

(1978) 03 AHC CK 0042

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11372 of 1975

Baboo Ram

APPELLANT

Vs

First Addl.District & Sessions Judge, Basti and others

RESPONDENT

Date of Decision : 15-03-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9A, 9B
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Explanation 1, 5(6), 5(7)

Citation : (1978) 03 AHC CK 0042

Hon'ble Judges : B.N.Sapru, J

Final Decision : Allowed

Judgement

B. N. Sapru, J.

This writ petition arise out of proceedings under the U. P. Imposition of Ceiling on Land Holdings Act, 1960. The land in dispute is situated in village Mahudar and includes khata no. 46.

The learned counsel for the petitioner has confined his submissions to the land comprised in khata no. 46 and has not addressed any arguments in respect of other land involved in this writ petition and, as such this Court is only determining the petitioner's rights in respect of the land comprised in the aforesaid khata no. 46.

The Prescribed Authority had held that the entire land comprised in khata no. 46 belonged to the petitioner. The petitioner's submission was that by an order of the Consolidation Officer dated 4th August, 1973 the names of Nandlal and Sadanand, sons of Jairam who were his nephews were ordered to be recorded as cosharers along with him in the said khata. The further submission on behalf of the petitioner was that in view of the fact that the aforesaid two persons had been recorded as the cosharers in the khata, three bighas and nineteen biswas, which constituted their share of the khata, should not be taken to be land

included in his holdings.

The Prescribed Authority and the Additional District Judge in appeal have negatived the claim of the petitioner and held that the land in the khata should be treated as the one forming part of the holding of the petitioner.

The learned District Judge, while deciding the appeal, in his judgment in paragraph 3 observed as follows:

"With regard to khata no. 46 it is urged that the Consolidation Officer by means of his order dated 481973 has ordered that the names of Nand Lal and Sadanand, sons of Jaijai Ram, and nephews of Baburam be also recorded as cosharers along with him in the said khata, hence 3 bighas 19 biswas, which constitute the share of the khatedar, should be exempted. It is true that the C. O. passed an order on 4873 that the names of Sadanand and Nandlal be also recorded as cosharers along with Baburam put his order was passed subsequent to 24th January, 1971. Section 5(7) of the Ceiling Act clearly says that in dettrmining the ceiling area any partition of land made after the 24th day of January, 1971, shall be ignored and not taken into account. If the Prescribed Authority was of the opinion that there was collusion between the tenureholder and any other party in the partition, explanation 2 appended to section 5(7) further says that the burden of proving that the case was covered by the above proviso shall rest with the party claiming its benefit. The Prescribed Authority has, therefore, rightly ignored the above entry contained in the revenue record made in pursuance of the order of the C. O. dated 481973."

The District Judge and the Prescribed Authority appear to have been of the view that the order of the Consolidation Officer holding that the sons of Jaijai Ram were cotenure holders along with the petitioner, attracted the provisions of section 5(7) of the U. P. Imposition of Ceiling on Land Holdings Act. The provisions of section 5(7) are reproduced below:

"In determining the ceiling area applicable to a tenure holder, any partition of land made after the twentyfourth day of January, 1971, which but for the partition would have been declared surplus land under this Act shall be ignored and not taken into account."

The order of the Consolidation Officer under which the sons of Jaijai Ram were held to be cotenure holders along with the petitioner was not an order partitioning the land of khata no. 46. The District Judge and the Prescribed Authority committed a manifest error of law in holding that the provisions of Section 5(7) of the U. P. Imposition of Coiling on Land Holdings Act applied.

However, that is not the end of the matter. Section 5(7), subclause (6) of the U. P. Imposition of Ceiling on Land Holdings Act provides as follows:

"In determining the ceiling area applicable to a tenureholder, any transfer of land made after the twentyfourth day of January, 1971, which but for the transfer would have been declared surplus land under this Act, shall be ignored and not

taken into account."

We are not concerned at this stage with the proviso to the said subsection. Thereafter, explanation 1 provides:

"For the purposes of this subsection the expression transfer of land made after the 24th day of January, 1971 includes

(a) a declaration of a person as cotenure holder made after the 24th day of January, 1971 in a suit or proceeding irrespective of whether such suit or proceeding was pending on or was instituted after the 24th day of January, 1971

(b) any admission, acknowledgment, relinquishment or declaration in favour of a person to the like effect, made in any other deed or instrument or in any other manner."

