

Bapu Charitable Society Vs. State of U.P. and Others

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Court : Allahabad

Decided On : May-02-2011

Judge : Ashok Bhushan; Hon'ble Ran Vijai Singh, JJ.

Appeal No. : WRIT - C No. - 22483 of 2011

Appellant : Bapu Charitable Society

Respondent : State of U.P. and Others

Advocate for Def. : C.S.C. Adv

Advocate for Pet/Ap. : Arvind Kumar Tewari, Adv

Judgement :

1. Heard Sri Arvind Kumar Tewari, learned counsel for the petitioner and the learned Standing Counsel.
2. By this writ petition, the petitioner has prayed for quashing the order dated 1 st March, 2011 issued by respondent No.3 rejecting the claim of the petitioner for freehold rights along with the order dated 21 st February, 2011 referred to in the order dated 1 st March, 2011.
3. Brief facts of the case as emerge from the pleadings of the parties in the writ petition are; Plot No.287 area 1.69 acre situate in village Paret Chhawani, Etawah is a Nazul land which is recorded in the revenue record as Bunjar under the management of the Collector. The State Government had issued various

Government orders beginning from Government order dated 23 rd May, 1992 by which policy for granting freehold rights was enforced. The last such Government order dated 21 st October, 2008 was issued by the State Government modifying the earlier policy and laying down new conditions for grant of freehold rights. In the year 2003, the petitioner-society had applied for freehold rights of the Plot No.287 but the same was not granted. The petitioner again submitted an application dated 29 th November, 2008 for freehold. A report was² submitted by the tahsil authorities on the said application that plot in question is recorded as Nazul land which was entered in the Zild Bandobast in the name of Malikan Sarkar Bahadur and in the Non Z.A. Khatauni the plot is recorded as Bunjar under the management of Collector, Etawah. The petitioner submitted various reminders for granting freehold rights. The last reminder dated 12 th July, 2010 submitted by the petitioner has been filed as Annexure-8 to the writ petition.

4. The impugned order dated 1 st March, 2011 has been passed rejecting the application of the petitioner for freehold rights giving various reasons. One of the reasons given in the order impugned is that in accordance with the Government order dated 21 st October, 2008 lessee or his heirs or nominee of lessee can make an application for grant of freehold rights. It was stated in the order that petitioner is neither lessee nor heir of the lessee nor nominee of lessee hence its application cannot be granted.

5. Sri Arvind Kumar Tewari, learned counsel for the petitioner challenging the order impugned, has contended that respondent No.3 has misinterpreted the Government order dated 21 st October, 2008. He submits that under the Government order dated 21 st October, 2008 freehold rights can be granted in favour of such registered society object of which is charitable at the rate of 60% of the circle rate for residential uses and at the rate of 80% for non residential uses.

6. Learned Standing Counsel submits that the Additional Collector in the impugned order has taken correct view of the matter in rejecting the application of the petitioner for giving freehold rights since the petitioner is neither lessee nor heir of lessee nor nominee of the lessee.

7. We have considered the submissions of learned counsel for³ the parties and have perused the record.

8. The relevant clause of the Government order dated 21 st October, 2008, which needs consideration, is Clause 2(1) which is to the following effect:-

"2(1). ??????? ????? ????? ????? ??????? ??????? ?? ????? ?? ??????????? ????? ?????
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9. The question to be considered is as to whether the aforesaid clause gives right to any charitable society to claim freehold rights which is neither lessee nor heir of the lessee nor nominee of the lessee. The Additional District Magistrate has rejected the claim of the petitioner on the ground that petitioner is neither lessee nor heir of the lessee nor nominee of the lessee.

10. The Government order dated 21 st October, 2008 has been issued for management of the Nazul land. Clause 2(1) on which reliance has been placed by learned counsel for the petitioner, is a clause under which freehold right can be granted with regard to lease of the Nazul land or with regard to Nazul land of which lease has come to an end in favour of lessee, heir of the lessee or nominee of the lessee. The first line of the aforesaid clause provides that proceedings for freehold rights with regard to Nazul land under lease or Nazul land of expired lease can be made in favour of lessee or heir of the lessee. The second part of the said⁴ clause deals with the rate under which freehold shall be made. The second part states that where lease is residential or lease is in favour of such registered society whose object is charitable/social service 60% of the present circle rate shall be charged and for non residential matter 80% of circle rate shall be charged as per land use of the Master Plan. The words registered society object of which is charitable or social service, have to be read along with the words lessee or his heirs. The condition of charging 60% of the present circle rate shall apply to leases which were in favour of the registered society object of which is charitable/social or

to residential lease. The said benefit of 60% of the circle rate has been given only to limited category of societies object of which is charitable or social service which makes it clear that even those societies object of which other than charitable or social service are not covered by the said clause. The concept of grant of freehold rights under Clause 2(1) of the Government order dated 21 st October, 2008 presupposes lease right of a lessee whose lease is continuing or expired. In the present case the petitioner does not claim itself lessee of the plot in question nor petitioner claims heir of any lessee. With regard to nominee of lessees or their heir Clause 2(4) of the Government order dated 21 st October, 2008 provides that freehold can be done in favour of nominee also. The petitioner also does not claim itself nominee of any lessee or heir of any lessee.

