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Court No. - 7

Case :- WRIT - C No. - 9036 of 2024

Petitioner :- Gur Lal Singh And Another

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Deptt. Of Revenue,Lko. And 3 Others

Counsel for Petitioner :- Gaurav Mehrotra,Akber Ahmad

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

1. Present petition has been filed for the following reliefs:

"I. To issue a writ, order or direction in the nature of Certiorari quashing the impugned appellate order dated 30.07.2008 passed by the Commissioner, Lucknow Division, Lucknow, Uttar Pradesh i.e. the Respondent No. 2, a copy whereof is annexed as Annexure-1 to this writ petition.

II. To issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 26.11.2007 passed by the Prescribed Authority (Ceiling) Lakhimpur, District Kheri, Uttar Pradesh i.e. the Respondent No.3, a copy whereof is annexed as Annexure-2 to this writ petition.

III. To issue a writ, order or direction in the nature of mandamus commanding the Respondents not to act upon the impugned order dated 26.11.2007 and impugned appellate order dated 30.07.2008 and create any hinderances in the peaceful enjoyment of the land in question of the Petitioners.

IV. To issue such other order or direction which this Hon'ble Court may deem just and proper in the circumstances of the case to protect the right and interest of the Petitioners."

2. The facts, in brief, are that one Smt. Ajeet Kaur, mother of petitioner nos.1 & 2, got executed a sale deed on 15.06.2010 ad-measuring 0.676 hectares at District Kheri from the original tenure holder namely Smt. Roopendra Jeet Kaur through her son and general power of attorney holder for a sale consideration of Rs.16,08,000/-. The power of attorney holder of Smt. Roopendra Jeet Kaur had represented to be the absolute land ad-measuring 4.723 hectares of Gata/Khasra No.54 situated at Tehsil Palia, District Kheri. Based upon the said, the case of the petitioners is that mother of petitioner nos.1 &

2 had purchased part of the said property ad-measuring 0.676 hectares after paying the sale consideration and through a registered instrument. It is also the case of the petitioners that they had done due diligence in the revenue records prior to purchasing the said property. What further emerges from the facts are that in respect of the land purchased by the petitioners by virtue of a sale deed, proceedings were initiated under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as 'the Rural Ceiling Act') by issuance of a notice to the original tenure holder on 09.09.2002. After considering the reply of the original tenure holder, who were five in number, the prescribed authority proceeded to pass an order on 26.11.2007 declaring the land as surplus in respect of four of the noticee and accepted the contention of fifth noticee. The said four noticees included the persons from whom the petitioners got a sale deed executed. The four noticees preferred an appeal against the order of the prescribed authority, however, the appeal came to be dismissed vide order dated 30.07.2008. Aggrieved against the said two orders passed by the prescribed authority and the appellate authority, the original tenure holders approached this Court by filing a writ petition being Writ Petition No.101 of 2008 (Ceiling) subsequently re-numbered as Writ C No.3000101 of 2008. In the said writ petition, an interim order came to be passed by this Court to the following effect:

“Notices on behalf of opposite Parties No. 1 to 3 have been accepted by the learned Chief Standing Counsel.

Let counter affidavit be filed within a period of six weeks. Rejoinder affidavit, if any, may be filed within two weeks.

List thereafter.

Till the next date of listing, the implementation and operation of the impugned order dated 30.07.2008 as well as dated 26.11.2007 passed by opposite parties no. 2 and 3 as contained in Annexure nos. 1 and 2 to the writ petition shall remain stayed.”

3. During the pendency of the writ petition, as detailed earlier, the mother of the petitioners purchased the part of the property by virtue of the sale deed executed in their favour on 15.06.2010.

4. It is also argued by learned counsel for the petitioners that in pursuance to the sale deed executed in favour of the mother of the petitioners, an application was moved for mutating the name of the mother of the petitioners in the revenue records which was also done in favour of the mother of the petitioners by virtue of an order dated 29.12.2012.

5. Learned counsel for the petitioners further draws my attention to the fact that after the death of the mother of the petitioners, based upon the petitioners being legal heir, their names were also mutated in the revenue records on 05.12.2015. He further draws my attention to the fact that based upon the ceiling proceedings culminated whereby the land was declared as excess, the name of the State Government was mutated in the revenue records in respect of the land in question vide order dated 24.10.2016.

