

Case :- WRIT - C No. - 26603 of 2021

Petitioner :- Sitaram

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Guru Prasad Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Guru Prasad Mishra, learned counsel for the petitioner and Sri Ajeet Kumar Singh, learned Additional Advocate General assisted by Sri Amit Verma, learned Standing Counsel for the State Respondents.

2. The present petition seeks to assail the order dated 19.07.2021 passed by the Respondent no. 3-Additional Collector (Administration), Muzaffarnagar in Case No. 433 of 2020 (Computerized Case No. D2020095500000433, Sitaram vs. State) whereby permission sought by the petitioner under Section 98(1) of the Uttar Pradesh Revenue Code, 2006¹ was turned down. The subsequent order dated 16.08.2021 passed by the Respondent no.2-Additional Commissioner (Administration), Saharanpur Division, Saharanpur in Case No. 1145 of 2021 (Computerized Case No. C202109000001145, Sitaram vs. State of U.P.) in terms of which the revision filed by the petitioner has been rejected is also sought to be challenged.

3. As per the facts set out in the writ petition, the petitioner claims himself to be a recorded tenure holder of Khasra No. 379/2 measuring 0.3280 hectares, recorded in Khata No. 50 situate at Village-Behada Assa, Tehsil Jaansath, District Muzafarnagar. The petitioner is stated to have purchased the aforesaid land on 02.03.2005 and thereafter claims to have become a *bhumidhar* with transferable rights. It is contended that the petitioner's son

1 the Code, 2006

died untimely, leaving behind two daughters and two sons and to meet these liabilities, the petitioner desired to sell the land in question. It is also stated that the petitioner had become old and feeble and with no one to look after him, he sought permission from the Collector for transfer of the land and submitted the application in the prescribed RC Form-27. Upon the aforesaid application, a report was called from the committee headed by the Sub Divisional Officer and as per the report dated 13.01.2020, the land in question had been obtained by the petitioner by means of a sale deed and the petitioner was recorded as *bhumidhar* with transferable rights. It was also stated in the report that the land in question was not a public utility land and that after transfer of the same, the area of the land held by the petitioner would be 4.4150 hectares. It was mentioned in the report that the petitioner was old and remained frequently ill and in the absence of adequate irrigation facilities was finding it difficult to carry on the agricultural operations. Taking into consideration this together with the fact that his son was predeceased leaving behind the liability of two grand-daughters and two grand-sons on the petitioner and that the petitioner was in need of funds for their education and marriage, the report along with the recommendation of the Committee was submitted to the authority concerned.

4. It is submitted that despite the aforesaid report in terms of which a clear recommendation was made in favour of the petitioner, his application was rejected by the Respondent no.3 by an order dated 19.07.2021 by assigning reasons that the application did not state the circumstances under which the land in question was purchased and that the petitioner could make arrangement for irrigation facilities. The order also records that the petitioner had not produced any evidence to support the factum of his illness. It was also stated that the petitioner was

allotted the land in question on a patta and that he was seeking transfer of the land for personal gains. The revision filed by the petitioner against the aforesaid order has been rejected by the Respondent no. 2 cursorily after reiterating similar reasons.

5. Contention of the learned counsel appearing for the petitioner is that the reasons assigned by the respondent authorities in rejecting his application seeking permission are wholly inconsequential for the purpose of grant of permission under Section 98 of the Code, 2006. It is submitted that none of the reasons cited by the respondent authorities for rejecting his application could be said to be a valid ground as per the relevant statutory provision.

6. Controverting the aforesaid contention, learned Additional Advocate General has tried to support the order passed by the respondent authorities by seeking to reiterate the reasons which have been specified in the orders under challenge.

7. In order to appreciate the rival contentions, the provisions contained under Section 98 which provide for restrictions on transfer by bhumidhar belonging to Scheduled Caste and the relevant rule under the U.P. Revenue Code Rules, 2016², may be referred to.

