

Court No. - 48

Case :- WRIT - B No. - 232 of 1980

Petitioner :- Gaya

Respondent :- D.D.C.And Others

Counsel for Petitioner :- V.K.S. Chaudhary,Kunal Ravi Singh,Manjari Singh

Counsel for Respondent :- R.N. Singh,S.C.,S.N. Singh

Hon'ble Saurabh Shyam Shamshery,J.

1. This writ petition is arising out of proceedings carried out for chak allotment. The contesting respondents claimed to be bona fide purchaser and land in dispute was sold to them by vendor in pursuance of permission granted by the Settlement Officer Consolidation. It is not much in dispute that during consolidation proceedings land allotted to contesting original respondent was her original holdings that is part of sale-deed and adjacent to the road.

2. Per contra, stand of original petitioner was initially that valuation was wrongly determined and allotment of chak was wrongly done. However, learned counsel for the petitioner submits that permission to sale was dated 10.11.1975 which was effective only for a period of one month. However, the vendors have executed sale-deed much after the period of one month i.e. on 02.02.1976 therefore the sale-deed was *void ab initio*.

3. Learned counsel for the petitioner was candidly clear that this plea was not taken during the consolidation proceedings before any of the authority even in the averments made in the writ petition. And for the first time by way of filing a supplementary affidavit on 30.10.2023 that after a period of more than 43 years, such pleadings were introduced.

4. Learned counsel for the petitioner has placed reliance on the judgment passed by Supreme Court in case of Ratan Lal Sharma vs. Managing Committee (1993) 4 SCC 10, that question of law could be raised for the first time before the writ Court. Learned counsel has placed reliance on judgment passed by co-ordinate Bench of this Court in the case of **Achhua vs. Assistant Director of Consolidation, Hamirpur and others (Writ B No. 2319 of 1983)** dated 21.02.2017 that the Revisional Authority ought to have decided the revision petition on merit whereas it has rejected mentioning only that no demand of chak was raised.

5. Sri R.N. Singh, learned counsel appearing on behalf of contesting respondents has supported the impugned orders and submits that question of law cannot be raised at very belated stage which was not even supported by the averment made either before the Consolidation Authorities or before this Court in the writ petition.

6. Heard learned counsel for the parties and perused the record.

7. The first issue before this Court is whether a legal issue could be raised before this Court for the first time at very belated stage. Its not under dispute that the writ petition was filed in the year 1980 and the challenge to sale-deed on ground that it was executed after the period provided in permission was raised for the first time before this Court after more than four decades. There is no doubt that this Court has very wide power to consider a question of law even raised for the first time which also include that it may be raised orally. However, the issue of equity has to be taken note of.

8. The petitioner has challenged sale-deed on the above referred ground for the first time before this Court, despite this matter was

pending for more than four decades. Therefore, it would definitely prejudice the case of the respondent. At this belated stage if this Court exercise its discretionary power to entertain such plea, it would not only be unreasonable but against the principle of equity also. Even otherwise in a case if the sale-deed was executed beyond the period granted therein, it may be an irregularity not an illegality, which would not make the sale-deed only voidable at instance of parties to it i.e. the instance of the vendor or vendee not at the instance of stranger i.e. petitioner. Therefore, the plea raised at very belated stage has no legal basis and accordingly rejected.

9. The other issue which requires consideration is whether in the facts and circumstances of present case, the Revisional Authority has failed to exercise power granted under Section 48 of U.P. Consolidation of Holdings Act, 1953. I have carefully perused the memo of the revision petition which is annexed along with writ petition being Annexure-5. The challenge to allotment of the chak in favour of respondent was only on ground that it fall in between the chaks of respondents.

10. I have also carefully perused impugned order passed by the Revisional Authority. It notes that, the revision petition was filed only in order to oppose the revision petition filed by the respondent. The Revisional Authority has noted that it has conducted a spot inspection also. So far as the claim of the petitioner was concerned, it was rejected since the claim was sought without any basis.

11. The other argument of the learned counsel for the petitioner that after the preparation of CH Form-23 any permission granted to sale the proposed chaks to petitioner was erroneous. However,

this argument would have any legal basis only when the petitioner has effectively challenged the permission either before the Consolidation Proceedings or within reasonable time before this Court. However as discussed above, such challenge to permission at the instance of the petitioner at belated stage, cannot be considered even otherwise the petitioner has not been able to show that great prejudice is caused to him and in these circumstances equity lies in favour of the respondent.

12. The question whether the Revisional Authority has exercised the powers granted under Section 48 U.P. Consolidation of Holdings Act, 1953 is concerned, it is well settled that the Revisional Authority could interfere with the order passed by the Lower Authority only when it suffers from any substantial illegality or has caused substantial injustice. However as discussed above, learned counsel for the petitioner has not able to show that orders passed by the appellate authority has suffered with any of the factors on which the Deputy Director of Consolidation could interfere.

13. In view of aforesaid facts and circumstances, I do not find any illegality or irregularity in the impugned order.

14. The petition accordingly **dismissed**.

Order Date :- 31.10.2023

A. Tripathi