly provides that approval shall not be given by the Collector in case land held in the State of U. P. by the intending

transferor on the date of application for permission is less than 1.26 hectare and secondly no approval will be given if the area so held in U. P. by

the person on the date of application for approval to transfer will after such transfer reduce his area to less than 1.26 hectare.

7. In the present case admittedly the Petitioner does not have an area more than 1.26 hectare. He belongs to the Scheduled Caste category and

has less than 1.26 hectares of agricultural land. Consequently by virtue of the proviso of Section 157A the first condition is not satisfied and the

statutory restriction would apply in the case of the Petitioner.

8. Consequently even if the Petitioner is permitted to transfer the land in question and purchase the land he proposes the area of his holding would

not be more than 1.26 hectare and therefore there is no question of the area being reduced to less than 1.26 hectares since he does not have 1.26

hectare of land.

9. Such a restriction u/s 157A appears to squarely apply in the case of the Petitioner.

10. In the appellate impugned order a reference has been made to purchase of land in the name of the Petitioner's wife in village Sona to be an

area of 1.154 hectare. The said reference clearly appears to be incorrect since the Petitioner has himself stated that he got a sale deed executed on

9.1.2007 in respect of an area of 0.154 hectare in village Sona. Consequently the reference to the area in the impugned appellate order appears to

be erroneous and shall be read not as 1.154 hectare but as 0.154 hectare.

11. With the aforesaid modification relating to area of land in village Sona referred to in the impugned appellate order there is no other error

therein. As such the relief claimed by the Petitioner cannot be granted. The impugned orders are upheld.

12. The writ petition is dismissed.

13. No order is passed as to costs.