

**Court No. - 18**

**Case :-** WRIT - C No. - 1688 of 2023

**Petitioner :-** Narsingh And Others

**Respondent :-** State Of U.P. Thru. Prin. Secy. Revenue, Lko.  
And Others

**Counsel for Petitioner :-** Manendra Nath Rai

**Counsel for Respondent :-** C.S.C.

**Hon'ble Shree Prakash Singh,J.**

Heard Sri Manendra Nath Rai, learned counsel for the petitioners, Sri Hemant Pandey, learned Standing Counsel for the State and perused the material placed on record.

By means of the instant petition, the petitioner has assailed the order dated 27.01.2006 passed by the respondent no. 2 and the order dated 30.11.2007 passed by the respondent no. 4.

Contention of the learned counsel for the petitioner is that, initially the petitioner purchased the land in question by way of registered sale-deed, which thereafter was recorded in the name of the petitioner vide order dated 17 January 2001 passed by Tehsildar, Dhorara in Case No. 428 of 2001. He submits that a stranger challenged the aforesaid order dated 17 January 2001 before the Special Divisional Officer by way of instituting an appeal which was decided by the order dated 29 March 2001 and the order passed by the Tehsildar dated 17 January 2001 was set aside and the matter was referred for further proceeding, invoking the powers under Section 167 of the UP Zamindari Abolition and Land Reforms Act, 1950 (hereinafter as 'the Act, 1950'). The petitioner moved a revision bearing No. 1794 of 2001–2002 under Section 219 of the Land Revenue Act, which was dismissed by the Revision Court while upholding the order passed by the Appellate Court and it was again held that the court below will proceed as per the provision of Section 167 of the Act 1950.

Contention of the learned counsel for the petitioner is that the Appellate Court could not have entertained the appeal instituted by a stranger as he had no interest as per the law in the land in question. He also submits that during the pendency of the Revision before the Revisional Court, the UP Zamindari Abolition and Land Reforms (Amendment) Act, 2004 was promulgated and by virtue of the same, the provision prescribed under Section 168 A of the Act, 1950 was omitted, which

became effective from 23 August 2004. He added that in fact the aforesaid plea was taken before the Revisional Court but the same was ignored and the order was passed. He also submitted that the petitioner could not avail the exemption as per the special provision inserted time to time i.e., in the year 2005, 2010 and 2014. Since in the year 2008, the State Government made an entry in the Revenue Record regarding the land in question and therefore the petitioner could not avail the benefit of the special provisions. He next added that the Revisional Court without considering the thin difference that the transfer of a share is distinguishable from transfer of the portion of a plot, amounting to fragmentation. In support of his contention, he has placed reliance on a judgement reported in (1992) RD 186; Goverdhan Singh and other Vs. Board of Revenue and others and has referred the following paragraph which is quoted hereinunder:-

*"Section 178 read with related rules contained in rules 159 to 164 of U.P.Z.A. and L.R. Rules 1952, makes it clear that two or more persons can co-share in a holding which itself is a fragment' or whose share if converted in terms of area becomes a fragment subject to the provisions of Section 178 of the Act. Therefore transfer of a share is distinguishable from a transfer of a portion of the plot in terms of area amounting to 'fragment' within the meaning of Section 168-A of the Act. The transferees of a defined share are however, entitled to co-share in the holding alongwith the transferor and if any of the co-shares applies for division of holding which may result in fragmentation, the same would be taken care of by the law and fragmentation would be prevented as is evident from Section 178(1) of the Act read with related rules."*

The emphasis was laid down by the court that in terms of the meaning of Section 168 A of the Act 1950, the term of area amounting to 'fragment' does not connote the area of a 'share'. He submits that so far as the case of the petitioner is concerned, it is evident from the sale deed itself that the portion of a share was transferred by way of sale deed and the provision of Section 168 A would not attract in this matter.

Concluding his arguments, he submits that looking into the flaw in the provision of section 168 A, the provision was omitted by way of an amendment in the Act, 1950 by the Legislature, and now the same is not in existence after its date of commencement i.e., 24th August 2004.

He submits that in view of the aforesaid, the order passed by the court, who entertained the application of a stranger as well as the order of the Revisional Court wherein the crux of the matter

was ignored regarding the transfer of share, not the transfer of portion of land and thus both the orders are erroneous and therefore, those are not sustainable in the eyes of law.

On the other hand, the learned counsel appearing for the State has vehemently opposed the contentions aforesaid and submitted that in the provisions named as 'Amendment Act, 2004', it was open to the petitioner to approach the authority concerned so far as any grievance with respect to the issue of fragmentation of the portion to any area is concerned and admittedly, the petitioner did not approach any authority. After the aforesaid enactment, he also added that the registered sale deed is enough to show that the portion of the land is sold out in favour of the petitioners and therefore, the same is covered under the provision of Section 168 A of the Act, 1950.

In support of his contention, he has placed reliance on the judgement rendered in case of Rais Fatima Vs. State of U.P. and Ors, in Land Acquisition No. 18646 of 2016 dated 28 April 2017 and has referred paragraph 16 of the judgement.