6. It is further stated that the petitioners on the foundation of the sale deed moved an application seeking impleadment in Writ C No.3000101 of 2008. The said impleadment application was opposed by the original writ petitioners/original tenure holders and this Court after hearing the objections proceeded to reject/dismiss the impleadment application filed by the petitioners. As the original writ petitioners had moved an application for dismissing the writ petition, the writ petition was also dismissed as not pressed. The said two orders were passed in the common judgment dated 13.02.2024. Aggrieved against the said judgment dated 13.02.2024, the petitioners approached the Hon'ble Supreme Court by filing SLP (Civil) Diary No(s).11855 of 2024 which was called out for hearing on 02.04.2024 and the Supreme Court dismissed the petition, however, observed that the impugned order will not stand in the way of the petitioners

agitating their rights including filing of fresh writ petition in which case the same has to be decided on its own merits in accordance with law. The order dated 02.04.2024 passed by the Supreme Court is quoted herein below:

“Permission to file Special Leave Petition is granted.

We find no reason to interfere with the impugned order. However, the impugned order will not stand in the way of the petitioners agitating their rights including filing of the fresh writ petition in which case the same has to be decided on its own merits in accordance with the law.

The Special Leave Petition is, accordingly, dismissed.

Pending application(s), if any, shall stand disposed of.”

7. In the light of the said observations made by the Supreme Court, the present petition has been filed by the petitioners stating that the order passed by the Ceiling Authorities which includes the order passed by the prescribed authority on 26.11.2007 as well as the appellate order dated 30.07.2008 are arbitrary and illegal, and deserve to be set aside.

8. It is further argued by learned counsel for the petitioners that by virtue of the observations made by the Supreme Court in its order, as extracted above, coupled with the fact that the petitioners had acquired valuable rights for consideration from the original holder, the petitioners have a right to contest and file the present writ petition challenging the two orders which have been passed declaring the land as surplus. In support of the said contention, learned counsel for the petitioners states that by virtue of Section 5(8) of the Rural Ceiling Act, although, a bar is created, however, by virtue of mandate of Section 52 of Transfer of Property Act, the petitioners having purchased the property during the pendency of the *lis* is entitled to continue the litigation. He further argues that this Court while entertaining the writ petition had granted the interim order on 01.12.2008 whereby the implementation and operation of the impugned order dated 30.07.2008 as well as order dated 26.11.2007

were also stayed. He extensively argues that the effect of the interim orders passed by this Court would, in effect, mean that the said two orders whereby the land was declared as surplus were stayed and there was no bar in execution of the sale deed as has been done in favour of the petitioners.

9. To explain the effect of the interim order, reliance is placed upon the judgment of the Supreme Court in the case of ***BPL Ltd. & Ors. v. R. Sudhakar and Ors.***; (2004) 7 SCC 219 whereby the Supreme Court had the occasion to deal with the earlier order of the Supreme Court in the case of ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association CSI Cinod Secretariat, Madras***; (1992) 3 SCC 1 and in fact, the Supreme Court, according to learned counsel for the petitioners, clarified the scope and effect of an interim order. Paras – 13 & 14 of the judgment in the case of BPL Ltd. (supra) are quoted herein below:

“13. In the case on hand the situation is entirely different. The Tribunal gets jurisdiction only on reference made by the Government. When the operation of the very order of reference was stayed, the question of dispute pending before the Tribunal did not arise inasmuch as the reference order itself stood suspended. So long as stay order was operating, it could not be said that the dispute was pending before the Tribunal. Admittedly, when workmen were dismissed from service stay order was operating. Learned Single Judge as well as the Division Bench of the High Court have proceeded on a wrong footing relying upon the decision of this Court in Shree Chamundi Mopeds Ltd. [(1992) 3 SCC 1 : (1992) 2 SCR 999] that the order of reference was not wiped out by virtue of staying of the operation of order of reference. It is not the question as to whether the order of reference is wiped out but the question is what is the effect of the staying of the operation of order of reference itself. Once the operation of the order of reference is stayed, there is no question of dispute pending before the Tribunal so long as the said order remains in operation because reference precedes dispute. To put it differently, dispute could come up for adjudication by the Tribunal pursuant to the order of reference only. If in a pending proceeding operation of order is stayed pending disposal of the main matter such as an appeal or revision, obviously the impugned order does not get quashed or wiped out. It only remains suspended. But the position is different in this case, as already stated above. It was not a case where the dispute was pending and only further proceedings were stayed. When the order of reference itself was stayed the

Tribunal did not have the jurisdiction to pass any further order. As such the question of either the management making an application under the proviso to Section 33(2)(b) or the Tribunal passing an order on such application would not arise. In case any tribunal proceeds to pass an order in spite of stay of the operation of the order of reference by the High Court it may amount to contempt of the order of the High Court. In case of some grave misconduct the management cannot afford to sit idle or simply wait to take action, particularly, when stay of the operation of the order of reference is obtained at the instance of the Union on behalf of the workmen. The case of Shree Chamundi Mopeds Ltd. [(1992) 3 SCC 1 : (1992) 2 SCR 999] is quite distinguishable and it is on the facts of that case. Even in that case it is stated that the order of stay did not amount to revival of appeal or proceeding.

