

(1998) 02 AHC CK 0071

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7972 of 1983

Chandradhar Prasad Narayan Singh

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 11-02-1998

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 5(6)(b)
Expl.1, 5(6)(b) Expl.10(2)

Citation : (1998) 02 AHC CK 0071

Hon'ble Judges : S.N.Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 27121981 passed by the Prescribed Authority and the order dated 1431983 passed by the IInd Additional District Judge, Varanasi, respondent No. 2 partly dismissing the appeal of the petitioner.

2. The facts of the case in brief are that the proceedings under U.P. Imposition of Ceiling on Land Holdings Act, 1960 (in short referred to as the Act) were initiated against the petitioner. He was issued a notice under Section 10(2) of the Act proposing 38.113 acres of land as surplus land. The Prescribed Authority by its order dated 27121981 declared 38.033 acres of irrigated land as surplus land of the petitioner. The petitioner filed appeal against this order. Respondent No. 2 has partly allowed the appeal by order dated

1431983. The petitioner has filed instant writ petition challenging the part of the order whereby his appeal has been dismissed.

3. I have heard Shri Faujdar Rai, learned Counsel for the petitioner and the learned Standing Counsel on behalf of State of U.P.

4. The first submission of the learned Counsel for the petitioner is that 16.57 acres of land of village Vishwanathpur district Gorakhpur belonged to Sitakant Mishra and that has wrongly been taken as land belonging to the petitioner while

determining the surplus land of the petitioner. This submission is passed on the fact that one Sitakant Mishra filed suit for declaration of his right over the land in question covering area of 16.57 acres on 491972, under Section 229B of U.P. Zamindari Abolition and Land Reforms Act, before the Revenue Court against the petitioner. The State of U.P. was also impleaded as a party. The petitioner entered into a compromise. The suit of the plaintiff was decreed by the Revenue Court on 1871974.

5. The Prescribed Authority found that the decree was obtained after the appointed date i.e. 24th January, 1971 as such the decree has to be ignored in view of subsection (6) of Section 5 of the Act. The Appellate Authority upheld the view. It further found that decree was collusive.

6. The learned Counsel for the petitioner contended that the Gaon Sabha and the State of U.P. were parties in the suit filed by Sitakant Misra. They did not contest the suit. The decree passed in the said suit is binding upon them. They cannot challenge the decree in the present proceedings in regard to determination of the surplus land under the provisions of Ceiling Act. Clause (b) of Explanation I of subsection (6) of Section 5 of the Act, specifically provides that a declaration of a person as a cotenureholder after the twentyfourth day of January, 1971, 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 has to be excluded. Subsection (6) of Section 5 reads as under:

(6) In determining the ceiling area application to a tenure holder, 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:

Provided that nothing in this subsection shall apply to

(a) a transfer in favour of any person (including Government) referred to in subsection (2).

(b) a transfer proved to the satisfaction of the Prescribed Authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a benami transaction or for immediate or deferred benefit of the tenureholder or other members of his family.

Explanation I For the purposes of this subsection, the expression transfer of land made after the twentyfourth day of January, 1971, includes

(a) a declaration of a person as a cotenureholder made after the twentyfourth day of January, 1971 in a suit or proceeding irrespective of whether such suit or proceeding was pending on or was instituted after the twentyfourth 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.

Explanation H The burden of proving that a case falls within clause (b) of the proviso shall rest with the party claiming its benefit."

7. This provision clearly excludes any declaration made in respect of rights of the party in any suit has to be ignored. Sitakant Misra had filed the suit on 49/1972 viz. after the appointed date i.e. 24/1/1971. The suit was decreed on 18/7/1974 and further it was on the basis of admission of the claim of the petitioner. Such decree has to be ignored irrespective of nature of the decree and parties in that suit. The learned Counsel for the petitioner has placed reliance upon the decision in State of UP v. Madho Kumar, 1976 AWC 391, wherein it was held that collusive decree even for defeating the provisions of law would not be a nullity. It would be voidable decree and so long as it is not avoided by due process of law, it will remain binding on the parties to the suit. In this case the provisions of subsection (6) of the Act as existing today, was not considered. In Sanjay Kumar and another v. State of U.P. and others, 1995 RD 478, 1996(1) JCLR 68(SC) the auction had taken place of the property after the appointed date. In a decree passed by the Court, the Supreme Court taking into consideration the provisions of subsection (6) of Section 5 of the Act held that such sale is to be ignored. The Prescribed Authority was justified in ignoring the decree passed by the Revenue Court after 24th January, 1971 in the suit filed after the said date.

8. The judgment of the Revenue Court further indicates that it was passed on the basis of admission of the petitioner considering the entire facts which were on record. It has been found that the decree was not obtained bona fide. It was collusive. Respondents 1 and 2 rightly keeping in view the provisions concerned and facts and circumstances of the case, ignored the decree passed in the suit.

9. The second submission of the learned Counsel for the petitioner is that plots No. 1076/1266 area 0.07 is Abadi land and Plot No. 1966/1248 area 1.40 acres is Godhan (deed dug) and, therefore, these plots are liable to be excluded while determining the surplus land of the petitioner.

10. Respondent No. 2 has considered the arguments raised in this respect on behalf of the petitioner. Respondent No. 2 after considering the relevant entries of 1377F to 1379F, found that two crops were raised in these plots and the contention of the petitioner was rejected. It is a matter of assessment of evidence and I do not find any legal infirmity in the orders impugned in this writ petition.

11. In the result, there is no merit in this writ petition and it is accordingly dismissed with costs. Petition dismissed.