

In Chamber

Case :- WRIT - C No. - 7284 of 2020

Petitioner :- Ramji Lal

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Vishesh Rajvanshi, Manoj Kumar Rajvanshi

Counsel for Respondent :- C.S.C., Bhupendra Kumar Tripathi

Connected with

Case :- WRIT - C No. - 7297 of 2020

Petitioner :- Ramji Lal

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Vishesh Rajvanshi, Manoj Kumar Rajvanshi

Counsel for Respondent :- C.S.C., Bhupendra Kumar Tripathi

Hon'ble Anjani Kumar Mishra, J.

These two connected petition involve an identical controversy. They were ordered to be listed together, vide order dated 19.05.2020. Both the petitions have been heard together as learned counsel and petitioner, therein are common. They are being decided by a common order.

The common petitioner in both petition belongs to the scheduled caste and is a purchaser from persons who had been allotted the land, subject matter of the sale deeds, for agricultural purposes by the Gaon Sabha. Both vendors in these two petitions who are stated to belong to the scheduled caste became bhumidhars with transferable rights of the land allotted to them, in accordance with Section 131-B of the U.P. Zamindari Abolition and Land Reforms Act. They, thereafter, executed sale deeds in favour of the petitioner who also belong to the scheduled caste.

It appears that a notice was sent to the petitioner on the ground that he had purchased land from persons belonging to the scheduled caste who had acquired bhumidhari rights under Section 131-B of the U.P. Zamindari Abolition and Land Reforms Act. However, the sale deeds had been executed without due permission and, therefore, were hit by the provisions of Section 157-AA of the U.P. Zamindari Abolition and Land Reforms Act.

The sale deed in favour of Ramji Lal, petitioner in Writ Petition No. 7284 of 2020 is dated 02.11.2001 while the other sale deed in his favour which is subject matter of Writ Petition No. 7297



of 2020 is dated 03.01.2002.

It appears that proceedings under Section 166/167 of the U.P. Zamindari Abolition and Land Reforms Act, wherefrom the writ petitions arise were drawn on the receipt of reports of the subordinate revenue authorities.

On receipt of notices, objections were filed and after hearing the petitioner, the A.D.M. (Finance & Revenue), respondent no. 3, in both the petitions, passed orders holding that since no prior permission had been obtained by the person who had acquired bhumidhari rights in accordance with Section 131-B of the U.P. Zamindari Abolition and Land Reforms Act before executing the sale deed in favour of the petitioner and since such permission was mandatorily required, the sale deeds being contrary to the provisions of the Act, were void *ab-initio*.

Accordingly, and as provided under Section 167 of the U.P. Zamindari Abolition and Land Reforms Act, the lands which were subject matter of the two void sale deeds in favour of the petitioner, were directed to vest in the State.

The orders aforesaid have been affirmed by the Commissioner who has dismissed the two consequential revisions.

The orders passed by the A.D.M. (Finance & Revenue) and the Commissioner are impugned in these two writ petitions.

Assailing the impugned orders, the first contention of learned counsel for the petitioner is that he belongs to the scheduled caste. It is also submitted that since it has been held in the impugned orders that the sale deeds in favour of the petitioner were void and that the land, subject matter of the void sale deeds, would vest in the State free from all encumbrance as provided under Section 166 of the U.P. Zamindari Abolition and Land Reforms Act, the fact that the petitioner continued in possession till the passing of the impugned orders, he is entitled to the benefit of Section 122-B (4-F) of the U.P. Zamindari Abolition and Land Reforms Act. Moreover, this plea had been specifically raised before the courts below especially the revisional court but has not at all been adverted to. The revisional orders are therefore, vitiated and are liable to be set-aside. The matters are liable to be remanded back for fresh consideration of this aspect of the matter.

It is next contended that the petitioner is a very poor person. He is a landless labourer and does not possess any land apart from the lands which are subject matters of these two writ petitions. Therefore, equity lies in favour of the petitioner. The writ





petitions are liable to be allowed on the ground of equity also.

Shri Neeraj Tripathi, Additional Advocate General, appearing on behalf of the State has supported the impugned orders. He has vehemently submitted that the provisions contained in Section 122-B (4-F) of the U.P. Zamindari Abolition and Land Reforms Act have no application in the case at hand. Therefore, even if this plea was raised and had not been considered by the revisional Court, the same would not, in any manner, vitiate the impugned orders. He has placed reliance upon the decision in ***Rajendra Singh And Another Versus State of U.P. And 3 Others*** reported in 2019 (144) revenue page 2 in support of the impugned orders and has submitted that the orders impugned are in total conformity with the law laid down in Rajendra Singh (supra).

