

AFR

Neutral Citation No. - 2023:AHC-LKO:52537

Court No. - 8

Case :- WRIT - C No. - 3000154 of 2003

Petitioner :- Sri Niwas And 3 Ors.

Respondent :- Upper Ayukt Administration Lucknow And 4 Ors.

Counsel for Petitioner :- V.K. Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Ajay Bhanot,J.

Heard Shri V. K. Pandey, learned counsel for the petitioner and learned Standing Counsel for the State.

The writ petition arises out of a judgement dated 10.04.2003 rendered by the appellate authority under the U.P. Imposition Ceiling (Amendment) Act (hereinafter referred to as 'the Ceiling Act') upholding the order of the prescribed authority declaring the disputed parcels of land to be surplus and discarding the sale deed executed in favour of the petitioner.

The petitioners are in possession of the disputed parcels of land.

The facts recited in the impugned order are that an agreement to sale was executed in favour of the petitioner by the original tenure holder on 14.12.1970 after payment of full consideration. The sale deed came to be registered subsequently on 10.06.1975 in favour of the petitioner.

The appellate authority has recorded that the cause for

delay of one and a half year in executing the sale deed after execution of the agreement to sale has not been disclosed. On this footing the impugned orders finds that the sale deed was not executed in a good faith but only with an intent to defeat the provisions of the Ceiling Act.

The sale deed which is the subject matter of dispute has to be examined in light of under clause (b) of sub-section (6) and (8) of Section 5 of the U.P. Imposition Ceiling (Amendment) Act. The relevant provision is extracted hereinunder:

"5. Imposition of Ceiling.....

(6)

(a)

(b) a transfer proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a benami transaction or for immediate or deferred benefit of the tenure holder or other members of his family.

8) Notwithstanding anything contained in sub-sections (6) and (7), no tenure-holder shall transfer any land held by him during the continuance of proceedings for determination of surplus land in relation to such tenure-holder and every transfer made in contravention of this sub-section shall be void."

These are two categories of sale deeds which arise for consideration in proceedings under the U.P. Imposition Ceiling (Amendment) Act. The validity of sale deeds executed prior to and after 24.01.1971 (the disputed sale deed falls in the category) and those after 10.10.1975 fell for consideration before this Court in **Pramod Kumar and Others Vs. Additional Commissioner (Administration) Gorakhpur Division**

and others, reported at **1999 (1) AWC 875**, wherein it was held:

"8. It may be noted that prescribed authority could look into the validity of the sale deeds not only executed after 24.1.1971 but also of the sale deeds executed prior to it. The sale deeds which are covered by sub-section (8) of Section 5 of the Act are to be treated as void.

9. The sale deeds executed after 24.1.1971 are to be ignored unless they are saved under clause (b) of sub-section (6) of Section 5. A reference in this regard may be made to the decision rendered in the case of *Raghuvir Singh v. State of U. P.*, and others, 1996 AWC 1380 and *Raghuvir Singh v. State of U. P.* and others, 1979 AM 767.

10. Sub-section (8) of Section 6 has been added in the Statute by U. P. Imposition of Ceiling (Amendment) Act, 1976 (Act No. XX of 1976) which came into force with effect from 10.10.1975. Thus all sale deeds relied upon by the petitioners, i.e., dated 13.4.1973, 5.11.1974 and 20.9.1975 were executed before the enactment and enforcement of sub-section (8) of Section 5. Therefore, the said sale deeds cannot be said to be void in terms of sub-section (8) of Section 5. View taken to the contrary by the authorities below is thus, manifestly erroneous. Illegal. A reference in this regard may be made to the decision rendered by a Division Bench in the case of *Om Prakash Agarwal v. A.D.J.*, and others, 1981 AWC 775. It was thus obligatory upon the authority below to look into the validity or otherwise of the sale deeds in question before discarding the same. The authorities below committed an error which is apparent on the face of record in holding that the aforesaid sale deeds were void and were hit by sub-section (8) of Section 5."

In Pramod (supra) this Court delineated the statutory duty of the appellate authority while examining the disputed sale deeds as under:

"11. The prescribed authority after going through the evidence on the record, recorded findings on the issues framed in the case against petitioners while dealing with sale deeds dated 5.11.1974 and 29.9.1975. It has taken the view that the said sale deeds were void on the basis of sub-section (8) of Section 5, which as stated above had no application in the present case. The appellate authority did not apply Its mind to the question as to whether the said sale deeds were executed in good faith, and for adequate consideration, under Irrevocable Instrument and as to whether they were benami or were executed for Immediate and deferred benefit of the tenure holder and other members of his family. In accordance with law, it had to apply Its mind to the said questions before discarding the said sale deeds and rejecting the claim of the petitioners."

Similarly this Court in **Satnam Kaur Vs. Commissioner Lucknow Division rendered in Writ C No. 1000541 of 1992** while determining a similar issue regarding the bona fides of a sale deed in the context of the Ceiling Act stated thus:

"8. Considering the arguments of learned counsel for the petitioners as well as learned Standing Counsel and going through the contents of pleadings as well as impugned orders, it is evident that Section 5 (6) (b) of the Act, clearly provides that transfer by tenure holder, if made after 27.01.1971, its bona fide consideration as per market value and in good faith. It is not disputed that the agreement to sale related to the property in question were executed in between 31.03.1970 to 01.01.1971 as all the consideration was paid at the time of agreement and possession was also given in pursuance of the agreement, and thereafter, sale deed in respect of the property in question were executed in between 26.07.1971 to 17.10.1973. Agreements to sale with possession are not disputed and all these facts were not considered by the Prescribed Authority. Hence, the petition is allowed and the impugned orders are hereby set aside."

The recitals in the sale deed disclose that the delay in executing the sale deed after execution of the agreement to sale was occasioned on account of the continued ill health of the vendor. The sale deed was admittedly in the records before the appellate authority as well as prescribed authority. However, both the authorities neglected to consider the reasons for delay in execution of the sale deed as cited in the said document.

In this wake, the impugned orders are vitiated due to non application of mind and it cannot be stated that the sale deed was not in a good faith. The adequacy as well as payment of consideration in regard to the lands comprised in the sale deed are not disputed. There is no material in the record for both the authorities to hold that the sale deed lacked bona fides or was not executed

in good faith.

In light of the preceding discussion and the findings of fact made above, the judgement rendered by this Court in **Pramod (supra) and Satnam Kaur (supra)** also cover the facts of this case.

The appellate authority as well as prescribed authority while passing the impugned orders 10.04.2003 and 31.03.1999 fell into errors of facts and law.

The impugned order passed by the appellate authority dated 10.04.2003 as well as the order passed by the prescribed authority dated 31.03.1999 are liable to be set aside and are set aside.

The writ petition is allowed.

Order Date :- 8.8.2023

Dhananjai