

**AFR**

(Judgment reserved on 13.08.2014)

(Judgment delivered on 09.09.2014)

**Court No. - 16**

**Case :-** WRIT - C No. - 52720 of 2000

**Petitioner :-** Rikhi Singh

**Respondent :-** Addl. Commissioner(Judicial) Saharanpur And Another

**Counsel for Petitioner :-** M.K.Gupta,S.K. Pundir

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

**Hon'ble Rajan Roy,J.**

Heard learned counsel for the parties.

By means of this writ petition, the petitioner has challenged the revisional court's order dated 17.10.2000 passed by the Commissioner under Section 333 of the U.P.Z.A. & L.R. Act. A sale deed was executed by Buddhan in favour of the petitioner on 12.09.1991 in respect of a certain land. There was a categorical recital in the sale deed that the vendor did not belong to Scheduled Caste. More than six years after registration of the sale deed, a stranger namely Dhumman, claiming himself to be a member of the Land Management Committee of the concerned village, filed a complaint, whereupon the Sub-Divisional Magistrate issued a notice under Section 167 of U.P.Z.A. & L.R. Act to the petitioner on 29.10.1997. Being aggrieved, the petitioner filed a revision under Section 333 challenging the notice dated 20.10.1997 issued by the S.D.M. firstly on the ground that the S.D.M. did not have jurisdiction to issue such notice, secondly on the ground that the notice was barred by limitation prescribed vide

Appendix-III, Serial No.20. The limitation prescribed was six years from the date of illegal transfer.

The revisional court accepted the contention of the petitioner to the extent that the S.D.M. did not have jurisdiction to issue notice, however, after recording his finding in this regard, he remanded the matter back for consideration by the Collector under Section 167 of the U.P.Z.A. & L.R. Act, without deciding the second objection regarding the bar of limitation.

The contention of the learned counsel for the petitioner is that the bar of limitation is clearly attracted in the facts and circumstances of the case but the revisional court erred in not considering the same and remanding the matter back for consideration under Section 167. Learned counsel for the petitioner further contended that a suit is required to be filed under Section 167 and bar of limitation is applicable to all the proceedings under the U.P.Z.A. & L.R. Act. The proceedings under Section 167 by the competent authority are termed as suit for the purpose of eviction. It was contended that the petitioner was a bona fide purchaser and was persuaded by the recitals contained in the sale deed that the petitioner was not a member of scheduled caste and he had no reason to disbelieve the said recital.

The only question, which falls for consideration in this case is as to whether any bar of limitation is prescribed for issuance of notice under Section 167.

In order to answer the aforesaid question, it is necessary to refer to Sections 157-A, 166, 167 of the U.P.Z.A. & L.R. Act, 1950.

**Section 157-A** is quoted below:

***“157-A. Restrictions on transfer of land by members of Scheduled Castes.- (1) Without prejudice to the restriction 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.”***

This section as originally inserted by U.P. Act No.4 of 1969 was confined to the members of the scheduled tribes alone. By U.P. Act No.34 of 1974, the provision was amended and the persons belonging to the scheduled caste were also included therein.

By U.P. Act No.20 of 1982, **Section 166** was subsequently added which reads as under:

***“166. Transfer made in contravention of the Act to be void.- Every transfer made in contravention of the provisions of this Act shall be void.”***

Prior to coming into force of U.P. Act No.20 of 1982 w.e.f. 03.06.1981, **Section 167** stood as under:-

***“Where a sirdar or asami has made any transfer in***

*contravention of the provision of this Act, the transferee and every person who may have thus obtained possession of the whole or part of the holding shall be liable to ejectment on the suit of the Gaon Sabha or the landholder, as the case may be."*

The aforesaid section was amended from time to time and was ultimately substituted by the existing Section 167 by U.P. Act No.20 of 1982, which reads as under:

**"167. Consequences of Void transfers.-** (1) *The following consequences shall ensure 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 movable 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 unauthorised occupants , the Collector may use or cause to be used such force as may be necessary."***

The Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 were made under the Act of 1950. **Rule 338** of the aforesaid Rules of 1952 reads as under:

**"338. *The suits, applications and other proceedings specified in Appendix III shall be instituted within the time***

*specified therein for them, respectively.”*

The aforesaid Rule 338 was added by Notification No.1827/1-A-3613-59, dated 27.04.1963.