14. *In Ravi S. Naik v. Union of India [1994 Supp (2) SCC 641] dealing with the staying of the operation of the order of disqualification, passed by the Speaker of the Assembly in regard to two members of the House, this Court held that the order of disqualification made by the Speaker dated 13-12-1990, was not operative and consequently it could not be said that they were not members of the Goa Assembly. The Court, looking to the terms of the interim order and its effect on the disqualification of the members on the relevant date, held: (SCC p. 662, para 40)*

“It is settled law that an order, even though interim in nature, is binding till it is set aside by a competent court....”

(emphasis supplied)

Similarly, in the present case also looking to the terms of the interim order granted by the High Court staying the very operation of the order of reference, it could not be said that dispute was pending before the Tribunal on the relevant date viz. the date on which the workmen were dismissed from service.”

10. To further buttress his submission in respect of the rights flowing by virtue of Section 52 of the Transfer of Property Act, learned counsel for the petitioners places reliance upon the judgment of the Supreme Court in the case of ***Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and Ors.***; (2013) 5 SCC 397 and lays emphasis on the observations of the Supreme Court made in Paras 26 to 29 which are quoted herein below:

“26. *It would also be worth discussing some of the relevant laws in order to appreciate the case on hand. Section 52 of the Transfer of Property Act speaks about the doctrine of lis pendens. Section 52 reads as under:*

“52. Transfer of property pending suit relating thereto.

—During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under the decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

It is well settled that the doctrine of *lis pendens* is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title *pendente lite*. The provision of this section does not indeed annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation.

27. Discussing the principles of *lis pendens*, the Privy Council in *Gouri Dutt Maharaj v. Sk. Sukur Mohammed* [(1947-48) 75 IA 165 : AIR 1948 PC 147] observed as under: (IA p. 170)

“... The broad purpose of Section 52 is to maintain the status quo unaffected by the act of any party to the litigation pending its determination. The applicability of the section cannot depend on matters of proof or the strength or weakness of the case on one side or the other in *bona fide* proceedings. To apply any such test is to misconceive the object of the enactment and, in the view of the Board, the learned Subordinate Judge was in error in this respect in laying stress, as he did, on the fact that the agreement of 8-6-1932, had not been registered.”

28. In *Kedar Nath Lal v. Ganesh Ram* [(1969) 2 SCC 787 : AIR 1970 SC 1717] this Court referred the earlier decision in *Samarendra Nath Sinha v. Krishna Kumar Nag* [AIR 1967 SC 1440 : (1967) 2 SCR 18] and observed: (*Kedar Nath Lal*

case [(1969) 2 SCC 787 : AIR 1970 SC 1717] , SCC p. 792, para 17)

“17. ... ‘16. ... The purchaser pendente lite under this doctrine is bound by the result of the litigation on the principle that since the result must bind the party to it so must it bind the person deriving his right, title and interest from or through him. This principle is well illustrated in *Radhamadhub Holder v. Monohur Mookerji* [(1887-88) 15 IA 97] where the facts were almost similar to those in the instant case. It is true that Section 52 strictly speaking does not apply to involuntary alienations such as court sales but it is well established that the principle of *lis pendens* applies to such alienations. (See *Nilakant Banerji v. Suresh Chunder Mullick* [(1884-85) 12 IA 171] and *Moti Lal v. Karrab-ul-Din* [(1896-97) 24 IA 170])’ (*Samarendra Nath case* [AIR 1967 SC 1440 : (1967) 2 SCR 18] , AIR p. 1445, para 16)”

29. The aforesaid Section 52 of the Transfer of Property Act again came up for consideration before this Court in *Rajender Singh v. Santa Singh* [(1973) 2 SCC 705 : AIR 1973 SC 2537] and Their Lordships with approval of the principles laid down in *Jayaram Mudaliar v. Ayyaswami* [(1972) 2 SCC 200 : (1973) 1 SCR 139] reiterated: (*Rajender Singh case* [(1973) 2 SCC 705 : AIR 1973 SC 2537] , SCC p. 711, para 15)