Admittedly, the Consolidation Officer decided the sons of Jaijai Ram were cotenure holders along with the petitioner by an order dated 481973. The learned Standing Counsel appearing on behalf of the respondent State has submitted that in view of explanation 1 to section 5(6), the declarations of the sons of Jaijai Ram as cotenure holders would amount to a transfer of the land within the meaning of section 5 (6) of the U. P. Imposition of Ceiling on Land Holdings Act. On the face of it the word "transfer" would not include the declaration that a person was a cotenure holder with the recorded tenure holder. However, in view of the explanation, to which full effect has to be given, a declaration by a person as cotenure holder made after the 24th day of January, 1971 in a suit or proceeding irrespective of whether such suit or proceeding is pending or was instituted after the 24th day of January. 1971 has to be deemed as transfer for the purpose of the aforesaid Section.

From the record it appears that the proceedings under the Imposition of Ceiling on Land Holdings Act, in which an order was made regarding the sons of Jaijai Ram as cotenure holders were under the provisions of Sections 9A and 10 of the said Act.

The question that has to be decided is whether an order of a Consolidation Officer under section 9A of the U. P. Consolidation of Holdings Act amounts to a declaration within the meaning of the explanation 1 to Section 5(6) of the U. P. Imposition of Ceiling on Land Holdings Act, 1960.

Section 9A is to be found in Chapter II of the said Act, which is headed as chapter relating to "Revision and Correction of Maps and Records." Section 7 of the Act provides that the District Officer shall before the provisional consolidation scheme for the unit is prepared, cause the village map of such unit to be revised. Section 8 deals with the provision of the field book or the current annual register and the determination of valuation and shares in joint holdings. Thereafter, section 8A of the Act provides for the preparation of the statement of principles. Section 9 thereafter provides for the preparation of the records of the statements mentioned in Sections 8 and 8A. A notice of the statements of

principles has to be published in the manner prescribed in the section and subsection (2) of section 9 provides that any person to whom notice under subsection (1) has been sent or any other person interested, may file objection before the Assistant Consolidation Officer, disputing the correctness of the nature of the entries in the records or in the extracts furnished there from, or in the statement of principles, or the need for partition. Thereafter comes section 9A which provides as follows:

"Disposal of cases relating to claims to land and partition of jointholdings. (1) The Assistant Consolidation Officer shall

(i) Where objections in respect of claims to land or partition of joint holdings are filed, after hearing the parties concerned, and

(ii) Where no objections are filed, after making such enquiry as he may deem necessary,

Settle the disputes, correct the mistakes and effect partition as far as may be by conciliation between the parties appearing before him and pass orders on the basis of such conciliation.

(2) All case which are not disposed of by the Assistant Consolidation Officer under subsection (1), all cases relating to valuation of plots and all cases relating to valuation of trees, wells or other improvements, for calculating compensation therefore, and its apportionment amongst coowners, if there be more owners than one, shall be forwarded by the Assistant Consolidation Officer to the Consolidation Officer, who shall dispose of the same in the manner prescribed.

(3) The Assistant Consolidation Officer, while acting under subsection (1) and the Consolidation Officer, while acting under, subsection (2), shall be deemed to be a court of competent jurisdiction, anything to the contrary contained in any other law for the time being in force notwithstanding."

Thereafter Section 9B provides for the disposal of objections and the statement of principles and Section 10 provides for the preparation of maintenance of the revised annual registers.

The Consolidation of Holdings Act, 1953 does not provide for a declaration of rights of tenure holders as such. In the Zamindari Abolition and Land Reforms Act declaratory suits are provided for under sections 229 and 229B and Section 229C. Similarly, Sections 59 and 60 of the U. P. Tenancy Act, 1939 also provided for declaratory suits. It will be noticed that there is no parallel provision in the U. P. Consolidation of Holdings Act, 1953.

The decision of an Assistant Consolidation Officer, or a Consolidation Officer, and even of a Settlement Officer, Consolidation in appeal directing the revision of the annual registers on the basis of their orders, as provided in section 10 of the said Act, cannot be deemed to be declarations within the meaning of the explanation 1 to Section 5(6) of the U. P. Imposition of Ceiling on Land Holdings Act.

The consolidation authorities while deciding the proceedings under section 9A or the Settlement Officer, Consolidation, while deciding the appeal against orders of subordinate officers, under that section do not create any rights in land. They only recognise preexisting rights in the land.

If the decision of the consolidation authorities that the nephews of Jaijai Ram were cotenure holders with the petitioner in proceedings under section 9A of the Act, is not a declaration within the meaning of Section 5(6) of the U. P. Imposition of Ceiling on Land Holdings Act, then the said decision of the consolidation authorities cannot be ignored in proceedings under section 5(6) of the said Act while determining the ceiling area applicable to a tenure holder.