“98. Restrictions on transfer by bhumidhars belonging to a Scheduled Caste.—(1) Without prejudice to the provisions of this Chapter, no bhumidhar belonging to a scheduled caste shall have the right to transfer, by way of sale, gift, mortgage or lease any land to a person not belonging to a scheduled caste, except with the previous permission of the Collector in writing:

Provided that the permission by the Collector may be granted only when—

(a) the bhumidhar belonging to a scheduled caste has no surviving heir specified in clause (a) of sub-section (2) of section 108 or clause (a) of section 110, as the case may be; or

(b) the bhumidhar belonging to a scheduled caste has settled or is ordinarily residing in the district other than that in which the land

² Rules, 2016

proposed to be transferred is situate or in any other State for the purpose of any service or any trade, occupation, profession or business; or

(c) the Collector is, for the reasons prescribed, satisfied that it is necessary to grant the permission for transfer of land.

(2) For the purposes of granting permission under this section the Collector may make such inquiry as may be prescribed.

Rule 99. Collector's permission for transfer of Scheduled Caste bhumidhar's land. (Section 98).— (1) An application under section 98 (1) or under section 98 (1) read with section 107, for permission to transfer land by way of sale or gift or for permission to bequeath land by will, as the case may be, shall be made by a Bhumidhar with transferable rights belonging to Scheduled Caste to the Collector in **R.C. Form-27**.

(2) An application under section 98 (1), for permission to mortgage his interest in the land shall be made by a bhumidhar, belonging to a Scheduled Caste to the Collector in **R.C. Form-28**.

(3) An application under section 98 (1), for permission to let out land shall be made by a bhumidhar belonging to a Scheduled Caste to the Collector in **R.C. Form-29**.

(4) On receipt of an application under section 98 (1) the Collector shall make such inquiry as he may, in the circumstances of the case, deem necessary. He may also depute an officer not below the rank of Naib Tahsildar for:

(a) verification of the facts stated in the application; and

(b) reporting the circumstances in which permission for transfer is sought.

(5) The inquiry officer referred to in sub-rule (4) of this rule shall submit the report in duplicate within the period of fifteen days, from the date of receiving the order of such inquiry.

(6) A copy of the report shall be supplied to the applicant free of charge, from the office of the Collector where such report has been submitted.

(7) The applicant may file objection against the report submitted by the inquiry officer within the period of seven days from the date of receipt of the copy of the report.

(8) After receiving the report submitted under sub-rule (3) and the objection, if any, if the Collector is satisfied that-

(a) the conditions of clause (a) or clause (b) of subsection (1) of section 98 are fulfilled; or

(b) the tenure holder or any member of his family is suffering from any fatal disease regarding which the certificate has been issued by any physician or surgeon specialist in the disease concerned and the permission for transfer is necessary to meet out the expenses for the treatment of such disease; or

(c) the applicant is seeking permission under section 98(1) of the Code for the proposed transfer to purchase any other land from

the consideration of such proposed transfer and the facts in this regard in the application are supported with certified copy of a registered agreement to sell in favour of the applicant; or

(d) the area of land held by the applicant on the date of application does not, after such transfer, reduce to less than 1.26 hectares, and

(e) if the permission is being sought for transfer by sale the consideration for the transfer of the land is not below the amount calculated as per the circle rate fixed by the Collector;

he may grant the permission by recording the reasons.

Explanation. —For the removal of doubt it is hereby clarified that if the condition enumerated in clause (d) of this sub-rule is not fulfilled but any condition enumerated in clauses (a) to (c) of this rule is fulfilled the permission under section 98(1) of the Code may be granted by Collector.

(9) An application referred to in sub-rule (2) or sub-rule (3) of rule 99 for permission to mortgage or to let out land, as the case may be, may be granted by the Collector on his being satisfied that the mortgage or letting out, as the case may be, is not possible in favour of a person belonging to a Scheduled Caste or Scheduled Tribe.

(10) An application referred to in sub-rule (1) of rule 99 for permission to bequeath land by will, may be granted by the Collector on his being satisfied that the bequeath of the land was not possible in favour of the person belonging to a Scheduled Caste or a Scheduled Tribe.

(11) The Collector shall make an endeavor to dispose of the application under section 98(1) within the period of fifteen days from the date of receiving the report submitted by the inquiry officer and if the application is not disposed of within such period the reason for the same shall be recorded.”

