

Reserved on:-27.2.2025

Delivered on:-19.3.2025

Court No. - 50

Case :- WRIT - B No. - 74239 of 2005

Petitioner :- Smt. Shakeela Begum And Another

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

Counsel for Petitioner :- Pankaj Mithal,Dharm Vir Jaiswal,Harsh Vikram,Krishna Dutt Tiwari,Krishna Kumar Singh,M.M. Chaurasiya

Counsel for Respondent :- Anuj Kumar

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. Arvind Srivastava as well as Mr. K.K. Singh, learned counsel for the petitioners, Mr. Tarun Gaur, learned Standing Counsel for the State respondents and Mr. Arun Kumar Pandey, learned counsel for respondent- Gaon-Sabha.

2. Brief facts of the case are that Smt. Leelawati (wife of Badloo) was bhoomidhar of khasra No. 268 area 0.380 hectare situated in Village Hashampur Gopal, Pargana, Tehsil and District Moradabad. Smt. Leelawati was initially Scheduled Caste (Hindu religion) however she converted herself into Christianity on 29.7.1986. A certificate of baptism was accordingly issued in favour of Smt. Leelawati signed by the pastor mentioning date of conversion of religion as 29.7.1986. Smt. Leelawati executed a registered sale deed on 20.9.1990 transferring her bhoomidhar land in favour of petitioners. On the basis of aforementioned registered sale deed dated 20.9.1990, petitioners were came in physical possession of the land in dispute. Petitioners were also recorded in the revenue records over the aforementioned plot. Tehsildar after about 10 years from the execution of sale deed in favour of petitioners submitted a report dated

6.9.2000 stating that vendor Smt. Leelawati was a Scheduled Caste lady and no permission was taken by her before execution of registered sale deed in respect to her bhoomidhar land, as such, the same will be void in view of the provisions contained under Section 157-A of U.P. Zamindari Abolition and Land Reforms Act, 1950 hereinafter referred to as U.P.Z.A. and L.R. Act. On the basis of aforementioned report of the Tehsildar, a proceeding was registered under Section 167 of U.P.Z.A. and L.R. Act as case No. 23/36/2001 State of U.P. Vs. Smt. Shakeela Begum and another. In the aforementioned case, notice was issued to the petitioners. Petitioners filed their objection to the report of Tehsildar stating that vendor was not Scheduled Caste lady on the date of execution of the sale deed, as such, the provision of Section 157-A of the U.P.Z.A. and L.R. Act will not be applicable in the matter. In the objection, it was also mentioned that on the basis of registered sale deed executed in favour of petitioners, the name of the petitioners have been recorded in the revenue record. In the aforementioned proceeding, vendor- Smt. Leelawati has also filed her personal affidavit to the effect that she does not belong to the Scheduled Caste as she has converted her religion to Christianity. The original certificate of baptism of Smt. Leelawati dated 29.7.1986 duly signed by the pastor containing the date of baptism was produced in the aforementioned proceeding under Section 167 of the U.P.Z.A. and L.R. Act. A certificate issued by the Gram Pradhan of the Gram Panchayat concern dated 16.2.2001 certifying that Smt. Leelawati had converted into Christianity was also filed in the aforementioned proceeding. Sub Divisional Magistrate vide order dated 5.3.2002 has held that sale deed dated 20.9.1990 is void as no permission under Section 157-A of the U.P.Z.A. and L.R. Act was taken by the vendor, as such, plot in question shall be vested in State. Against the order dated 5.3.2002, petitioners filed appeal under Section 331 of the U.P.Z.A. and L.R. Act which was registered as appeal No. 112 of 2002-03. The aforementioned appeal was heard by Additional Commissioner (Administration) Moradabad Division

Moradabad and the same was dismissed vide order dated 14.8.2003. Petitioners filed second appeal before Board of Revenue which was registered as second appeal No. 24 of 2002-03. The aforementioned appeal was heard and dismissed vide order dated 6.7.2005 hence this writ petition for the following relief:-

"Issue a suitable writ, order or direction in the nature of certiorari quashing the orders dated 5.3.2002, 14.8.2003 in respect of 112/2003-03 and 6.7.2005 in respect of S.A. No. 24/2002-03 (Annexure Nos. 6,7 and 8) respectively."

3. This Court entertained the matter on 6.12.2005 and granted interim protection in favour of petitioners to the effect that petitioners shall not be evicted from the land in dispute in pursuance of the impugned orders.

4. In pursuance of the aforementioned order, counter affidavit has been filed on behalf of Gaon Sabha. Petitioners have filed their rejoinder affidavit in the matter.