I have considered the submissions made by learned counsel for the parties and perused the record.

Although it has not been specifically argued before me, however, one of the grounds taken of the writ petitions is that the transfer made in favour of the petitioner by the sale deeds in question was not covered by Section 157AA of the Act, especially because both the vendors and vendee belong to the scheduled caste. The import being that permission contemplated in Section 157AA of the Act is required to be obtained only in case the transfer is by a scheduled caste in favour of a person who does not belong to the scheduled caste.

An identical plea has been considered and turned down in Writ - C No. 44406 of 2015, Amichandra Vs. State of U.P. and 2 Others. Relevant portion of the said judgment is extracted below:-

"157-AA. Restrictions on transfer by member of Scheduled Castes becoming bhumidhar under Section 131-B. (1) Notwithstanding anything contained in Section 157-A, and without prejudice to the restrictions contained in Sections 153 to 157, no person belonging to a Scheduled Caste having become a Bhumidhar with transferable rights under Section 131-B shall have the right to transfer the land by way of sale, gift, mortgage or lease to a person other than a person belonging to a Scheduled Caste and such transfer, if any, shall be in the following order of preference:

(a) landless agricultural labourer,

(b) marginal farmer,

(c) small farmer; and

(d) a person other than a person referred to in Clauses (a), (b) and (c).

(2) A transfer in favour of a person belonging to Clause (a) of Sub-section (1) shall be made in order of preference given below. If a person referred to in Clause (a) is not available then transfer may be made to a person referred to in Clause (b) of the said sub-section and if a person referred to in Clause (b) is also not available then to a person referred to in Clause (c) of the said sub-section if a person referred to in Clause (c) is also not available then to a person referred to in Clause (d) of the said sub-section in the same order of preference:

(a) first, to the resident of the village where the land is situate;

(b) secondly, if no person referred to in Clause (a) is available, to the resident of any other village within the Panchayat area comprising the village where the land is situate;

(c) thirdly, if no person referred to in Clause (a) and (b) is available, to the resident of a village adjoining the Panchayat area comprising the village where the land is situate.

(3) If no person referred to in Sub-section (1) belonging to a Scheduled Caste is available, the land may be transferred to a person belonging to a Scheduled Tribe in the order of preference given in Sub-sections (i) and (2).

(4) No transfer under this section shall be made except with the previous approval of the Assistant Collector concerned.

(5)

From the provision quoted herein above, it is clear that sub-section (4) is the material provision insofar as the issue in the instant writ petition is concerned. It is very categorical and relates to the entire Section 157-AA of the Act. It puts a total embargo on any sale-deed etc. being executed without the prior permission of the Collector.

The submission that permission is required for a sale only in favour of a non Scheduled Caste person is also entirely misconceived. Section 157-AA of the Act deals with land wherein a person belonging to the Scheduled Caste becomes a bhumidhar with transferable rights of land allotted to him after he has remained in possession for a period of ten years, as provided under Section 131-B of the Act.

Moreover this Section, 157-AA of the Act permits transfers between two persons belonging to the Scheduled Castes only. The only exception carved out by sub-section (3) of this Section is that if transferee belonging to a Schedule Caste is not available. Then a transfer in favour of a member of a Scheduled tribe may be permitted in accordance with the conditions and order of preference specified in the section itself. Even otherwise, the section provides for various categories of persons who are entitled to purchase the land in the order of preference given. A person in a higher category shall have preference over a person in the lower category mentioned.

In such a view of the matter, I do not agree with the submission made by the learned counsel for the petitioner. Moreover, the crucial provision, namely, sub-section (4) was evidently not pointed out to the court when





the judgment in the case of Ramey (supra) was rendered. The said judgment having failed to notice the crucial sub-section (4), must therefore, be held to be per incuriam. Therefore, the petitioner is not entitled to get any benefit of the said judgment in the case of Ramey (supra).

I consider it appropriate to reiterate and clarify that this Section does not provide for or permit a transfer by a Scheduled Caste in favour of a non-Scheduled Caste.

The argument of learned counsel for the petitioner is therefore entirely misconceived. The section provides that various categories of persons, belonging to Scheduled Caste and Scheduled Tribes only are entitled to purchase the land in the order of preference given.