Paragraph 16 of the judgement is quoted hereinunder:-

*"16. We have considered all the submissions raised and the first issue is with regard to the status of the sale-deed of the petitioner. It is no doubt, clear from the provisions of Section 168-A read with the provisions of Section 166 and 167 of the 1950 Act that if such a transaction resulting in a fragmentation is arrived at, then the subject matter of transfer shall be with effect from the date of transfer be deemed to have vested in the State Government free from all the encumbrances treating the transaction to be void. The sale-deed presently involved is of the year 1999. Thus, a combined reading of all the aforesaid three Sections of the 1950 Act leaves no room for doubt that the sale-deed which was executed in the year, 1999 in favour of the petitioner was obviously in violation of the aforesaid provisions. The petitioner admittedly did not make any attempt to get it regularized or validated under the amendment of Section 168-A in 2005, 2010 or 2014. The distinction that was sought to be drawn by the learned counsel for the petitioner that it relates to an 'Abadi' being part of an agricultural holding, is not an exception countenanced in the aforesaid provisions. Secondly, the judgment in the case of U.P. State Industrial Development Corporation (supra) would not be attracted on the facts of the present case inasmuch as in the said case, the transactions were prior to 1982 when the provisions of the 1950 Act were entirely different. Then the enactment required taking of an action by the Collector and it is only thereafter that the transaction could be held to be void*

*or land could be vested in the State. After the amendment in the Act, 1982, the deeming provision has been introduced and in such circumstances, the aforesaid judgment of the Apex Court is clearly distinguishable and applicable. Apart from this, from the ratio of the said case as indicated in Paragraph 10 thereof, it is evident that the Court proceeded on the presumption that there was no evidence on record to prove that the claimants had acquired any land in violation of the statutory provisions and further there was no evidence to substantiate the plea that the claimants were in illegal and unauthorized possession. This finding was based on the fact that the Collector or any other Authority under the 1950 Act had not undertaken any exercise for either evicting the claimants who were in possession and therefore, there was no vesting in favour of the State. "*

Referring the aforesaid he submits that it has been held by the division bench of this Court that it was incumbent upon the petitioner after the Amendment Act, 2004 that he could have attempted to get it regularised or validated under Section 168 A in year 2005, 2010 or 2014 but the same was not done by the petitioner which is an admitted fact. He further placed reliance on judgement rendered in Mahadev Vs. State of U.P passed in Writ Petition No. 5836 (M/S) of 2009 dated 11.11.2009 and has referred paragraph 5 as well as the case rendered in Charan Singh Vs. Vii ADJ passed in Writ C No. 2785 of 1985. Referring the abovesaid judgements, he submits that it is evident from the ratio of the abovenoted judgements, that the omission of the provisions of Section 168 A, is prospective and further added that the petitioner did not take any objection which is being raised before this Court, in this petition. Thus, submission is that there is no ambiguity or unlawfulness in the order passed by the appellate authority as well as the revisional court.

Having heard the learned counsel for the parties and after perusal of the material placed on the record, it transpires that the land in question was purchased by the petitioner, and that too is the share of a co-sharer in the land which was later on recorded in the name of the petitioner by virtue of the order passed by the Tehsildar in a mutation proceeding. The fact remains that the share of a portion reveals that the share of a co-sharer from total holdings of an area was purchased by the petitioner and the portion which is mentioned in the registered sale deed do not disclose that whether this portion of the area of the whole holding is mentioned or that the area, which is purchased by the petitioner is denoted.

When this court examined the law and facts agitated by both the parties, it is clear from the registered sale deed itself that the

share of the portion of a shareholder in the holding was sold out to the petitioner and it has also been mentioned in the sale deed that no fragmentation is done. Time and again, the coordinate bench of this Court has held that the transfer of a 'share' is distinguishable from transfer of part of the plot, which is amounting to fragment with the meaning of Section 168 A of the Act 1950. So far as the present matter is concerned, the share of a portion of a co-sharer is sold out which is an admitted fact between the parties. The question which was agitated by the State that the portion of the land is denoted in the registered sale deed, but the same could not clarify itself that whether that is the portion of the total area of the land or the portion of the share of co-sharer, which is sold out by way of the registered sale deed.

The second question which crop up is that whether the petitioner could have approached the authority in terms of the special provisions as well as the settled law that the provision of Section 168 A along with the amended provisions, is prospective in nature and therefore, no retrospective meaning can be given. So far as the contention of the petitioner is concerned that in the year 2005, he was before the Revisional Court and the Revisional Court decided the matter in the year 2006 and the special provision came into effect in the year 2010 after the special provision of 2005, whereby the exemption was granted and in the meantime, in the year 2008, the land in question was recorded by the State Government in the Revenue Record in the name of the State and therefore he could not approach the authorities concerned so as to seek the exemption, as is provided in the special enactment.

The question with respect to the delay has also been agitated that after passing of about 15 years, the writ petition has been filed before this court which has been answered by the counsel for the petitioner that since the unlawfulness is creeping in the order of the Appellate Court and the same was passed while entertaining, an application moved by an stranger and later on the same was also not corrected by the Revisional Court. This court finds that the delay is explained properly.

This court is of considered opinion that the law laid down in Goverdhan's case, which clearly says that the portion of land as well as the share of a land is totally different and distinguishable, seems to be correct and so far as the present case is concerned the portion of a share of a co-sharer is transferred by way of a registered sale deed, which is apparent from the deed itself.

In view of the aforesaid submission and discussions, the orders

passed dated 30.11.2007 and 27.01.2006, impugned in this petition, are hereby set aside.

The writ petition is **allowed** accordingly.

Consequences shall be followed.

**Order Date :- 29.11.2023**

Anurag