

(1981) 05 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 685 of 1980

Bhanu Pratap Singh and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 20-05-1981

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 13, 13A, 14

Citation : (1981) AWC 565

Hon'ble Judges : S.J. Hyder, J

Bench : Single Bench

Advocate : V.B. Singh, for the Appellant;

Final Decision : Allowed

Judgement

S.J. Hyder, J.—The question canvased before this Court is about the interpretation of Section 13-A of the U.P. Imposition of Ceiling on Land Holdings Act, hereinafter referred to as "the Act." There is no real controversy between the parties with regard to the facts of the case just hereinafter stated. Usual notice u/s 10(2) of the Act was issued to Bhanu Pratap Singh Petitioner No. 1. He contested the notice, inter alia, on the ground that he was entitled to an additional two hectares of land as one of his sons Surendra Pratap Singh had attained majority. After recording evidence in the case and after hearing the parties, the Prescribed Authority acceded to the said contention and accepted the case of the Petitioner No. 1 that his son Surendra Pratap Singh was major and Petitioner No. 1 was entitled to an additional two hectares of land under the Act. The State submitted to the decision of the Prescribed Authority and did not prefer an appeal. At the instance of the State Government, the Prescribed Authority issued a notice to the petitioner on January 21, 1977 purporting to be a -notice u/s 13-A. In the notice it was, inter alia, stated that on a further investigation made by the State, it has come to light that Surendra Pratap Singh was not a major and the order granting the benefit of an additional two hectares

of land to the Petitioner No. 1 was erroneous and was liable to be reviewed. Bhanu Pratap Singh, Petitioner No. 1, filed a reply to the said notice dated January 21, 1977. The then Prescribed Authority, Bareilly, did not record any evidence and passed an order dated May 5, 1973 holding that Bhanu Pratap Singh was not entitled to the benefit of additional two hectares of land as his son Surendra Pratap Singh had not attained the age of majority. Bhanu Pratap Singh made an application for setting aside the said order and the application was allowed by the Prescribed Authority by his order dated January 2, 1978. By means of this order, the Prescribed Authority set aside his earlier order dated May 5, 1977. The State then moved another application through the Naib Tehsildar (Consolidation) and the said application was rejected on February 1, 1978. Undaunted by this reverse, the State moved yet another application for setting aside the order dated January 2, 1978. This application was moved on February 4, 1978. The Prescribed Authority allowed this second application by the State by its order dated March 31, 1978 and recalled the order dated January 2, 1978. Against the order dated March 31, 1978, the State preferred an appeal u/s 13-A (2) read with Section 13 of the Act which was dismissed by the appellate Court by its order dated September 14, 1979. Bhanu Pratap Singh has, therefore, filed this writ petition for quashing the orders of the Prescribed Authority dated 5-5-1977 and 31-3-1978 and that of the appellate Court dated 14-9-1979.

2. The Petitioner has urged a number of grounds in support of the relief sought by him. Since this writ petition succeeds on one of these grounds, it is unnecessary to traverse and consider the other averments made on behalf of the Petitioner.

3. learned Counsel appearing for the Petitioner urged that the power conferred on the Prescribed Authority to review his order u/s 13-A of the Act is confined to a rectification of mistake apparent on the face of the record. The order passed by the Prescribed Authority as far back as December 31, 1974 could not be reviewed merely because the said order was considered to be erroneous on facts. This position has not been controverted on behalf of the State. On the other hand, learned Standing Counsel has urged that this writ petition should be dismissed on other ground which shall be presently noticed.

Sub-section (1) of Section 13-A reads as under :

13-A. Re-determination of surplus land in certain cases-(1) The Prescribed Authority may, at any time, within a period of two years from the date of notification under sub-section (4) of Section 14, rectify any mistake apparent on the face of the record :

Provided that no such rectification which has the effect of increasing the surplus land shall be made, unless the Prescribed Authority has given notice, to the tenure-holder of its intention to do so and has given him a reasonable opportunity of being heard.

