
(2012) 08 AHC CK 0100
In the Allahabad High Court
Case No : Writ Case No. 37950 of 2012

Chhatthu	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (2012) 08 AHC CK 0100

Hon'ble Judges : Sanjay Misra, J

Final Decision : Dismissed

Judgement

Sanjay Misra, J.—Heard Sri Ashok Tripathi, learned Counsel for the petitioner and learned Standing Counsel on behalf of respondents No. 1 to 3 as also Sri M.N.Singh, on behalf of respondent No. 4 Gram Sabha. Notice need not be issued to the respondents No. 5 to 8 in view of the order being passed herein.

2. A caveat has been reported on behalf of one Nurresa wife of Tebarak by Sri Satyendra Nath Tiwari advocate who has been served with a copy of the writ petition on 31.7.2012 but although the list of fresh cases has been revised, yet Sri Satyendra Nath Tiwari is not present.

3. By means of this writ petition, the .petitioner seeks to challenge the order dated 26.3.2012 passed in Case No. 59, Chhatthu v. Gaon Sabha, whereby the restoration application filed by State of U.P. has been allowed and the earlier order dated 4.6.2008 passed in proceedings under section 229B of the U.P.Zamindari Abolition & Land Reforms Act (for short "the Act") has been recalled, as also the impugned order dated 5.6.2012 passed by the Revisional Court in Revision No. 152/D2012, Chhatthu v. Mr. Lakhan Megh Dalan and others, whereby the revision filed by the petitioner has been rejected.

4. According to learned Counsel for petitioner, the petitioner had filed a suit under section 229B of the Act, which was decreed on 4.6.2008 wherein it was clearly recorded that the land in question was entered in the name of

respondents No. 5 to 8 herein but they had left the country and never came back and according to the statement of Gram Pradhan the petitioner is in possession over the land in question since last more than 50 years, therefore, he has acquired bhumidhari rights.

5. Learned Counsel for the petitioner has submitted that notices were issued and Gaon Sabha was duly represented and Gram Pradhan made statement before the Trial Court, therefore, the State could not have maintained the restoration application against said order but the Court below has illegally allowed the restoration application by the impugned order and restored the suit to its original number to be redecided afresh. No notice was given to the petitioner prior to passing the impugned order and the revision has also been illegally dismissed.

6. Learned Standing Counsel has submitted that the appearance of Gaon Pradhan in proceedings under section 229B of the Act does not amount to representation of the State. Since the recorded tenure holders left the country more than 50 years back, therefore, in the absence of any claim by their successor, the land vested in the State and as such, State was a necessary party and without impleading the State as a party respondent and without serving notice on the State, suit under section 229B of the Act was illegally decreed, therefore, the State could very well maintain the restoration application which has been rightly allowed by the order impugned.

7. Learned Standing Counsel has further submitted that the order impugned indicates that on the restoration application of the State, notice was issued to the petitioner which was duly served and report of service was available on record and when the petitioner chose not to appear in the proceedings, it cannot be held that the impugned order is ex parte.

8. Learned Standing Counsel has also submitted that the suit has been restored to its original number and requires to be decided on merits after considering evidence of both the parties, in as much as, the earlier decree dated 4.6.2008 was an ex parte decree and there is no finding therein with respect to the right of the State upon the original tenure holders leaving the country.

9. Having considered the respective submissions of learned Counsel for the parties and perused the record, it appears that the order impugned recites that on the restoration application of the State, notice was issued to the petitioner and after its service, the service report is available on record, therefore, it cannot be held that the restoration application of the State was allowed without issuing notice to the petitioner. The submission to the contrary is therefore, misconceived.

10. In so far as the second submission is concerned, admittedly the State was a party but it was not noticed in the suit and it was only Gram Pradhan who had appeared as a witness and gave his statement. The submission of learned Standing Counsel that the Gram Pradhan cannot be representative of the State, appears to have substance. The State was required to be noticed with regard to

its claim that the land was deemed vested in the State since the recorded tenure holders left the country never to return. Therefore, the restoration application filed by the State was rightly allowed by the impugned order holding therein that interest of the State requires to be considered in the suit filed by the petitioner claiming right over the land in question on the basis of possession. The impugned order on that score, therefore, cannot be held to be illegal, in as much as, the rights of the parties are yet to be decided in the suit under section 229B of the Act and the parties shall have full opportunity to lead their evidences before the Trial Court, which will have to decide the claim of the State as also the petitioner over the land in question.

11. The Revisional Court has affirmed the order dated 26.3.2012 passed by the Trial Court holding that entire proceedings before the Trial Court in the suit had been conducted ex parte against the State and therefore, the restoration application was correctly allowed.

12. From the aforesaid findings of Courts below it appears that the case of the State is on the basis of deemed vesting when the erstwhile tenure holders vacated the land and left the country without any successor, whereas the claim of the petitioner is on the basis that the recorded tenure holders left the country and the petitioner is in uninterrupted possession over the land in question. As such, when the ex parte decree passed under section 229B of the Act has been set aside on the restoration application of the State, it cannot be held that the rights of the parties have been adjudicated. The same is yet to be adjudicated in the suit itself.

13. Therefore, even after exchange of affidavits between the parties, such claims cannot be decided by this Court in writ proceedings, hence, no interference by this Court is required with the orders impugned whereby the parties have been given opportunity to get their claims adjudicated on the basis of their respective evidences.

14. The writ petition has no merits, it is accordingly dismissed.

However, it is made clear that passing of this order will no way affect the rights of the parties as claimed by them in its adjudication before the Courts below.

15. No order is passed as to costs.