

(2016) 04 AHC CK 0120

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (M/S) No. 7656 of 2015.

Afsar Ali and Others

APPELLANT

Vs

Addl. Commissioner (Admn.) Devi Patan Gonda and Others

RESPONDENT

Date of Decision : 25-04-2016

Acts Referred:

Limitation Act, 1963 — Section 5

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 27(4)

Citation : (2016) 5 ADJ 684 : (2016) 116 ALR 628 : (2016) 132 RD 222

Hon'ble Judges : Devendra Kumar Upadhyaya, J.

Bench : Single Bench

Advocate : Agendra Sinha, Advocate, for the Appellant; C.S.C, Jai Kumar and Mrinal Chandra, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Devendra Kumar Upadhyaya, J. - Heard Sri Agendra Sinha, learned counsel for the petitioners, learned Standing Counsel for the State-respondents and Sri Mrinal Chandra, learned counsel appearing for the respondent Nos. 2 and 3.

2. This petition under Article 227 of the Constitution of India seeks to challenge the order dated 19.11.2015, passed by the Additional Commissioner (Administration), Devi Patan Mandal, Gonda, whereby application made by the petitioners under Section 5 of the Indian Limitation Act for condoning the delay in moving the application under Section 27(4) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as "Ceiling Act") for setting aside the certain pattas in favour of the respondents, has been rejected.

3. Submission of learned counsel for the petitioners is that the pattas were allegedly executed on 18.02.1992 unlawful and the petitioners did not have any information of the said pattas. The information regarding said pattas came to the notice of the petitioners only on 28.06.2015 when the alleged patta holders attempted to take possession of the land in dispute. The submission is, thus, that sufficient reasons have been indicated by the petitioners in the application moved

for the said purpose and the Additional Commissioner has not been able to appreciate the correctness of the reasons in their true perspective and has, thus, passed the impugned order dated 19.11.2015, which is not sustainable.

4. Having heard the learned counsel appearing for the parties, I find myself unable to agree with the submission made by the learned counsel for the petitioners.

5. It appears that in respect of properties of the Tepraha Estate, a Civil Suit seeking certain declaration was filed by one Thakur Sabir Ali in the year 1940 with the prayer that the plaintiff thereon be provided with the relief of decree of possession of the properties mentioned in the plaint or in the alternative a decree of possession of the properties not covered by some deed be passed in favour of the plaintiff. The suit appears to have decreed by the Civil Court and decree has lastly been affirmed, as has been submitted by the learned counsel for the petitioners, by Hon"ble Supreme Court by means of judgment and order dated 26.03.1962 in S.L.P. No. 256 of 1959.

6. It has been contended by the learned counsel for the petitioners that the execution case for executing the said decree which has been affirmed by the Hon"ble Supreme Court is still pending and, in the meantime, it appears that certain proceedings under Section 10(2) of the Ceiling Act were initiated against one Thakur Sabir Ali. In the proceedings drawn under the Ceiling Act certain portion of the land including the land in question in this case was declared to be surplus in terms of the order passed by the Chief Revenue Officer, Bahraich in Ceiling Case No. 382, decided on 31.03.1991.

7. After declaration of land as surplus under the Ceiling Act, the pattas appear to have been executed. A counter affidavit filed by the respondent Nos. 2 and 3 also contains the Khatauni pertaining to 1397-1402 Fasli wherein it has been recorded that the tenancy rights have accrued in the patta holders right from 1399 Fasli.

8. The thrust of the argument advanced by the learned counsel for the petitioners, Sri Sinha is that in fact the petitioners or the predecessor in interest never received any notice under the Ceiling Act and it is petitioners who are tenure holders in terms of the Civil Court decree and further that before the execution of civil court decree could be finalized, no proceedings under the Ceiling Act ought to have been initiated. The submission is that in fact the land in question could not have been at all declared surplus under the Ceiling Act and as such any patta executed in respect of the said land would also be unlawful and needs to be nullified.

9. The case at hand concerns itself with the proceedings sought to be instituted by the petitioners under Section 27(4) of the Ciling Act, therefore, any enquiry of the submissions made by the learned counsel for the parties in this matter has also to be confined within the limitation of the proceedings under Section 27(4) of the Ceiling Act. In respect of the claim of the petitioners on merit over the tenancy rights, the proceedings under Section 27(4) of the Ceiling Act are not

appropriate. Merely because the execution of some Civil Court decree which, the petitioners assert, is pending, cannot it preclude the Additional Commissioner to examine as to whether the reasons given by the petitioners seeking condonation of delay in their application presented under Section 5 of the Indian Limitation Act were sufficient or not. The fact remains that certain proceedings under the Ceiling Act were drawn and the land in question was declared surplus way back in the year 1991. The petitioners had an opportunity, if they felt aggrieved by the order of declaration of the land as surplus, to have filed an appeal under Section 13 of the Ceiling Act which clearly provides that any party aggrieved by an order of determination of surplus land under Sub Section (2) of Section 11 or Section 12, may, within 30 days of the date of the order, prefer an appeal. It is, however, not known as to whether the petitioners have challenged the said order by filing an appeal or by taking recourse to any other proceedings which may be permissible under law. If the land was declared surplus in the year 1991 and the State Government has taken possession thereof, it was incumbent upon the State to have leased out the properties declared to be surplus or to manage the said surplus land in terms of the provisions of the Ceiling Act.