11. Learned counsel for the petitioner has placed reliance on paragraphs 18 and 19 of the Nazul Manual, which are to the following effect:-

18. Lease of charitable purposes. - Ordinarily no lease or sale of nazul land at concessional rates shall be allowed for purposes other than charitable purposes, such as, for hospitals, educational institutions and orphanages, and the concession so allowed shall not exceed half the annual rental in the case of lease or half the total market-value in the case of sale;

Provided that, subject to the condition that the total amount of concession does not exceed Rs.10,000 in value, in places other than big cities the rate of concession may exceed the limit aforesaid in the case of the following categories of institutions:

(i) Girls schools and other educational institutions for women having a popular managing body.

(ii) Institutions engaged in the uplift of Harijans and their housing and education:

Provided also that, subject to the condition that the total amount of concession does not exceed Rs.15,000 in the value in KAVAL towns, and Rs.3,000 in other towns, the rate of concession may exceed the limit of aforesaid in the case of educational institutions proposed to be started by local bodies in connection with

the Compulsory Primary Education Scheme of the Uttar Pradesh Government.

19. Notwithstanding anything contained in rule 18, the State Government may sanction a lease⁶ or sale of Nazul land for such purposes and at such rates as it may, having regard to the special circumstances of the case, consider proper.

12. Paragraph 18 of the Nazul Manual relates to grant of lease with regard to lease or sale of nazul land at concessional rates. Paragraph 19 of the Nazul Manual provides that the State Government may sanction the lease or sale of Nazul plots for such purposes and at such rates as it deems fit in special circumstance of the case. The aforesaid paragraphs 18 and 19 of the Nazul Manual does not help the petitioner in any manner since it is not the case of the petitioner that at any point of time any lease was granted to petitioners charitable society.

13. Reliance has also been placed by learned counsel for the petitioner on Government order dated 8th June, 1979 which provided policy guidelines for allotment of nazul land to public institutions. The said Government order is again for allotment of nazul land to public institutions. The petitioner is not claiming any allotment of any land, hence the said Government order also does not help the petitioner in any manner.

14. Reliance has also been placed by the learned counsel for the petitioner on a Division Bench judgment of this Court in the case of Ashok Kumar Agarwal vs. District Magistrate and others reported in 2009(8) ADJ 175. In the said case the writ petition was filed challenging the order of the District Magistrate rejecting the application of the petitioner for converting lease hold rights over nazul plot No.3861 area 151.40 square meters. In the said case freehold rights were already granted in favour of the respondents.

15. The application was rejected on the ground that title of the⁷ petitioner was doubtful. There has been a litigation in the Civil Court by Suit No.51 of 1975 which showed that Ram Das had purchased a plot from Nagar Palika, Lalitpur in the year 1901. In the decree the Civil Court held that there was a deed of the year 1901 in favour of Ram Das and Siddhi Gautamia. The finding was also that land was sold

by Nagar Palika to Ram Das. The Civil Court has also recorded finding that petitioner of that writ petition was the successor in interest of late Ram Das and the land was not given on lease but sold to Ram Das. It is useful to note paragraphs 2 and 12 of the judgment, which are as under:-

2. By this writ petition, the petitioner has prayed for quashing the order of the District Magistrate, Lalitpur dated 19.1.2000, rejecting his application for converting lease hold rights over nazul plot No. 3861 area 151.40 square meters with the self assessed deposit of Rs. 11,128/- vide challan No. 47 dated 30.1.1999.

12. We have heard learned counsel for the parties at length and find that the District Magistrate could not have gone beyond the decree of civil court in Original Suit No. 51/1975 in which Nagar Palika, Lalitpur was defendant no. 1 to the suit. The Civil Court, after considering documentary and oral evidence, held that the petitioner is the successor in interest of late Shri Ram Das. The land was not given on lease to Ram Das, but was sold by Nagar Palika to Ram Das. The sale deed (Paper No. 59 C-1) also proved that one-third part of the land was left for digging the well and for public purposes. The findings in respect of the nazul land have become final between the parties. These findings, however, do not bind the State Government as the State Government through Collector was not party to the suit. The nazul lands belong to the State Government and are given in the management of the local bodies. The Nagar Palika, Lalitpur was managing the land on behalf of the State Government. It could not have settled the land in favour of petitioner by any document to be treated as sale. The findings, with regard to the title of petitioner on the basis of paper No. 59-C, a document of sale, therefore, was not binding upon the State Government. The finding of possession, however, had persuasive value, to be considered by the District Magistrate. The District Magistrate could not have denied the conversion of the land into free hold on the ground, that the petitioner did not have title over the land. If the petitioner had the ownership, there was no need for him to apply for free hold rights. The District Magistrate was only required to consider whether the petitioner was in possession through Nagar Nigam to consider the grant of free hold rights.

16. In the above case, according to findings recorded, admittedly the land was sold to predecessor in interest of the petitioner and the freehold application was sought to be made on the ground that land belong to predecessor in interest of the petitioner and freehold application was filed on that basis. Present is not a case where petitioner claims to be owner of the land by any sale or lease. Thus⁹ the Division Bench judgment in Ashok Kumar Agarwals case (supra) does not help the petitioner in any manner.

17. The interpretation which has been put by the counsel for the petitioner is that freehold right can be granted in favour of registered society with charitable object and since the petitioner is registered society it is entitled to claim freehold right. The argument of the petitioner is fallacious. The Nazul plot in question is not covered under any lease nor any right is claimed by the petitioner through lessee. The petitioner cannot make an application for freehold rights when the Nazul plot is not held by it under any continuing lease or expired lease. The Additional District Magistrate has taken correct view of the matter in rejecting the application of the petitioner. The petitioner is clearly not covered by Clause 2(1) of the Government order dated 21 st October, 2008 and is not entitled to claim any freehold right. The relief prayed in the writ petition cannot be granted.

18. The writ petition is dismissed.