8. Section 98 of the Code mandates that no *bhumidhar* belonging to a scheduled caste shall have the right to transfer, by way of sale, gift, mortgage or lease any land to a person not belonging to a scheduled caste except with the previous permission of the Collector in writing. The previous permission of the Collector is therefore, a condition precedent before any *bhumidhar* of scheduled caste can seek to transfer his land to a person not belonging to a scheduled caste. In the absence of such permission having been obtained, the transfer would be rendered void as per Section 104, and would be subject to the consequences provided under Section 105.

9. The proviso to Section 98 enumerates the conditions under which permission may be granted by the Collector, and the same are as follows:

(i) the *bhumidhar* belonging to a scheduled caste has no surviving heir specified in clause (a) of sub-section (2) of section 108 or clause (a) of section 110, as the case may be; or

(ii) the *bhumidhar* belonging to a scheduled caste has settled or is ordinarily residing in the district other than that in which the land proposed to be transferred is situate or in any other State for the purpose of any service or any trade, occupation, profession or business; or

(iii) the Collector is, for the reasons prescribed, satisfied that it is necessary to grant the permission for transfer of land.

10. The reasons prescribed, as referred to under clause (c) of the proviso to Section 98(1), upon which the Collector is to record its satisfaction that it is necessary to grant permission for transfer of the land, are specified under sub-rule (8) of Rule 99 of the Rules, 2016, and the same are as follows:

(i) the conditions of clause (a) or clause (b) of subsection (1) of section 98 are fulfilled; or

(ii) the tenure holder or any member of his family is suffering from any fatal disease regarding which the certificate has been issued by any physician or surgeon specialist in the disease concerned and the permission for transfer is necessary to meet out the expenses for the treatment of such disease; or

(iii) the applicant is seeking permission under section 98(1) of the Code for the proposed transfer to purchase any other land from the consideration of such proposed transfer and the facts in this regard in the application are supported with certified copy of a registered agreement to sell in favour of the applicant; or

(iv) the area of land held by the applicant on the date of application does not, after such transfer, reduce to less than 1.26 hectares, and

(v) if the permission is being sought for transfer by sale the consideration for the transfer of the land is not below the amount calculated as per the circle rate fixed by the Collector;

11. The conditions under which permission may be granted for transfer to a *bhumidhar* belonging to a scheduled caste can thus be summarised as follows:-

(i) in the absence of surviving heir specified in clause (a) of sub-section (2) of section 108 or clause (a) of section 110;

(ii) the transferor has settled or is ordinarily residing in the district other than that in which the land proposed to be transferred is situate or in any other State for the purpose of any service or any trade, occupation, profession or business;

(iii) for the reasons prescribed under the Rules, i.e.

(a) the tenure holder or any member of his family is suffering from any fatal disease; or

(b) the applicant is seeking permission for the proposed transfer to purchase any other land from the consideration of such proposed transfer; or

(c) the area of land held by the applicant on the date of application does not, after such transfer, reduce to less than 1.26 hectares, and

(d) if the permission is being sought for transfer by sale the consideration is not below the amount calculated as per the circle rate fixed by the Collector.

12. The explanation to Rule 99 clarifies that in a situation where any condition enumerated in clause (a) to (c) of sub-rule (8) of Rule 99 is fulfilled, the permission may be granted even if the holding of the *bhumidhar* (transferor) after such transfer reduces to less than 1.26 hectares.

13. The procedure for obtaining permission for transfer under Section 98 is provided for under Rule 99 of the Rules, 2016 and as per sub-rule (3) thereof an application seeking permission to transfer land by way of sale or gift or for permission to bequeath land by will, as the case may be, is to be made by a *bhumidhar* with transferable rights belonging to scheduled caste to the Collector in RC-Form 27. Upon receipt of such an application, the Collector under sub-rule (4) shall make an enquiry as he may, in the circumstances of the case deem necessary. For the purpose he may depute an officer not below the rank of Naib Tehsildar for : (a) verification of the facts stated in the application; and (b) reporting the circumstances in which permission for transfer is sought. Thereafter, under sub-rule (5), the inquiry officer shall submit the report in duplicate within a period of 15 days from the date of receiving the order of such enquiry. The copy of the report is to be supplied to the applicant under sub-rule (6) whereupon the applicant may file objections against the report within a period of seven days and thereafter the Collector upon being satisfied that any of the conditions under sub-rules (8)(a) to (d), and sub-rule (8)

(e) of Rule 99, are fulfilled, he may grant permission after recording reasons.

