

Court No. - 51

Case :- WRIT - C No. - 1415 of 2023

Petitioner :- Radheshyam Prajapati

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

Counsel for Petitioner :- A.K. Maurya I

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

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. A.K. Maurya, Counsel for the petitioner, Mr. Sudarshan Singh, Counsel for respondent no.4, Mr. Abhishek Shukla, learned Standing Counsel for the State-respondents and Mr. Bhupendra Kumar Tripathi for respondent no.7, Gaon Sabha.

2. Brief facts of the case are that plot No. 733 area 63 1/2 dismil situated in Village Parasi Khurd Pargana Majhawar Tehsil and District Chandauli was purchased by petitioner through registered sale deed executed on 28.6.2002 from respondent nos. 5 and 6. On the basis of the aforementioned sale deed, the name of petitioner was recorded in the revenue record vide order dated 15.7.2005. After about 3 years of the execution of the sale deed, an application was filed on 21.7.2005 by respondent no.4 (brother of petitioner's vendor) under Section 157-A of the U.P.Z.A. and L.R. Act stating that vendor belongs to Scheduled Caste, as such, sale deed is void and property should be vested in State. On the basis of the application dated 21.7.2005, case No. 1 of 2005 under Section 157-A of the U.P.Z.A. and L.R. Act was registered before respondent nos. 3 and notice was issued to petitioner. Petitioner filed his objection that respondent no.4 has no right to file application/objection against the sale deed dated 28.6.2002 Respondent no.3/ Additional District Magistrate, Chandauli vide order dated 24.7.2006 declared the sale as void and vested the plot in dispute in the State. Against the order dated 24.7.2006 passed by respondent no.3, petitioner filed revision before the respondent no.2, which was dismissed for non-prosecution on 23.2.2016. Petitioner filed a restoration application along with the prayer for condonation of delay which was rejected by respondent no.2 vide order dated 24.11.2022. Hence this writ petition challenging the orders dated 24.11.2022 & 23.2.2016 passed by respondent no.2 as well as order dated 24.7.2006 passed by respondent no.3.

3. Counsel for the petitioner submitted that proceeding initiated under Section 157-A of the U.P.Z.A. and L.R. Act at the instance of respondent no.4 was not maintainable. He further submitted that sale deed itself contains the recital that parties do not belong to Scheduled Caste. He further submitted that without conducting proper inquiry about the caste of the vendor, impugned order dated 24.7.2006 has been passed by respondent no.3 vesting the properties in the State. He submitted that order passed by respondent no.2 is also without jurisdiction in view of the law laid down by this Court in the case reported in **2012 (116) RD 69, Rakesh Kumar vs. State of U.P. and others** as well as in **Writ C No.18585**

of 2023 Sudheer Kumar Jain vs. State of U.P. and others dated 10.8.2023. He further placed reliance upon the judgment of this Court reported in **2011 (4) ADJ 796; Smt. Sumitra Devi vs. Sushila Devi and others** in order to demonstrate that respondent no.4 have no locus to challenge the execution of sale deed executed by brother of respondent No.4 in favour of petitioner. He submitted that order impugned be set aside.

4. On the other hand, Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents and Mr. Sudarshan Singh, Counsel for respondent no.4 submitted that order impugned has rightly been passed by respondent no.3 vesting the property in the State Government. He further submitted that after considering the pleading of the parties, the Court has held that sale deed is void in view of violation of the mandatory provisions contained under Section 157-A of U.P.Z.A. and L.R. Act. He further submitted that revision filed by petitioner was dismissed for non-prosecution and the restoration application was highly belated, as such, the restoration application was rightly rejected so no interference is required against impugned order.

5. I have considered the arguments advanced by learned Counsel for the parties and perused the records.

6. There is no dispute about the fact that sale deed was executed in favour of the petitioner in the year 1982 by respondent nos. 5 and 6 and the sale deed contains recital that parties do not belong to Scheduled Caste community. There is no dispute about the fact that vide order of respondent no.3, the sale has been held to be void u/s 157A of the U.P.Z.A. & L.R. Act and property has been vested in State Government and the revision filed by the petitioner has also been dismissed.

7. In order to appreciate the controversy, the perusal of Section 157-A of U.P.Z.A. and L.R. Act will be relevant which is as follow:-

"[157A. 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.]"

