

(2010) 12 AHC CK 0058

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25310 of 1991

Bhagwat Narain

APPELLANT

Vs

Additional Commissioner, Jhansi Division and Others

RESPONDENT

Date of Decision : 09-12-2010

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10

Citation : (2010) 12 AHC CK 0058

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Shukla, J.—Present writ petition has been filed by the Petitioner, questioning the validity of judgment and order dated 24.08.1991 passed by Additional Commissioner (Judicial) Jhansi Division, Jhansi in appeal No. 55/1 of 1983/1989-90, Bhagwat Narain v. State of U.P., and further for quashing of judgment and order dated 19.03.1983 passed by Respondent No. 2 in case No. 125 of 1976-77, State v. Raja Ram.

2. Brief background of the case, as disclosed from the record of writ petition, is that a notice u/s 10 (2) of the U.P. Imposition of Ceiling on Land Holdings Act was served on the father of the Petitioner, Raja Ram, showing his total irrigated area to be 28.36 acres; ceiling area was shown to be 22.97 acres irrigated. 19.98 acres irrigated area was shown as single cropped land and 4.28 acres area was shown as un-irrigated land. Said case was registered as case No. 125 of 1976-77, State v. Raja Ram. The Prescribed Authority, Mauranipur, Jhansi declared 5.39 acres irrigated area as surplus vide order dated 22.11.1975. Petitioner's father filed appeal No. 52 of 1976, which was allowed on 31.07.1976 and the matter was remanded back. The Prescribed Authority in remand proceeding passed order on 28.10.1978 holding total irrigated area to be 27.11 acres and found 4.47 acres of land as surplus. Again appeal was filed and the same was allowed on 04.09.1979. In between Petitioner's father Raja Ram died.

The Prescribed Authority, thereafter on account of death of Raja Ram again gave notice on 12.12.1979 to the Petitioner u/s 10 (2) of the aforesaid Act. Petitioner filed objection. In the said proceedings so undertaken an area of 5.39 acres had been shown as surplus. Petitioner preferred appeal. Again said appeal was allowed on 25.05.1982 and the matter was remanded. The Prescribed Authority again in remand proceeding declared 3.20 acres of irrigated area as surplus land vide order dated 19.03.1983. Petitioner again preferred appeal and the said appeal had been dismissed vide order dated 23.12.1985, against which Petitioner filed writ petition No. 1345 of 1986. Said writ petition was allowed and the matter was remanded back. Relevant extract of the said judgment is being quoted below:

" Having heard the learned Counsel for the parties, the main question that falls for consideration is as to whether the land in dispute was acquisition by Raja Ram, father of Petitioner. To prove this, on behalf of Petitioner, Smt. Kunjan, widow of Ram Lal was examined. Apart from that even the Lekhpal made a statement that Smt. Kunjan was co-sharer and she was living separately. The extracts of Fard Mutshikat 1348 and Khewat were also filled and they were on record as is clear from the discussions of evidence under issue No. 4 in the judgment dated 28.3.1981. All these evidence and other evidence ought to have been considered by the learned IV Additional District Judge while deciding the appeal. Apart from that simply on the basis that Smt. Kunjan failed to get her name recorded in the revenue papers after the death of her husband Ram Lal, could not lead to interference that she has got no right. As she was claiming to be co-sharer, even though she might not have been in possession, but the possession of one co-sharer is the possession of all. Unless there was finding on the basis of evidence on record, particularly with reference to extracts of Fard Mutshikat and Khewat that Ram Lal was not co-sharer along with Raja Ram, the finding recorded by the learned District Judge cannot be sustained. The extracts of 1348 F and extracts of Khewat have been over looked by the learned District Judge and any finding recorded by overlooking important documentary and oral evidence on record, shall be perverse and can not be sustained.

In view of the discussions made above, the present petition succeeds and is allowed. The impugned judgment and order dated 23.12.85 is hereby quashed and the case is remanded to the learned District Judge for deciding it afresh after hearing the learned Counsel for the parties and considering the entire evidence on record. As the matter has dragged on for too long, what is required is expedition. The learned District Judge is, therefore, directed to decide the appeal within a period of three months from the date a certified copy of this order is produced before him. There shall be no order as to costs. The interim order dated 20.1.86 is vacated."

3. Pursuant to remand order passed by this Court, appeal had been taken up and the same was dismissed. At this juncture, present writ petition has been filed.

4. Pleadings interse parties have been exchanged and original records of the

ceiling authority as well as appellate authority have also been summoned.

5. Thereafter, present writ petition has been taken up for final hearing and disposal with the consent of the parties.

6. Sri S.V. Goswami, learned Counsel for the Petitioner, contended with vehemence that the appellate forum has totally misdirected itself in deciding the matter as per directives issued by this Court qua the issues raised therein, without providing any opportunity of hearing and has wrongly proceeded to mention that documentary evidence was not available on record, whereas records were available as would be evident from the original record produced, as such writ petition deserves to be allowed.

7. Countering the said submission, learned standing counsel, on the other hand, has contended that rightful opinion has been formed and no interference should be made with the order impugned.

8. After respective arguments have been advanced, factual position which emerges in the present case is that earlier matter had travelled to this Court in the shape of writ petition No. 1345 of 1986, Bhagwat Narain v. 4th Additional District Judge, and this Court had allowed the writ petition, remanded the matter back to the appellate forum for being re-decided in respect of the fact as to whether Ram Lal was co-sharer along with Raja Ram or not. This Court had precisely proceeded to mention that extract of 134 Fasli and the extract of Khewat had been overlooked by the learned District Judge and any finding recorded by overlooking the material on record would be perverse and could not be sustained. This Court had also taken note of the fact that extract of furd Mutakibat 1348 Fasli were also accepted and they were on record and is clearly disclosed in issue No. 4 in the judgment dated 23.08.1981. All these evidences ought to have been considered. The appellate forum has proceeded to mention that from perusal of records, there is no khewat of 1348 Fasli in existence which would go to show and substantiate that in the property in question Ram Lal had any share and merely on the basis of furd Mutakibat, wherein reference of only old number has been given, from which it cannot be presumed that in the land under ceiling Ram Lal or his wife kunjan Devi had any share. Records, specially of the appellate authority, produced before this Court clearly reflects that in the present case file in question was transmitted from the court of District Judge and for summoning of the document on 15.05.1991 orders were passed. Matter was again taken up on 17.08.1991 and on the said date it was mentioned that neither of the parties were present and the next date fixed was 24.08.1991, when it was mentioned that in case any one intended to file written agreement, same could be done. The appellate authority thereafter has proceeded to pass order. The order passed by the appellate authority, thus, clearly reflects that in the present case without providing opportunity of hearing to the Petitioner or his counsel opinion has been formed that the documents are not on record and the case of the Petitioner is not at all substantiated. Once this is writ apparent that the order passed by the appellate authority is exparte to the Petitioner without providing

any opportunity of hearing and opinion has been formed on merit, that documents are not on record, then opportunity ought to have been afforded to the Petitioner.

9. Consequently, present writ petition succeeds and the same is allowed. The order dated 24.08.1991 passed by the appellate forum is quashed and set aside. The matter is remitted back to the appellate forum for being decided afresh on the basis of records available and after affording opportunity of hearing to the Petitioner, within three months from the date of receipt of a certified copy of this order.