“15. The doctrine of *lis pendens* was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the subject-matter of litigation from the ambit of the court's power to decide a pending dispute or frustrate its decree. Alienees acquiring any immovable property during a litigation over it are held to be bound, by an application of the doctrine, by the decree passed in the suit even though they may not have been impleaded in it. The whole object of the doctrine of *lis pendens* is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property, which are the subject-matter of a litigation, to the power and jurisdiction of the court so as to prevent the object of a pending action from being defeated.”

11. He also emphasizes the law as clarified by the Supreme Court in the case of ***A. Nawab John and Ors. v. V.N. Subramaniam***; (2012) 7 SCC 738 and lays emphasis on the observation of the Supreme Court made in Paras 17 to 22, which are quoted herein below:

“17. Section 52 of the Transfer of Property Act, 1882 (for short “the TP Act”) incorporates the doctrine of lis pendens and it stipulates that during the pendency of any suit or proceeding in which any right to immovable property is, directly or specifically, in question, the property, which is the subject-matter of such suit or proceeding cannot be “transferred or otherwise dealt with”, so as to affect the rights of any other party to such a suit or proceeding. The section is based on the principle:

“41. ... ‘... that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations pendente lite were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant’s alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceeding.’”
(Bellamy v. Sabine [(1857) De G & J 566 : 44 ER 842], ER p. 849)

Quoted with approval by this Court in *Vinod Seth v. Devinder Bajaj* [(2010) 8 SCC 1 : (2010) 3 SCC (Civ) 212] . (SCC p. 20, para 41).

18. It is settled legal position that the effect of Section 52 is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the court.

“12. ... The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court.” (*Sanjay Verma v. Manik Roy* [(2006) 13 SCC 608 : AIR 2007 SC 1332] , SCC p. 612, para 12.)

19. Such being the scope of Section 52, two questions arise: whether a pendente lite purchaser: (1) is entitled to be impleaded as a party to the suit?; (2) once impleaded what are the grounds on which he is entitled to contest the suit?

20. This Court on more than one occasion held that when a pendente lite purchaser seeks to implead himself as a party-defendant to the suit, such application should be liberally considered. This Court also held in *Saila Bala Dassi v. Nirmala Sundari Dassi* [AIR 1958 SC 394] that, “justice requires”, a pendente lite purchaser “should be given an opportunity to protect his rights”. It was a case, where the property in dispute had been mortgaged by one of the respondents to another

respondent. The mortgagee filed a suit, obtained a decree and “commenced proceedings for sale of the mortgaged property”. The appellant Saila Bala, who purchased the property from the judgment-debtor subsequent to the decree sought to implead herself in the execution proceedings and resist the execution. That application was opposed on various counts. This Court opined that Saila Bala was entitled (under Section 146 CPC) to be brought on record to defend her interest because, as a purchaser pendente lite, she would be bound by the decree against her vendor.

21. There is some divergence of opinion regarding the question, whether a pendente lite purchaser is entitled, as a matter of right, to get impleaded in the suit, this Court in *Amit Kumar Shaw v. Farida Khatoon* [(2005) 11 SCC 403] held that: (SCC p. 411, para 16)

“16. ... Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a *lis pendens* transferee a party, under Order 22 Rule 10 an alienee pendente lite may be joined as party. As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case.”

(emphasis supplied)

22. The preponderance of opinion of this Court is that a pendente lite purchaser's application for impleadment should normally be allowed or “considered liberally”.

12. Learned Standing Counsel, on the other hand, strongly opposed the petition by arguing that once the rights of the petitioners were decided by this Court while rejecting the impleadment application, merely because the Supreme Court has made certain observations, the

same would not confer any further right in favour of the petitioners to challenge, if they are not existent otherwise. He further draws my attention to the mandate of Section 5(8) of the Rural Ceiling Act to argue that by means of a statutory intervention, all the sale deeds executed after a particular date are void and in fact the petitioners are trying to agitate the rights of the original tenure holders based upon a sale deed which is void by virtue of statutory intervention. He further argues that the petitioners are not the aggrieved party as the sale deed, based upon which the present petition has been filed, is a void instrument conferring no rights whatsoever. He further argues that the argument of counsel for the petitioners founded upon the mandate of Section 52 of Transfer of Property Act is misplaced inasmuch as Section 52 operates and explains the doctrine of *lis pendens* which protects the rights of purchaser by virtue of an instrument executed during the pendency of the suit, whereas, in the present case, there is a specific bar of execution of the sale deed and the effect of that bar is also clarified in the Ceiling Act *pari materia* of which there is no similar provision under the Transfer of Property Act, as such, he prays that the writ petition is liable to be dismissed.