The relevant extract of Appendix-III referred in Rule 338 reads as under:

Serial No.	Section of the Act	Description of suit, application and other proceeding	Period of Limitation	Time from which period begins to run	Proper court fees
19	163	Suits for ejectment of bhumidhar	Six years	From the date of illegal transfer	As in the Court Fees Act, 1870, on one year's revenue
20	167	Suits for ejectment of a sirdar or asami	Do	Ditto	Ditto

The entry in Column-5 corresponding to Serial No.20 was added by Notification No.365/1-A-2-1 (2)-68, dated January 28, 1969.

On a conjoint reading of the aforesaid provisions, it is apparent that prior to the coming into force of U.P. Act No.20 of 1982, w.e.f. 03.06.1981, there was a provision under the then existing Section 167, for ejectment of a transferee, where a transfer had been made in contravention of the provision of the Act of 1950 as also of every other person who may have thus obtained possession. This ejectment was to be done on the suit of the Gaon Sabha or the landholder as the case may be for which a limitation was prescribed at

Serial No.20 of Appendix-III referred in Rule 338 of the Rules of 1952. However, by U.P. Act No.20 of 1982, the existing Section 166 was substituted prescribing that every transfer made in contravention of the provisions of the Act to be automatically void. The consequences of such void transfer are mentioned in Section 167, as substituted by Act No.20 of 1982, according to which, the subject matter of such transfer shall with effect from the date of transfer be deemed to have vested in the State Government free from all encumbrances etc. Thus, as per the substituted (or existing Section 167), there is no necessity of filing a suit by the Gaon Sabha or the landholder instead action can be taken by the Collector under sub-section (2) of Section 167 which reads as under:

*“(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 unauthorised occupants, the Collector may use or cause to be used such force as may be necessary.”*

The language of Sub-Section(2) quoted herein above also clearly suggests that contravention of the provisions of the Act in matters of transfer of land leads to such proceedings becoming automatically void and as a consequence, the subject matter of the transfer is deemed to have vested in the State Government free from all encumbrances from the date of transfer. Subsection (2) provides that 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 possession from such unauthorised occupants, the Collector may use or cause to be used such force as may be necessary.

Prior to 03.06.1981, such proceedings/ transfers were not automatically void but voidable, therefore, a suit was required to be filed by the Gaon Sabha or the land holder and limitation was prescribed for the said purpose in Appendix-III read with Rule 338 but w.e.f. 03.06.1981, the law has changed. The limitation referred in Rule 338 of the Rules 1952 and prescribed at Serial No.20 of Appendix-III is in respect of suits, which could be filed under the earlier Section 167 in respect of the transfers made prior to coming into force of U.P. Land Laws (Amendment) Act, 1982 (Act No.20 of 1982). The same has no application to the existing Section 167, which has come into force w.e.f. 03.06.1981.

The principles of natural justice require that notice be issued to the concerned transferees or persons in possession as a consequence of the transfer, inviting objections therefrom before proceeding to act under Subsection-2 of Section 167 of U.P.Z.A. & L.R. Act, 1950.

In this regard reference may be made to certain observations of this court in the judgment dated 10.09.2007 passed by this court in the

case of **Lakhanpur Co-operative Housing Society Limited and another Vs. Board of Revenue**, 2007 ILR (All.) 845 : 2008 (2) AWC 1667, paras 8 & 9 of which are quoted below:

*“8. By an amendment in Section 163 of the Act made by U.P. Act XXXV of 1976, it was provided for the first time that a transfer by bhumidhar in contravention of Section 154 could be declared void by an Assistant Collector, 1st Class either suo motu or on the application by any person, after an enquiry. The consequences were contained in Sub-section (2) which mainly provided that subject-matter of transfer, with effect from the date of order made under Section (1) shall be deemed to be vested in State Government free from all encumbrances. Section 163 of the Act was later on deleted from the statute vide U.P. Land Laws (Amendment) Act (Act No. 20 of 1982) with effect from 3.6.1981 and a new Section 166 was introduced prescribing every transfer made in contravention of provisions of the Act to be automatically void and the consequences were contained in Section 167 amended to have been vested in the State Government free from all encumbrances.*

