
(2012) 02 AHC CK 0306
In the Allahabad High Court
Case No : C.M.W.P. No. 70490 of 2011

Bhagwati Singh and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 06-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 4A

Citation : (2012) 115 RD 811

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : R.C. Singh, for the Appellant; Sanjay Goswami (Addl. C.S.C.) and C.S.C, for the Respondent

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard Sri R.C. Singh learned Counsel for the petitioners and Sri Sanjay Goswami, learned Additional Chief Standing Counsel for the respondent-State. Affidavits have been exchanged between the parties, as such, the matter is being disposed of finally at this stage itself. The present writ petition relates to proceedings undertaken under the U.P. Imposition of Ceiling on Land Holdings Act, 1960. The objection filed by the petitioners has been partly allowed and certain land has been declared surplus under the orders dated 16.1.1993. The said order has been affirmed by the impugned order dated 23.11.2011 passed by the appellate authority and while proceeding to decide the appeal certain action has been taken in relation to the holding of one Jamal Ahmad, as a result whereof, this Court entertained the writ petition in the background aforesaid which has been narrated in the interim order dated 7.12.2011, reproduced hereinunder:

Admit.

Heard learned Counsel for the petitioners.

The challenge in this petition is to the orders passed by the Ceiling Authorities under the U.P. Imposition of Ceiling on Land Holdings Act, 1960. The impugned order dated 16.1.1993 which has been affirmed by the appellate order dated 23.11.2011, declares certain land as surplus in the hands of the petitioners.

The background of the case is that the ceiling proceedings were initiated against Mahadeo Singh father of the petitioner No. 1 and grand-father of the petitioners No. 2 to 4. Certain land was declared surplus on 31st July, 1978 whereafter an appeal was filed by Mahadeo and others and the order of the prescribed was set aside on 28.5.1982 whereafter the matter stood remanded. The prescribed authority on 16.1.1993 passed an order declaring 30.59 acres of land as surplus in the hands of the tenure holder.

For the purpose of the present writ petition, it would be necessary to mention that two appeals were filed, one by the petitioners and the other by Jamal Ahmad and others. The appeals filed by the petitioners and by Jamal Ahmad were dismissed in a summary manner on 20th April, 1995.

The appellants in both the appeals filed their respective writ petitions before this Court. The writ petition filed by the petitioners referred to hereinabove came to be allowed on 26.4.2007. Jamal Ahmad and others filed a writ petition No. 12501 of 1995 which remained pending before this Court. During the pendency of the said writ petition they claim to have filed a review application before the appellate authority which was allowed on 12.8.1999 by the then Additional Commissioner (Judicial), Mr. Shyam Lal. The petition before this Court was withdrawn.

The proceedings which have now come up before this Court arise out of the remand order passed by the High Court in the petition filed by the petitioners on 26.4.2007 which is to the following effect:--

"Heard Sri R.C. Singh, the learned Counsel for the petitioners and the learned Standing Counsel representing the respondents.

The prescribed authority declared certain area of the petitioners' land as surplus under section 10(2) of U.P. Imposition of Ceiling on Land Holdings Act, 1960. The petitioners being aggrieved by the aforesaid orders filed an appeal which was dismissed by an order dated 20.4.1995. Being aggrieved by this order the petitioner has filed the present petition.

From a perusal of the appellate order, it transpired that the Appellate Court without determining the points and issues and without considering the evidence on record has in a very casual and mechanical manner dismissed the appeal without considering the points and issues raised by the petitioners in the memo of appeal. In this regard the appellate authority is required to consider the provisions of Order XLI, Rule 31 C.P.C. and pass the order in accordance with these provisions.

In view of the aforesaid the impugned appellate order cannot be sustained and

quashed. The writ petition is allowed. The matter is remitted back to the appellate authority to decide the appeal afresh after hearing the petitioners."

Accordingly, the appellate authority was directed not to interfere with the possession of the petitioners during the pendency of the appeal and to deliver a judgment in compliance of the principles as laid down under Order XLIII, Rule 11. The appellate authority has now proceeded to take-up the matter issue-wise and has dismissed the appeal upholding the order dated 16.1.1993. Hence, this petition.

Sri R.C. Singh submits that the findings on all issues are against the weight of evidence on record and even otherwise the appellate authority has recorded conclusions which are contrary to law by wrongly shifting the burden on the petitioners. He further submits that a novel method was adopted by the D.G.C. Revenue by moving an application in the appeal filed by the petitioners to the effect that the order obtained by Jamal Ahmad on 12.8.1999 was a manipulation, and therefore the appeal should be dismissed. Accordingly, Sri Singh submits that there was no occasion for moving this application in the appeal of the petitioners more so when the appellate order had already been set aside and the matter had been remanded for a decision afresh.

While taking the Court to the respective findings recorded in appeal Sri Singh has invited the attention of the Court to the issues that had been raised and has contended that the appellate authority has recorded findings without advert to the facts that were narrated in relation to every specific objection. To illustrate his arguments Sri Singh has invited the attention of the Court to Issue Nos. 1, 2, 3 and 9, apart from the other issues that were particularly raised in the written arguments that have been noticed by the learned Commissioner.