4. Order 47 Rule 1 CPC confers power of review on a Civil Court. A Civil Court can review its judgment or order on the ground that a new and important matter of evidence has come to the knowledge of the party seeking the review which was not within his knowledge or could not be proved by him at the time when the decree was passed or orders made in spite of the exercise of due diligence. A Civil Court can also review its decree or order on account of an error apparent on the face of the record or for any sufficient reasons. On a comparison of the provisions contained in Section 13-A of the Act with those contained in Order 47 Rule 1 of the Code of Criminal Procedure it would appear that the power of the Prescribed Authority to review his order is narrower in its ambit than the power conferred on a Civil Court. In other words, the Prescribed Authority under the Act can exercise the power of review only on the ground that the order sought to be reviewed suffers from a mistake apparent on the face of the record. No other ground for review is available to the Prescribed Authority while exercising its powers u/s 13-A of the Act.

5. The question then is what is the meaning which can be given to the expression error apparent on the face of the record." It has been settled that a review is not by any means an appeal whereby any erroneous decision can be reheard and corrected. It lies only to correct a patent error. An error can be said to be patent only where without any elaborate argument, one could point to the error and say that here is a substantial point of law which stares one in the face and that there could reasonably be no two opinions about it. It is only when an error is of such a nature that it can be said to be an error apparent on the face of the record. See *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, .

6. Applying the test above laid down, there was no error apparent on the face of the record in the order of the Prescribed Authority dated December 31, 1974. May be that the said decision was erroneous on facts and a different view could be taken of the evidence by the Court of appeal. However, as already stated, the State submitted to the decision of the Prescribed Authority dated December 31, 1974 and did not prefer an appeal. The supposed error in the order dated 31-12-1974 which concerned a question of fact could not, therefore, be corrected by the Prescribed Authority while exercising powers u/s 13-A.

7. Learned standing counsel urged that the Petitioner has not averred in his writ petition that Surendra Pratap Singh had attained the age of majority on the relevant date and that this Court should not allow its prerogative jurisdiction under Article 226 of the Constitution to be invoked by the Petitioner. Bhanu Pratap Singh in his objection to the notice u/s 13-A has specifically stated that his son Surendra Pratap Singh had attained the age of majority on the relevant date. The Petitioner further averred in his reply that the Prescribed Authority should not allow its jurisdiction u/s 13-A of the Act to be invoked for setting aside the order dated December 31, 1974. The gist of the point taken by Bhanu Pratap Singh in his reply to the notice u/s 13-A of the Act have been repeated in paragraph 4 of the writ petition. This Court is not concerned with the

determination of the disputed questions of fact. That function has been assigned to the Prescribed Authority and the Court of appeal by the Act. The Prescribed Authority determined the disputed questions between the parties by its order dated 31-12-1974. In my opinion, it was not necessary for the Petitioner Bhanu Pratap Singh to state anything more before this Court relating to the facts of the case. The submission urged on behalf of the State is without substance and can not be accepted.

8. Learned standing counsel urged that the order of the Prescribed Authority dated 31-3-1978 was appealed against by Bhanu Pratap Singh although no appeal lay against the said order. This argument totally ignores the provisions of subsection (2) of Section 13-A of the Act. The said sub-section makes the provisions of Section 13 applicable to an order passed by the Prescribed Authority under sub-section (1) of Section 13-A. The appeal was, therefore, rightly preferred by Bhanu Pratap Singh against the order of the Prescribed Authority dated March 31, 1978.

9. There are four other Petitioners in this writ petition but nothing has been urged before me on their behalf. They are, therefore, not entitled to any relief.

10. The result is that this writ petition succeeds and is hereby allowed. The order of the Prescribed Authority dated January 21, 1977 and March 31, 1978 and that of the appellate Court dated 14th September, 1979, are hereby quashed. The Petitioner Bhanu Pratap Singh will be entitled to his costs. The writ petition on behalf of Petitioners 2 to 5 is dismissed.