5. Counsel for the petitioners submitted that petitioners-vendor, Smt. Leelawati on the date of execution of the sale deed was professing Christianity religion, as such, she was not Scheduled Caste accordingly provision of Section 157-A of the U.P.Z.A. and L.R. Act will not be applicable. He further submitted that certificate of baptism certifying that vendor-Smt. Leelawati has changed her religion to Christianity on 29.7.1986 was a genuine document therefore the respondents have committed error in disbelieving the certificate of baptism on the ground that it does not bear the date under the signature of the authority issuing the certificate. He further submitted that in the sale deed, the recital was their that vendor Smt. Leelawati does not belong to Scheduled Caste, therefore there was no occasion for initiating the proceeding under Section 157-A of the U.P.Z.A. and L.R. Act. He further submitted that impugned orders have been passed in illegal and arbitrary manner, as such, the same cannot be sustained in the eye of law. He submitted that proceeding under Section 157-A/ 167 of the U.P.Z.A. and L.R. Act cannot be initiated in illegal and arbitrary manner. He submitted that on the basis of sale

deed executed in favour of petitioners in the year 1990, petitioners were recorded as bhoomidhar with transferable rights over the plot in question, as such, the initiation of proceeding in the year 2000 under Section 157-A/ 167 of the U.P.Z.A. and L.R. Act is abuse of process of law. He further placed reliance upon the following judgements of Hon'ble Apex Court as well as of Bombay High Court in support of his argument:-

"(i) 2017 0 Supreme (SC) 1632 Chhedi Lal Yadav and Others Vs. Hari Kishore Yadav (D) Through Lrs. and Others

(ii) 1997 0 Supreme (SC) 1314 Gram Panchayat Kakran Vs. Addl. Director of Consolidation and Another.

(iii) 1933 Law Suit (Bom) 100 Jessie Grant Khambatta Vs. Mancherji Cursetji Khambatta

(iv) AIR 1965 Supreme Court 1179 Punjabrao Appellant Vs. D.P. Meshram and Others"

6. On the other hand, Mr. Tarun Gaur, learned Standing Counsel for the State respondents submitted that vendor-Smt. Leelawati was a Scheduled Caste (Jato) lady, as such, she cannot transfer the land to anybody without prior permission from the District Magistrate. She submitted that there was no illegality in the initiation of the proceeding under Section 157-A/ 167 of the U.P.Z.A. and L.R. Act in respect to the plot in question. He further submitted that after issuing the show cause notice to the petitioners and considering the objection filed by petitioners, the impugned order has been passed vesting the plot in question in favour of State/ Gaon Sabha. He further submitted that mere conversion to Christianity does not change the Scheduled Caste status of the vendor as the past identity for the agriculture land is determined by birth not by religion affiliation. He submitted that all the three Courts have recorded finding of fact that no permission was obtained by the vendor, as such, the sale deed executed by Smt. Leelawati will be void. He placed reliance upon the judgements of Hon'ble Apex Court in support of his arguments:-

"(i) R.K.T. Huchegowda Vs. Deputy Commissioner, Hassan

District (1994)

(ii) D.S. Nakara Vs. Union of India, AIR 1983 SC 130

(iii) Soosai Vs. Union of India (1985) 1 SCC Supl. 590

(iv) Kailash Sonkar Vs. Maya Devi AIR 1984 SC 600

(v) Surya Dev Rai Vs. Ram Chander Rai (2003)"

7. I have considered the arguments advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that Smt. Leelawati recorded tenure holder of the plot in question had executed a registered sale deed on 20.9.1990 in favour of petitioners and petitioners were accordingly recorded in the revenue records as bhoomidhar with transferable rights. There is also no dispute about the fact that after 10 years from the execution of sale deed, a report was submitted by Tehsildar on 6.9.2000 and the plot in question has been ordered to be vested in State/ Gaon Sabha in the proceeding under Section 157-A/ 167 of the U.P.Z.A. and L.R. Act. There is also no dispute about the fact that appeal as well as second appeal filed by petitioners have been dismissed by Additional Commissioner/ Board of Revenue.

9. In order to appreciate the controversy involved in the matter, the perusal of Section 157-A and Section 167 of the U.P.Z.A. and L.R. Act will be relevant for perusal which are as under:-

Section 157A in The U.P. Zamindari Abolition and Land Reforms Act, 1950- 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 transfer 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.]"