13. To decide the issue in hand and to determine whether the petitioners can file the petition challenging the orders passed against the original tenure holder, it is essential to notice the scheme of Ceiling Act, 1960. The said Act was introduced for a more equitable distribution of land taking into account the interest of the community and for providing land after taking the same from the land owners for redistribution to the landless agricultural labourers and for other public purposes as best to subserve the common good.

14. The said Act was enacted in the year 1960. Section 4 of the said Act provides for manner of determination of area for the purposes of ceiling and exemption and Section 5 of the said Act prescribes and restricts that no tenure holder is entitled to hold in the aggregate

throughout the State any land in excess of the ceiling area applicable to the said person. Section 5(6), Section 5(7) and Section 5(8) of the said Act are relevant for the purposes of the present case and are quoted herein below:

“Section 5. Imposition of Ceiling. -

(6) In determining the ceiling area applicable to a tenure-holder, any transfer of land made after the twenty-fourth day of January, 1971 which but for the transfer would have been declared surplus land under this Act, shall be ignored and not taken into account;

Provided that nothing in this sub-section shall apply to -

(a) a transfer in favour of any person (including Government) referred to in sub-section (2);

(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 the immediate or deferred benefit of the tenure-holder or other members of his family.

Explanation I.—For the purposes of this sub-section, the expression transfer of land made after the twenty-fourth day of January, 1971, includes-

(a) a declaration of a person as a co-tenure-holder made after the twenty-fourth day of January, 1971, in a suit, or proceeding irrespective of whether such suit or proceeding was pending on or was instituted after the twenty-fourth day of January, 1971;

(b) any admission, acknowledgment, relinquishment or declaration in favour of a person to the life effect, made in any other deed or instrument or in any other manner.

Explanation II- The burden of proving that a case falls within clause (b) of the proviso shall rest with the party claiming its benefit.

(7) In determining the ceiling area applicable to a tenure-holder, any partition of land made after the twenty-fourth day of January, 1971 which but for the partition would have been declared surplus land under this Act shall be ignored and not taken into account ;

Provided that nothing in this sub-section shall apply to

*(a) [* * * *]*

(b) a partition of a holding made in a suit or a proceeding pending on the said date ;

Provided further that notwithstanding anything contained in the preceding proviso, the prescribed authority, if it is of opinion that by collusion between the tenure-holder and any other party to the partition, such other party has been given a share which he was

no entitled to, or a larger share than he was entitled to, may ignore such partition.

Explanation I. - If a suit is instituted after the said date for declaration that a partition of land has taken place on or before the said date, then such declaration shall be ignored and not be taken into account, and it shall be deemed that no partition has taken place on or before the said date.

Explanation II.- The burden of proving that a case falls within the first proviso shall rest with the party claiming its benefit.

(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.

Explanation- For the purposes of this sub-section, proceedings for determination of surplus land shall be deemed to have commenced on the date of publication of notice under sub-section (2) of section 9 and shall be deemed to have concluded on the date when an order in relation to such tenure-holder is passed under sub-section (1) of section 11 or under sub-section (1) of section 12 or as the case may be, under section 13.”

15. It is also relevant to note Section 35 of the said Act which prescribes for penalties for contravention of the mandate of Section 5(8) of the said Act and is quoted herein below:

“Section 35. Penalties.- (1) Whoever -

(a) fails to submit a statement as required under sub-section (2) or sub-section (2-A) of section 9 or sub-section (1) of section 30, or to furnish an affidavit under sub-section (1) of section 38-A; or

(b) makes or submits a statement or furnishes any information in a document referred to in clause (a) which is false and which he has reason to believe to be false; or

(c) otherwise contravenes any order passed under this Act ; or(d) obstructs any person from taking possession of any land in accordance with the provisions of this Act; or

(e) transfers any land in contravention of sub-section (8) of section 5 or sub-section (2) of section 6;

shall be punishable with imprisonment which may extend to two years or with fine or with both.