In order to attract the provisions of section 5(6) of the U. P. Imposition of Ceiling on Land Holdings Act, there must be a transfer which, in view of explanation 1, would include a declaration of a person as cotenure holder. There must be a transfer of ownership in the tenure rights from one person to another. The word "declaration" referred to in explanation 1, clause (a) will take its colour from the word "transfer" which it is by fiction deemed to be. The word "transfer" connotes a transfer of ownership or tenure rights from one person to another. Similarly, the words "declaration" used by the Legislature in subclause (a) of Explanation 1 in section 5 (6) should be taken to mean an act by which rights have been transferred or recognised in favour of a person who did not possess such rights earlier. The mere recognition of the rights of a preexisting tenure holder in a holding cannot amount to a declaration of rights of such person within the meaning of section 5(6) of the U. P. Imposition of Ceiling on Land Holdings Act. The Court is reinforced in the view that it has taken by the language of subclause (b) of explanation 1 to section 5(6). The words of clause (b) are as follows:

"Any admission, acknowledgment, relinquishment, or declaration in favour of a person to the like effect made in any deed or instrument or in any other manner."

All the acts mentioned in subclause (b) require something to be done by a tenure holder in favour of some other person, who is to get rights in the land comprised in the holding of the tenure holder. The declarations in a suit or a proceeding have been included in subclause (a) of Section 5(6) of the aforesaid Act. Therefore, the word "declaration" which is repeated again in subclause (b) should mean a declaration otherwise than in a suit or other legal proceedings as there is a presumption that the Legislature does not use redundant words. In this context in which the words declaration is to be found in subclause (b) of explanation 1 to section 5(6) indicates that a declaration referred to therein is a declaration made by the tenure holder in a manner otherwise than by an admission, acknowledgement or relinquishment in any deed or instrument. The words in subclause (b) of Section 5(7) of the Act "or in any other manner" must be read as ejusdem generis with the words which immediately precede it. They must be confined to the declarations made by a tenure holder in any other manner than by way of admission, acknowledgment or relinquishment. There is nothing voluntary in the act of the tenure holder when the consolidation

authorities determine that some one other than himself also has rights in a particular holding. In fact, the declaration may, and in many cases is given against the wishes of the recorded tenure holder. The Legislature was attempting to prevent alienations by tenure holders to circumvent the provisions of the U. P. Imposition of Ceiling on Land Holdings Act. The Legislature was not trying to take away preexisting rights in land, except where it did so expressly.

The order of the consolidation authorities directing the names of the sons of Jaijai Ram namely Nand Lal and Sadanand to be recorded as cotenure holders along with the petitioner was in effect only a mutation order correcting the entries in the annual registers, and cannot be held to be a "declaration" within the meaning of Explanation 1 to Section 5(7) of the U. P. Imposition of Ceiling on Land Holdings Act.

The learned Standing Counsel has drawn my attention to paragraph 4 of the counter affidavit filed on behalf of the respondents as also the judgment of the consolidation authorities and the learned District Judge, and submitted that burden was on the petitioner to show that the petition by which the sons of Jaijai Ram got rights in the land of Khata no. 42 was not collusive. In the first place, an adjudication by the Consolidation Officer of the rights of the sons of Jaijai Ram in the holding of the land comprised in khata no. 46 can by no stretch of imagination be treated as a partition of the holding. The provisions of subsection (7) deal only with partition of land. In the proviso to that subsection it is provided that notwithstanding anything contained in the preceding proviso (which means of partition of a holding made in a suit or proceeding pending on the said date, i.e. the 24th day of January, 1971) if the Prescribed Authority is of the opinion that there was a collusion between the tenure holder and another party to the partition, and such other party has been given a share to which he is not entitled, or given a large share than what he was entitled to, he may ignore such partition. As I have already held earlier, the Prescribed Authority and the Additional District Judge committed a manifest error of law in applying the provisions of Section 5(7) of the U. P. Imposition of Ceiling on Land Holdings Act to the land comprised in khata no. 46. In these circumstances, I cannot accept the submissions made by the learned Standing Counsel.

In the result, the writ petition is allowed in part. The decision of the Prescribed Authority and of the learned Additional District Judge impugned in this petition are quashed only in respect of the land comprised within khata 110. 46 situate in village Mahudhar. The matter will now go back to the Prescribed Authority to determine the ceiling area applicable to the petitioner, if any, without taking into account the share of the land in khata no. 46 which has been recognised by the Consolidation Officer in his judgment dated 481973 in favour of the sons of Jaijai Ram, namely Nandlal and Sadanand. The petitioner is entitled to his costs of this writ petition.

Under an interim order of this Court dated the 23rd October, 1975 the petitioner was required to deposit certain amount of money with the respondents. The

amounts of money, if any, so deposited by the petitioner shall be refunded to him.