"Section 167 of U.P.Z.A. and L.R. Act- . Consequences of void transfers. --(1) The following consequences shall ensue in respect of every transfer which is void by virtue of Section 166, namely--

(a) the subject-matter of transfer shall with effect from the date of transfer, be deemed to have vested in the State Government free from all encumbrances;

(b) the trees, crops and wells existing on the land on the date of transfer shall, with effect from the said date, be deemed to have vested in the State Government free from all encumbrances;

(c) the transferee may remove other moveable property or the materials of any immovable property existing on such land on the date of transfer within such time as may be prescribed.

(2) Where any land or other property has vested in the State Government under sub-section (1), it shall be lawful for the Collector to take over possession over such land or other property and to direct that any person occupying such land or property be evicted therefrom. For the purposes of taking over such possession or evicting such unauthorised occupants, the Collector may use or cause to be used such force as may be necessary."

10. The perusal of relevant recital made in the sale deed dated 20.9.1990 will also be relevant which is as under:-

" विक्रेता अनुसूचित जाति या जनजाति का सदस्य नहीं है।"

11. Perusal of the affidavit of Smt. Leelawati filed before Sub Divisional Officer will also be relevant which is as under:-

"समक्ष:- श्रीमान एस०डी०ओ० महोदय मुरादाबाद।

मु०नं०- 17/58 सन् 2000 ई०

सरकार बनाम शकीला बेगम आदि

धारा- 167 एल०आर०एक्ट

ग्राम हाशमपुर गोपाल

शपथपत्र मिनजानिव श्रीमती लीलावती पत्नि श्री स्व बदलू निवासी ग्राम हाशमपुर गोपाल तहसील व जिला मुरादाबाद।

शपथकर्ता शपथपूर्वक निम्ननिवेदन करता है:-

1- यहकि शपथकर्ता उपरोक्त नाम व पते का निवासी है तथा हालात से वाखुबी वाकिफकार है।

- 2- यहकि शपथकर्ता ईसाई धर्म का अनुयायी है तथा प्रार्थी का पूरा परिवार ईसाई धर्म के अनुयायी है।
- 3- यहकि शपथकर्ता के पूर्वज भी ईसाई धर्म के अनुयायी थे।
- 4- यहकि शपथकर्ता ने आराजी खाता सं०- **168** खसरा नं०- **268** रकवई **0.380** है० को दिनांक **19.9.90** को विक्रय कर दी है।
- 5- यहकि शपथकर्ता के खिलाफ शपथकर्ता को ईसाई धर्म का न दर्शाकर अनुसूचित जाति का दर्शाया है जोकि शपथकर्ता के मौलिक अधिकारों का हनन है।
- 6- यहकि शपथकर्ता बयनामे के समय भी ईसाई धर्म का अनुयायी था और आज भी ईसाई धर्म का अनुयायी है।
- 7- यहकि शपथपत्र का पेरा नं० **1** ता **6** मेरे निजि ज्ञान मे सब सत्य व सही है और कुछ छिपाया नहीं गया है। ईश्वर मेरी मदद करें।

शपथकर्ता शपथकर्ता”

12. A certificate of baptism issued by pastor also demonstrate that on the date of execution of sale deed, vendor- Smt. Leelawati had converted her religion as Christianity. The proper objection was filed on behalf of petitioners as well as the vendor- Smt. Leelawati in order to demonstrate that Smt. Leelawati was not Scheduled Caste lady on the date of execution of sale deed but no proper consideration was made by the respondent while directing to vest the land in question in State, as such, the order impugned passed by respondent nos. 2,3 and 4 cannot be sustained in the eye of law.

13. It is also material to mention that a registered sale deed was executed in the year 1990 and the report was submitted after 10 years that sale deed is void in view of the provisions contained under Section 157-A of the U.P.Z.A. and L.R. Act although petitioners had matured their right on the basis of sale deed and the name of petitioners were recorded in the revenue record as bhoomidhar with transferable rights. The initiation of the proceeding after such a long time under Section 157-A/ 167 of the U.P.Z.A. and L.R. Act in view of the facts and circumstances of the present case cannot be entertained and allowed for vesting the plot in question in State.

14. Considering the entire facts and circumstances of the

case, impugned orders dated 5.3.2002 passed by respondent no.3, 14.8.2003 passed by respondent no.2 and 6.7.2005 passed by respondent no.4 are liable to be set aside and the same are hereby set aside.

15. The writ petition stands **allowed** and authorities are directed to correct the entry of the plot in question by recording the name of petitioners over the plot in question forthwith.

16. No orders as to costs.

Order Date :- 19.3.2025

Vandana Y.