14. The provision with regard to the transfer by *bhumidhar* belonging to scheduled caste as contained under Section 98 of the Code, 2006 corresponds to Section 157A and 157-AA of the repealed Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950³, with some points of difference.

15. Under the ZA & LR Act, in terms of Section 157-A no *bhumidhar* or *asami* belonging to a scheduled caste could transfer the land to a person not belonging to a scheduled caste except with the previous approval of the Collector whereas under Section 157-AA the restriction was to the effect that a person belonging to a scheduled caste having become a *bhumidhar* with transferable rights under Section 131-B shall have no right to transfer the land by sale or otherwise to any person other than a person belonging to a scheduled caste. The transfer under Section 157-AA was to be permissible only to persons belonging to scheduled castes in the order of preference as prescribed under sub-section (1). The restriction on a scheduled caste with regard to the transfer of land in favour of a person who does not belong to a scheduled caste under Section 157-AA was thus absolute and such transfer was not permissible in any contingency. The language of sub-section (1) of Section 157-AA was such that even in case of a member of a scheduled caste acquiring transferable rights of a *bhumidhar* under Section 131-B who is desirous to transfer such land to another person belonging to the scheduled caste by way of sale, gift, mortgage or lease the right to transfer was not absolute and the transfer was permissible only in accordance with the preferences specified therein. Sub-section (4) provided that no transfer under Section 157-AA was permissible without the previous approval of

³ the ZA & LR Act

the Assistant Collector concerned. These restrictions were made subject to a further condition with the insertion of sub-section (5), in terms of which a transferee of land under sub-section (1) shall have no right to transfer the land by way of sale, gift, mortgage or lease before the expiry of a period of ten years from the date of transfer in his favour.

16. The aforementioned distinction with regard to the rights of a *bhumidhar* with transferable rights belonging to a scheduled caste and a *bhumidhar* who has acquired the transferable rights in respect of an allotted land, is not maintained under the Code, 2006. The restrictions and the preferences enumerated in Section 157-AA of the repealed ZA & LR Act also have no existence under the Code, 2006. The procedure for grant of permission for transfer by *bhumidhar* belonging to a scheduled caste has been simplified under the Code, 2006 and the Rules made thereunder with a view to make the procedure more objective and the requisite permission for transfer is to be granted to a *bhumidhar* belonging to a scheduled caste upon fulfilment of either of the conditions specified under clause (a) or (b) of the proviso to sub-section (1) of Section 98, or upon fulfilment of any of the conditions specified under clause (b), (c) or (d) and clause (e) of sub-rule (8) of Rule 99 of the Rules, 2016.

17. Under Section 98(1) of the Code, 2006 read with Rule 99 of the Rules, the Collector may grant permission for transfer by *bhumidhars* belonging to scheduled caste upon fulfilment of either of the five specified conditions: (i) in the absence of a surviving heir; (ii) the transferor has settled or is ordinarily residing in a different district or State; (iii) the tenure holder or any member of his family is suffering from any fatal disease; (iv) the applicant is seeking permission for transfer to purchase any other land from the consideration of such proposed transfer; (v) the area of the

land held by the applicant on the date of application does not, after such transfer, reduce to less than 1.26 hectares. This is subject to a further condition that the consideration for the transfer of the land is not below the amount calculated as per the circle rate fixed by the Collector. The condition with regard to the area of the land, held by the applicant, consequent to the transfer of the land being reduced to less than 1.26 hectares, is not mandatory subject to the fulfilment of any of the other conditions.

18. In a case where the application has been made as per the prescribed procedure and upon due enquiry as provided under the Rules, 2016 either of the aforesaid conditions are held to be satisfied, the permission is required to be granted for transfer under Section 98.