10. The U.P. Imposition of Ceiling on Land Holdings Act, 1960 was enacted by the State Legislature towards achieving the goal of agrarian reforms. The pattas executed in the year 1992 in respect of the land which has been declared surplus cannot be permitted to be cancelled after a lapse of period of 23 years, specially when the petitioners have measurably failed to give any reason for moving the application under Section 27(4) of the Ceiling Act with so much of delay. Claim of the petitioners on the merit regarding their tenancy rights, I am afraid, could not have been gone into in the proceedings sought to be instituted by the petitioners under Section 27 (4) of the Ceiling Act. Chapter IV of the Ceiling Act prescribes for disposal and settlement of surplus land. Section 25 provides that State Government may use or permit the use of the whole or any portion of such land for any purpose for which such land could have been acquired under the Land Acquisition Act, 1894. Section 26 similarly provides that all settlement of surplus land vested in the State is to be made on behalf of the State Government by the Collector. Section 27 provides that land declared surplus shall be settled in the village in which land is not available for the community purposes or in which the land as available is less than 15 acres with the Gaon Sabha. It further provides that land so settled with the Gaon Sabha shall be used for planting trees, growing fodder or for such other community purposes, as may be prescribed. Sub-Section (2) and (3) of Section 27 provide that surplus land shall be settled by the Collector in accordance with the order of preference and subject to the limits as specified in Section 198 of the U.P. Z.A. and L.R. Act. Thus, purpose of implementing the Ceiling Act is not only to vest land in State after declaration of land being surplus; rather it is to put such surplus land to use which would achieve the purpose of agrarian reforms. The land was declared surplus in the year 1991 and thereafter in terms of the provisions of Ceiling Act it has been settled with the certain villagers. Sub-Section 4 of Section 27 of the Ceiling Act

empowers the Commissioner to cancel the settlement and the lease either suo-motu or on the application made by the aggrieved person. It also empowers the Commissioner to direct every person holding or retaining possession of the surplus land to be evicted. It further provides that after cancellation of any lease, the land will revert to the State.

11. The ground available to the learned Commissioner under Section 27(4) of the Ceiling Act for cancelling the lease is that the lease can be cancelled if the Commissioner finds the settlement to be irregular. Irregularity in settlement and the execution of the lease will, in my considered opinion, be confined to the irregularity in the process of the settlement of the lease. The Commissioner may, however, conduct an enquiry in the proceedings under Section 27(4) of the Act to ensure that the surplus land is allotted or leased out only in terms of the preferences and limitation prescribed under Section 198 (3) of the U.P. Z.A. and L.R. Act.

12. From a perusal of the application moved under Section 27(4) of the Ceiling Act by the petitioners it does not transpire that it is the allegation of the petitioners that the persons in whose favour lease was granted do not come within the order of preference under Section 198(3) of the U.P. Z.A. and L.R. Act. The reasons indicated seeking cancellation of lease are vague. The application only shows that since the land which has been allotted and leased out is in the shape of grove, abadi, gate and kothi as such the same could not have been allotted. Further averments have been made that one Smt. Zakia Begum had earlier instituted the proceedings seeking cancellation of the lease (case no. 344) which was subsequently got dismissed as not pressed. Averments in the said application are that civil matter has been settled by upto the Hon"ble Supreme Court in favour of the petitioners as such pattas need to be cancelled. Such grounds, as is borne out from a bare reading of the application moved by petitioners under Section 27(4) of the Ceiling Act, would not constitute any case so as to call for any interference by the learned Commissioner in exercise of its authority, jurisdiction and power under Section 27(4) of the Ceiling Act.

13. However, the court need not make any observation regarding the merit of the claim of the petitioners in respect of their tenancy rights. For the said purpose, it has been informed by the learned counsel for the petitioner that the execution case is still pending.

14. Now coming to the reasons indicated in the application moved by the petitioners under Section 5 of the Indian Limitation Act seeking condonation of delay in moving the application under Section 27(4) of the Ceiling Act, I may only observe that the application is absolutely cryptic in nature and does not disclose sufficient cause and reason for the delay of as long as 23 years.

15. For the reasons disclosed herein above, the petition deserves to be dismissed which is hereby dismissed.

16. However, notwithstanding dismissal of this petition, I may make it clear that

any observation or discussion made in this judgment would not be construed to be any reflection on the merit of the claim of the petitioners on their tenancy rights.

17. There will be no order as to costs.