8. Perusal of the order of Additional District Magistrate dated 24.7.2006 will be also relevant which is as under :-

"प्रस्तुत वाद की कार्यवाही सुधार पुत्र स्व० पतरू निवासी ग्राम टीरो परगना मझवार तहसील व जनपद चन्दौली के वाद पत्र दिनांक **21.7.2005** पर प्रारम्भ हुई कि राधेश्याम पुत्र कालिका ने वंशनरायन उर्फ वंशराज पुत्र स्व० पतरू व सुदामा पुत्र स्व० पतरू से एक बैनामा दिनांक **28.6.2002** को कराया। उक्त विक्रय विलेख के विक्रेतागण अनुसूचित जाति के व्यक्ति हैं एवं क्रेता पिछड़ी जाति का व्यक्ति है। विक्रय विलेख तहरीर किये जाने से पूर्व नियमानुसार अनुमति नहीं प्राप्त की गयी थी अतः उक्त विक्रय विलेख को शून्य घोषित किया जाय। वाद दर्ज कर विपक्षीगण को नोटिस-सम्मन जारी किया गया। विपक्षी की आपत्ति दिनांक **2.3.2006** प्राप्त हुई। आपत्ति में कहा गया है कि उसने वंशनरायन उर्फ वंशराज व सुदामा पुत्रगण स्व० पतरू निवासीगण टीरो से भूमि क्रय किया है। वादी का उक्त भूमि से कोई सम्बन्ध नहीं है। अतः वाद योजित करने का कोई अधिकार नहीं है वाद पत्र तीन वर्ष बाद प्रस्तुत किया गया है। कालबाधित होने के कारण भी वादपत्र स्वीकार किये जाने योग्य नहीं है। विक्रेतागण जाति के कहार है जो अनुसूचित जाति में नहीं आते हैं जो पिछड़ी जाति में आते हैं इसलिये विक्रेतागण ने अपने को अनुसूचित जाति का न होना कहा है। कहार जाति के लोग अनुसूचित जाति की श्रेणी में नहीं आते हैं। विक्रय पत्र साफ पाक है। किसी को आपत्ति करने का अधिकार नहीं है।

वादी के विद्वान अधिका ने अपने तर्कों में कहा कि विक्रय विलेख के विक्रेतागण अनुसूचित जाति के सदस्य हैं और बैनामा तहरीरी के दिनांक को उनके पास **1.26** हेक्टेयर से कम भूमि रही। भूमि विक्रय से पूर्व जिलाधिकारी से अनुमति प्राप्त किया जाना आवश्यक था। ऐसा न करके विक्रेतागण द्वारा नियमों का उलंघन किया गया। विक्रय पत्र शून्य घोषित किये जाने का निवेदन किया गया। प्रतिवादीगण के विद्वान अधिवक्ता ने तर्कों में कहा कि बैनामा तहरीरी दिनांक को विक्रेतागण अनुसूचित जाति की श्रेणी में नहीं आते थे उक्त अवधि में व पिछड़ी जाति की श्रेणी में थे जिस कारण विक्रय हेतु अनुमति लिये जाने की आवश्यकता नहीं थी। वाद पत्र तीन वर्ष बाद प्रस्तुत किया गया है। कालबाधित होने के कारण वाद पत्र स्वीकार किये जाने योग्य नहीं है। वाद पत्र निरस्त किये जाने का निवेदन किया गया।

पत्रावली पर उपलब्ध साक्ष्यों एवं उभय पक्षों के तर्कों से यह स्पष्ट है कि श्री वंशनरायन व सुदामा पुत्र गण स्व० पतरू निवासीगण टीरो परगना मझवार तहसील व जनपद चन्दौली अनुसूचित जाति के व्यक्ति हैं। सुधार शिकायतकर्ता/वादी उन्हीं के परिवार व जाति का व्यक्ति है। सुधार ने इस आशय का अपना जाति प्रमाण पत्र प्रस्तुत किया है कि वह भी विपक्षीगणों राधेश्याम, वंशनरायन, सुदामा की जाति के परिवार है। सुदामा, वंशनरायन द्वारा दिनांक **28.6.2002** को ग्राम परासी खुर्द परगना मझवार तहसील व जनपद चन्दौली स्थित अपनी **authorities** भूमि गाटा सं० **733** रकबा **63 ½** डिस. का विक्रय पत्र राधेश्याम पुत्र कालिका निवासी परासी खुर्द के पक्ष में निष्पादित किया है। यह विक्रय/अन्तरण बिना कलेक्टर की पूर्व अनुमति के किया गया है जो उत्तर प्रदेश जमींदारी विनाश एवं भूमि व्यवस्था अधिनियम की धारा **157** क के प्राविधानों के विपरीत है। अतः प्रश्नगत बैनामा व अन्तरण शून्य है। प्राविधानों के विपरीत विक्रीत सम्पत्ति राज्य सरकार में निहित होने योग्य है।

आदेश

अतः विक्रय विलेख दिनांक **28.6.2002** बावत आराजी नं० **733** रकबा **63 ½** डिसमिल स्थित मौजा परासी खुर्द परगना मझवार तहसील व जनपद चन्दौली शून्य घोषित किया जाता है। उक्त विक्रय विलेख द्वारा विक्रीत आराजी राज्य सरकार में निहित की जाती है। आदेश की प्रमाणित प्रति उप-निबन्धक चन्दौली व तहसीलदार चन्दौली को प्रेषित हो। बाद आवश्यक कार्यवाही इस न्यायालय की पत्रावली दाखिल दफ्तर हो।