(2) Where the Collector has taken possession of any surplus land under section 14 and any person thereafter occupies such land or any part thereof without any lawful authority, such person shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3) Any court convicting a person under sub-section (2) may make an order for evicting the person summarily from such land, and

such person shall be liable to such eviction without prejudice to any other action that may be taken against him under any law for the time being in force.

(4) Without prejudice to the provisions of sub-section (2) and (3) the Collector may re-take possession of such land and may for that purpose use or cause to be used such force as may be necessary for evicting any person found in occupation thereof.”

16. A plain reading of the provisions of Section 5, as extracted above, restricts the transfer of any land which is liable to be declared surplus after 24th day of January, 1971 subject to the exceptions prescribed under Sub-Section 6(a) and 6(b) of Section 5 of the said Act. Sub-Section 7 of Section 5 even bars the partition of the land by the tenure holder after the 24th day of January, 1971 except as prescribed in exception (b) of Sub-Section (b) of Section 7. Sub-Section 8 of Section 5 is very clear and in uncertain terms holds that the tenure holder is barred from transfer to any land during the continuance of the proceedings for determination of the surplus land and any transfer made in contravention of the sub-section is held to be void. The explanation to the said sub-section further clarifies that the proceedings would be deemed to be commenced on the date of publication of notice under Section 9(2) and stand concluded when an order is passed under Section 11(1) or Section 12(1) or under Section 13.

17. A conjoint reading of Sections 5(6), 5(7) & 5(8) makes it clear that the Act seeks to restrict the transfer of lands after 24th day of January, 1971 and places an absolute restriction through Section 5(8) in transferring the land after commencement of the ceiling proceedings.

18. In the present case, admittedly the ceiling proceedings came to an end after the dismissal of appeal filed by the tenure holders on 30.07.2008. The proceedings in the present case commenced on 09.09.2002, thus, any transfer made after 30th July, 2008 would attract

the rigour of Section 5(8) and the sale deed executed would be rendered void.

19. The submission of Shri Gaurav Mehrotra, learned counsel for the petitioners that the stay order passed by this Court in writ petition filed by the original tenure holders on 01.12.2008 would have the effect of eliminating the bar by virtue of Section 5(8) till the contention of the writ petition cannot be accepted. Even if the law as clarified by the Supreme Court in the case of **A. Nawab John (supra)** and as relied upon by learned counsel for the petitioners is accepted. The said contention can also not be accepted on the strength of the argument of Shri Mehrotra that the right to contest the proceedings would flow in favour of the petitioner by virtue of Section 52 of the Transfer of Property Act, for the simple reason that the doctrine of *lis pendens*, which flows from Section 52 of the Transfer of Property Act, governs the rights of the purchaser of the property during the pendency of the *lis*, as there is no specific bar in the entire Transfer of Property Act restricting the transfer, and also, there is no similar provision in the Transfer of Property Act as contained in Section 5(8) of the Ceiling Act declaring any transfer during the pendency of the *lis* to be void. Thus, reliance placed upon Section 52 of the Transfer of Property Act by the counsel for the petitioners is not well founded and deserves to be rejected.

20. In the present case, the entire case of the petitioners for challenging the two orders is the contention that the sale deed executed in favour of petitioners' mother on 15.06.2010 would grant a locus to the petitioners to prefer the writ petition, which is founded on a deed which is void since the very inception and by virtue of Section 5(8) is a void document. A void document would not confer any right much less a right to sue at the instance of the original tenure holder as, apparently, no rights are affected by passing of the orders which are impugned in the present writ petition. The petitioners were not even

aggrieved persons at the time when the appeal was decided. The petitioners would not even be aggrieved persons solely based upon a deed which is void by virtue of statutory injunction. It is fairly well settled that a *locus standi* to present a writ petition is traditionally conferred on a person whose rights are affected, although the said traditional view has been expanded subsequently, however, the expanded and liberalized view of *locus standi* is confined in cases which have public interest element in it.

21. The other argument of learned counsel for the petitioners that right to contest the proceedings also flows in favour of the petitioners by virtue of observations made by the Supreme Court in the SLP extracted above, also merits rejection as the Supreme Court in its order only permitted the rights to be raised by the petitioners which certainly cannot mean to confer the right to contest the proceedings on the basis of a void document.

22. Thus, for all the reasons recorded above, the present writ petition at the instance of the petitioners based upon a document which is void by virtue of statutory injunction, is not maintainable and is accordingly ***dismissed***.

Order Date :- 12.11.2024
nishant

[Pankaj Bhatia, J.]