Learned Additional Advocate General Sri V.K. Singh has opposed the petition and he contends that the findings which have been recorded are in accordance with law and that the learned Commissioner has taken notice of each and every fact so as to find out the veracity and probative value of the evidence led on behalf of the petitioners and then has arrived at independent findings in compliance of the judgment dated 26.4.2007. He submits that the finding of facts do not suffer from any infirmity and the impugned order does not require any interference.

I have perused the impugned order as also the order of the prescribed authority dated 16.1.1993.

The first issue which has been raised and which has been decided by the appellate authority is in relation to the land of Village Semra Hardo. The conclusion drawn is that the Khewat indicates 1/8th share of the petitioners and this fact has been admitted by the petitioners in their cross-examination, therefore, the finding has been returned against them.

I have perused the finding at Page 97 of the paper book which categorically records that the petitioners had in their statement indicated that their names

were wrongly recorded against 1/8th share and that they were share holder of 1/16th only. It is strange that this admission which is alleged to have been made by the petitioners is being treated to be an admission for 1/8th share whereas they have admitted only 1/16th share. The finding therefore prima facie is perverse.

Similarly on Issue No. 2 the land relating to Village Terhi and Khairatia were also termed to be not belonging to the Khata of the tenure holder, yet the entire notice as contained in Form 3ka, Kha, Ga, has been accepted by the learned Commissioner when a considerable part of the land was left out by the prescribed authority himself particularly relating to the holding of one Ravindra Nath Gupta. This finding on Issue No. 2 is therefore also prima facie perverse and against the weight of evidence on record.

Coming to Point No. 3, relating to the land being irrigated or unirrigated of Village Piperia Narhar, the burden has been shifted on the petitioners for not having filed Khasras 1378 to 1380 Fasli. This is against law inasmuch as in view of the provisions of section 4-A of the 1960 A this is an obligation of the prescribed authority and the Ceiling Authority to examine the relevant Khasra of 1378 Fasli and to make a local inspection if necessary. The section itself casts an obligation on the authority and the burden is not on the tenure holder. Learned Commissioner has not cared to look into the said provisions and has recorded a finding which is against law. Moreover reliance placed on the Khatauni of 1359 Fasli was misplaced.

Similarly the other issues have been dealt with very erroneously and particularly Issue No, 9 where the application against Jamal Ahmad in this appeal was entertained and made the basis for dismissing the appeal of the petitioners. This approach of the learned Commissioner is not only erroneous but is clearly directed in a manner so that the petitioners do not get any relief on the grounds taken that too even on erroneous considerations. The legal process for dealing with the order dated 12.8.1999 is not to record a finding on the basis of an application which is not maintainable in the appeal of the petitioners, and that too even without Jamal and another being a party to the proceedings. This circumvented method to avoid legal hurdles is impermissible. In the opinion of the Court the order suffers from malice in law if not in fact at this stage. Prima facie the Court is satisfied that the order has been passed based on findings which are perverse and not consonance with the 1960 Act.

Until further orders of the Court, the operation of the impugned order dated 23.11.2011 shall remain stayed and the respondents and their agents are restrained from interfering with the possession of the petitioners over the land in dispute in any manner whatsoever during the pendency of the writ petition.

2. A counter-affidavit has been filed thereafter contending that the order of the appellate authority is justified yet during the arguments Sri Sanjay Goswami was unable to defend the order on the issue relating to the procedure undertaken

against Sri Jamal Ahmad. Jamal Ahmad has already filed a separate writ petition No. 70479 of 2011 challenging the action taken against him.

3. A perusal of the facts as extracted hererinabove demonstrates that the appellate authority has proceeded to shift the burden of proving the land to be irrigated or unirrigated on the petitioner. They have now filed a Khasra alongwith the counter-affidavit which ought to have been produced before the prescribed authority. The order therefore cannot be supported on the basis of any evidence that is adduced through the counter-affidavit at this stage before this Court. The petitioners will have to be given an opportunity to rebut any such evidence, if relied on by the State.

4. Apart from this the deductions claimed by the petitioners and the contentions raised in respect of each of the objections to the finding of the prescribed authority, also do not appear to have been dealt with in correct perspective.

5. Apart from this, the procedure adopted by the learned Commissioner by clubbing the case of the petitioners with that of Jamal Ahmad and then utilizing the orders passed therein for the purpose of dismissing the present case, is not in accordance with law. The petitioners' claim could not have been placed on a worse situation then that which existed at the stage of the prescribed authority. Nonetheless, for the reasons recorded in the order dated 7.12.2011, I see no either material through the counter-affidavit to take a different view as the order of the learned Commissioner cannot be sustained on merits. The consideration of each and every issue in accordance with the evidence led by the petitioners has to be followed by a finding without ignoring the objections taken. The learned Commissioner does not appear to have strictly complied with the directions of the High Court issued earlier in the judgment dated 26.4.2007.

6. Accordingly for the reasons aforesaid, the impugned order dated 23.11.2011 cannot be sustained and is hereby quashed. It shall be open to the appellate authority to pass a fresh order in accordance with law. The writ petition is allowed.