दिनांक: **24.7.2006** आर.आर. सिंह

अपर जिलाधिकारी चन्दौली,

जनपद चन्दौली।

आदेश दिनांकित हस्ताक्षरित मेरे द्वारा खुले न्यायालय में उद्घोषित।

दिनांक: **24.7.2006**

आर.आर. सिंह

अपर जिलाधिकारी चन्दौली,

जनपद चन्दौली।"

9. Paragraph Nos. 21 to 25 of the judgment rendered in **Rakesh Kumar (Supra)** will be also relevant for perusal which is as under :-

"21. A plain and simple reading of Section 3(4) of the Act and Sections 14, 14-A and 15 of the U.P. Land Revenue Act makes it clear that the Collector includes Additional Collector as well as Assistant Collector and is authorised to discharge the powers and duties conferred upon him under the Act or in any other law in force. The aforesaid Acts do not confer upon the Collector the power to declare a transaction to be void under Section 166 of the Act being violative of Section 154 or 157-A of the Act. Such power is vested only in the Assistant Collector First Class who may be authorised by the State Government to discharge all or any of the functions of the Collector but converse to it is not permitted. The duties and functions assigned therein to the Assistant Collector First Class under law are not to be discharged by the Collector even though he may be the controlling authority of the Assistant Collectors First Class. He is not authorised to take over the functions assigned to the Assistant Collectors. Thus, Collector is not supposed to discharge the functions specifically assigned to the Assistant Collectors under the above two Acts including that of declaring a transfer to be void.

22. Apart from the above the initial order which was challenged in appeal before the Additional Commissioner was passed by the Assistant Collector First Class and, therefore, also on the order being set-aside in appeal, the matter ought to have been remanded to the Assistant Collector First Class.

23. Accordingly, I answer the question by holding that the Assistant Collector First Class is the competent authority to declare any transaction of agricultural land void under Section 166 of the Act, if it is in contravention of Section 154 and 157-A of the Act or as a matter of fact, of any other provision of the Act.

24. In such a situation, the Additional Commissioner committed an error of law in remanding the matter to the Collector.

25. The writ petition is accordingly allowed and the order of the Additional Commissioner dated 27.8.2010 is modified to the extent that the matter stands remanded to the Assistant Collector First Class in place of the Collector as directed. "

10. In another case **Sudhir Kumar Jain (Supra)**, this Court after following the ratio of law laid down by **Rakesh Kumar (Supra)** has held that property cannot be vested in State Government under Section 157-A of U.P.Z.A. and L.R. Act by the Collector/Additional Collector.

11. In the instant matter, order dated 24.7.2006 declaring the sale deed as void and vesting the plot in dispute in State has been passed by respondent no.3, Additional District Magistrate, Chandauli who is not competent to pass the order in view of the ratio of law laid down in **Rakesh Kumar (Supra)** and **Sudheer**

Kumar Jain (Supra) as quoted above. Vendor himself has not filed any application/ complaint in respect to sale deed executed on 28.6.2002.

12. It is also material that in the instant matter, no proper enquiry has been conducted regarding the caste of the vendor although the sale deed itself contains recital that vendor do not belong to Scheduled Caste. The relevant recital of the sale deed are as follows:-

"बिक्रय पत्र

सरकारी मालियत-**1,59,000/-** रूपया।

लेनदेन-**1,52,400/-** रूपया।

स्टाम्प-**12720/-**रूपया।

सरकारी रेट-**2500/-** रूपया प्रति डि०।

प्रयोजन-कृषि कार्य हेतु।

हम कि वंशनरायन व सुदामा पुत्रगण स्व० पतरू निवासीगण

टिरोँ पो० कारा परगना मझवार तहसील व जिला चन्दौली।-- विक्रेता/प्रथम पक्ष

व राधेश्याम पुत्र कालिका निवासी परासी खुर्द परगना मझवार तहसील व जिला चन्दौली।

--- क्रेता/द्वितीय पक्ष

विक्रेतागण अनु. जाति/ जन जाति के नहीं है। वेशुदा भूमि के बावत इसके पहले कोई अनुबन्ध तहरीर नहीं हुआ है।

वेशुदा भूमि कृषि भूमि है और कृषि कार्य हेतु क्रय किया जा रहा है सड़क से **500** मीटर से काफी अधिक दूरी पर स्थित है।

तहरीर तारीख **28.6.2002"**

13. Revisional orders passed by Additional Commissioner are based on technical

grounds, as such, the same are also arbitrary and cannot be maintained in the eye of law.

14. Considering the entire facts and circumstances as well as the ratio of law laid down by this Court in Rakesh Kumar (Supra), the impugned order dated 24.7.2006 passed by respondent no.3 and order dated 24.11.2022 as well as 23.2.2016 passed by respondent no.2 are liable to be set aside and the same are hereby set aside. Writ petition stands **allowed**, however, the proper authority can proceed afresh in proper manner after conducting proper enquiry regarding the caste of the parties in accordance with law.

Order Date :- 8.11.2023/ Vandana Y.