19. In the case at hand, the application by the petitioner was made in the prescribed form as provided under Rule 99 upon which the enquiry was duly made for the purpose of verification of the facts stated in the application and also reporting the circumstances under which permission for transfer was being sought. The report submitted by a team of revenue officers made a clear recommendation in favour of the petitioner indicating that the conditions prescribed for the purpose under the relevant statutory provision stood satisfied. In the face of the aforesaid circumstances, the reasons assigned in the order dated 19.07.2021 passed by the Respondent no. 3 that the applicant did not state the circumstances under which the land in question was purchased and that the petitioner could make arrangement for irrigation facilities, or that he had not produced any evidence to support the factum of his illness, are wholly inconsequential for the purpose of grant of permission for transfer. The other reason stated in the order that the petitioner was seeking transfer of the land for personal gains is also not relevant and is based on a conjecture.

20. In exercise of its discretionary power, if the concerned authority ignores or does not take into account considerations which are relevant to the purpose of the statute in question, then its action would be invalid. This would be more so where the statute conferring discretion on the authority has structured the discretion by expressly laying down the consideration which should be taken into account by the authority for exercise of the discretion. In such a case, if the exercise of the discretionary power has been influenced by considerations that cannot lawfully be taken into account or by disregard of the relevant considerations required to be taken into account, the decision arrived at by the authority would be invalid.

21. The “irrelevant considerations” doctrine was stated by **Lord Esher MR** in **R. vs. St Pancras Vestry**⁴ by observing as follows:

“But they must fairly consider the application and exercise their discretion on it fairly, and not take into account any reason for their decision which is not a legal one. If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion.”

22. The scope of interference by Courts in matters relating to exercise of discretion conferred by a statute upon an authority was subject matter of consideration in **Associated Provincial Picture Houses, Ltd. vs. Wednesbury Corporation**⁵ wherein it was stated by **Lord Greene, M.R.** as follows:

“... The law recognises certain principles on which the discretion must be exercised ... They are perfectly well understood. The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found, expressly or by implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters.

4 (1890) 24 Q.B.D. 371

5 [1947] 2 All E.R. 680

... the court is entitled to investigate the action of the local authority with a view to seeing whether it has taken into account matters which it ought not to take into account, or, conversely, has refused to take into account or neglected to take into account matters which it ought to take into account.”

23. The circumstances under which exercise of discretionary powers by a statutory authority may be held to be invalid were stated in **Padfield And Others vs. Minister of Agriculture, Fisheries And Food And Others**⁶, wherein **Lord Upjohn** observed as follows:

“Unlawful behaviour by the Minister may be state with sufficient accuracy ... (a) by an outright refusal to consider the relevant matter, or (b) by misdirecting himself in point of law, or (c) by taking into account some wholly irrelevant or extraneous consideration, or (d) by wholly omitting to take into account a relevant consideration.”

24. The principle laid down in the decision of the **House of Lords** in **Padfield’s case** (supra) was reiterated by **Lord Denning, M.R.** in **Breen vs. Amalamated Engineering Union And Others**⁷, by stating as follows:

“The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside.”

25. The proposition can thus broadly be laid down by stating that a decision by an authority exercising discretionary power under a statute must be arrived at by taking into account the relevant considerations and eschewing the irrelevant considerations, in the absence of which the action would have to be held as ultra vires and void.

6 [1968] 1 All E.R. 694

7 [1971] 2 Q.B. 175

26. The conditions which are required to be satisfied while considering grant of permission by the Collector to a *bhumidhar* belonging to a scheduled caste seeking to transfer land belonging to him having been clearly specified under the proviso to sub-section (1) of Section 98 read with sub-rule (8) of Rule 99, the reference made in the orders impugned to any other circumstance and on the basis thereof to reject the application of the petitioner seeking grant of permission to transfer, would therefore render the exercise of the discretionary power as ultra vires and invalid. The orders impugned having been passed in the absence of consideration of the relevant provisions and being based on wholly irrelevant consideration, are accordingly held to be legally unsustainable and are set aside and quashed.

27. The matter is remitted to the Respondent no. 3 for passing of fresh order on the basis of the provisions contained under Section 98 of the Code, 2006 read with sub-rule (8) of Rule 99 of the Rules, 2016 in the light of the discussion made hereinabove. The respondent authority would be expected to pass appropriate orders on the application of the petitioner under Section 98 seeking grant of permission for transfer, expeditiously, and preferably within a period of three months from the date of presentation of a certified copy of this order.

28. The writ petition stands **allowed** in the manner indicated above.

Order Date :- 06.04.2022

Kirti

(Dr. Y.K. Srivastava, J)