It therefore necessarily follows that before a transfer is effected, it has to be determined as to the category under which the prospective vendee falls and whether another person of the Scheduled Caste, who is in a higher preferential category is available or not. This determination has to be made and duly recorded prior to the transfer itself.

It is in this context that sub-section (4) has been introduced which mandates that in case, a person is entitled to execute a sale-deed, etc. in favour of person(s) belonging to the Scheduled Caste, such transfer shall not be without prior permission of the Assistant Collector. If this is not the valid and correct interpretation of sub-section (4) of Section 157-AA of the Act sub-sections (1) and (2) would be rendered redundant."

Coming to the submissions made before this Court, the main point which requires consideration is whether the petitioner can be granted any benefit of the provisions contained in Section 122B (4-F) of the U.P. Zamindari Abolition and Land Reforms Act.

For dealing with the above argument, it appears necessary to quote Section 122-B (1) of the Act, which reads as follows:-

"122B. Powers of the Land Management Committee and the Collector. - [(1) Where any property vested under the provisions of this Act in a Gaon Sabha or a local authority is damaged or misappropriated or where any Gaon Sabha or local authority is entitled to take or retain possession of any land under the provisions of this Act and such land is occupied otherwise than in accordance with the provisions of this Act, the Land Management Committee or local authority, as the case may be, shall inform the Assistant Collector concerned in the manner prescribed."

From a bare perusal of the provision quoted above, it is clear that Section 122-B is attracted only with regard to land which vests in the Gaon Sabha or a local authority. Secondly such land vested in the Gaon Sabha or local authority must have been occupied by a person belonging to the scheduled caste, otherwise than in accordance with the provisions of the Act.

It is only in the above two qualifying circumstances would the



provisions contained in Section 122-B (4-F) come into play. The land which was subject matter of the sale deeds in favour of the petitioner was land over which the vendors had obtained bhumidhari rights in accordance with Section 131-B. Therefore, on the date of the sale deed, the land did not vest in the Gaon Sabha or in any local authority. However, since the sale deeds were executed in favour of the petitioner contrary to the provisions contained in Section 157AA of the Act, without necessary permission for such sale deeds having been obtained, the sale deeds being contrary to the provisions of the Act, was void, as provided by Section 166 of the Act.

Section 167 of the Act provides the consequences of any transfer which is void under Section 166 of the Act. Section 167 (1) (a) provides that in case a transfer is void being contrary to the provisions of the Act as provided under Section 166, the property which is subject matter of such transfer shall be deemed to vest in the State Government free from all encumbrances, from the date of the illegal transfer.

From the above, it is clear that the lands subject matter of the sale deeds in favour of the petitioner, on the date of the sale did not vest in the Gaon Sabha or local authority and in view of Section 167 (1) (a) and since the transfer was void, the lands are deemed to vest in the State. The State is not the Gaon Sabha or a local authority mentioned in Section 122-B (1) of the Act.

Under the circumstances, therefore, the contention of learned counsel for the petitioner that he was entitled to the benefit of Section 122-B (4-F) is without substance. In effect the benefit is being sought against the State and not regarding land which is vested in the Gaon Sabha or a local authority.

There is yet another aspect of the matter on account of which the submission of learned counsel for the petitioner cannot be accepted.

Admittedly the petitioner entered into possession over the lands in issue, on the basis of the sale deeds executed in his favour. Therefore, on the date he entered into possession, the same was legal and permissive possession and not unauthorized occupation of the land. The benefit of Section 122-B is available only with regard to land vested in the Gaon Sabha under Section 117 of the Act.

The contention that the petitioner is a poor person cannot be accepted because he had the capacity to obtain two sale deeds in his favour in the years 2001 and 2002. A person purchasing land cannot be said to be a very poor person. The contention

that the petitioner is a landless agricultural labourer also cannot be accepted for the same reason.

In my considered opinion, no equity lies in favour of the petitioner. The contention that he is unaware of the law and, therefore, purchased the land in question despite the vendor not having obtained requisite permission for the sale, also cannot be accepted because ignorance of law is no defence.

In view of the foregoing discussion and since all contentions raised by learned counsel for the petitioner in both writ petitions have been repelled, herein above, this Court is constrained to hold that both writ petitions are wholly devoid of merit, and the orders impugned therein, call for no interference.

Both writ petitions are accordingly dismissed.

Interim orders, if any, stand discharged.

Order Date :- 01.06.2020

Mayank