*12. From a reading of provisions of Section 154, Section 163, Section 166 and Section 167 together before and after the amendment clearly demonstrate that prior to amendment made under Section 163 vide amending Act XXXV of 1976 which came into force on 15.6.1976, any transfer made by a bhumidhar in excess of ceiling limit prescribed under Section 154 would entail ejectment of the transferee at the instance of Gaon Sabha and the ejectment from the excess land transferred in contravention of the prescribed limit in Section 154 could have been directed only in a suit for ejectment filed by Gaon Sabha. The view taken by me finds support from the judgment of Hon'ble Apex Court in the case of Kripashankar v. Director of Consolidation and Ors. 1979 RD 80, wherein it has been held that under unamended Section 163 any transfer by a bhumidhar made in contravention of Section 154 is not, void but voidable only at the instance of Gaon Sabha only to the extent of contravention that is to say only to the extent of excess transfer over and above the prescribed limit. The limitation for filing such a suit as provided in Appendix III was six years. In case where the Gaon Sabha*



*failed to bring a suit within the prescribed period its claim would stand barred by limitation.”*

In this regard, it is relevant to refer to the Prefatory Notes-3, in the Statement of Objects and Reasons attached to the Bill pertaining to U.P. Act No.20 of 1982, which reads as under:

*“3. Under the existing provisions the transfers made in contravention of the provisions of the said Act are declared void after following the given procedure. It has been considered necessary to provide that such transfers shall be deemed to be void and no declaration shall be necessary therefor.”*

The term 'void' means invalid, nullity since inception. On the other hand a 'voidable act' is invalid on a declaration being made to this effect. Voidable action requires a declaration, but not a void act, as, it is non-existent in the eyes of law since inception.

It was contended by the learned counsel for the petitioner that the column-3 of appendix-3 refers to 'description of suit, application and other proceedings', therefore, the limitation prescribed at Serial No.20 is applicable in respect of proceedings also and ipso facto, the same is applicable to proceedings under the existing Section 167. The argument of the learned is misconceived for the reason that the heading is of a general nature as under the provisions of the Act and the Rules not only suits and applications but various proceedings can be initiated. This is apparent from a reading of the entries corresponding to various serial numbers of Appendix-3. Some entries in column-3 refer to applications while other refer to suits etc. but so far

as serial No.20 pertaining to Section 167 is concerned, the same only refers to suits for the reason already discussed above. Appendix-III was not amended on or after coming into force of the Amendment Act, 1982 w.e.f. 03.06.1981 to prescribe any limitation for any action under Section 167. In fact, Section 167(1) only mentions the consequence of Section 166. It is only subsection (2) which prescribes consequential action for eviction. Neither existing Section 167 nor Appendix-III prescribes any limitation for any action under Subsection (2) of Section 167 as substituted w.e.f. 03.06.1981. Bar of limitation prescribed at Serial No.20 of Appendix applies only to a suit in respect of transfer of property prior to 03.06.1981. It is not applicable in the instant case.

The learned counsel for the petitioner further placed reliance upon Section 31 of Limitation Act, 1963 to submit that even as per the said Act, the impugned notice was barred by limitation. The argument on the face of it is misconceived. Limitation Act, 1963 has no application in the instant case as the action impugned is neither in respect of any suit nor any application filed before a court. The term 'period of limitation' has been defined under Section 2(j) of the said Act. Section 3 also refers to suits, appeals and applications as also to 'prescribed period of limitation'. Sections 3 and 31 have no application in the instant case.

In view of the above, the contention of the learned counsel for the petitioner that the revisional court erred in remanding the matter to the

competent authority under Section 167 without considering the bar of limitation is misconceived and the same is rejected. After going through the order of the revisional authority, I am of the view that the revisional authority has rightly remanded the matter to the competent authority for necessary action under Section 167. It is needless to say that such action will include the issuance of notice to the petitioner followed by appropriate action after considering his objections.

The writ petition is dismissed.

**Order Date :- 09.09.2014**

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