
(1994) 11 AHC CK 0074

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 14407 of 1989

Deshpat Singh and Another

APPELLANT

Vs

State of U.P.through Collector,Lalitpur and Another

RESPONDENT

Date of Decision : 02-11-1994

Acts Referred:

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

Citation : (1994) 11 AHC CK 0074

Hon'ble Judges : Binod Kumar Roy, J

Final Decision : Partly Allowed

Judgement

Binod Kumar Roy, J.—In terms of the order dated 2.8.1989, I propose to dispose of this writ application at the admission stage itself.

2. The petitioners Deshpat Singh son of Deokinandan and Jahar Singh son of Deshpat Singh pray to quash the order dated 30.8:1986 passed by the Prescribed Authority Ceiling (Additional SubDivisional Officer), Lalitpur (Respondent No. 3) in Ceiling Case No. 1/8 of 198586 State v. Deshpat Singh as contained in Annexure5, declaring 21.76 acres of lands as surplus of petitioner No. 1 and the Appellate Order dated 12.7.1989 passed by the Additional Commissioner, Jhansi Division, Jhansi (Respondent No. 2) dismissing their Appeal No. 1/1/2 of 198889, as contained in Annexure6.

3. The relevant facts lie in a narrow compass: The petitioners assert that the land in question was Sir and Khudkasht of Mool Chand, grandfather of petitioner No. 1 and great grandfather of petitioner No. 2, which after the abolition of the Zamindari became Bhumidhari of Deokinandan (father of petitioner No. 1 and grandfather of petitioner No. 2) and they were tenancy of their Hindu joint family and was not selfacquisition and that after the death of Deokinandan in 1974. The petitioner No. 2 became cotenure holder alongwith petitioner No. 1 having 1/2 share. A notice under Section 10 (2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 was issued to petitioner No. 1 against which the petitioners filed objections separately asserting, inter alia that in view of the aforementioned

facts petitioner No. 2 accordingly acquired rights in the land in question by birth in which he has 1/2 share; that 2 acres of land were sold bona fide for valuable consideration to Beni Bai; that some land were acquired for forest and those lands should be excluded; that they should be allowed additional 2 hectares land for their wives and 8 members of the family; that petitioner No. 2 was major and separate and was in possession and so was entitled to 1/2 share as he was born before the abolition of Zamindari; and that no land is surplus and hence the notice is liable to be rejected. It appears that in order to prove their case, the petitioners examined themselves (copy of the deposition of the Petitioner No. 1 has been appended as Annexure3) and one Munnal Lai had filed Khatauni of 1359 Fasli and 1347 Fasli to show that the land was Sir and Khudkasht of Deokinandan. They also produced copies of the Kutumb Register, Birth and Death Entry Register of December 1948 (copy of which has been appended as Annexure4) On the other hand, the State examined the Lekhpal Kailash Narain. The prescribed authority by its order, as contained in Annexure5, held that petitioner No. 2 was not proved to be born before the abolition of the Zamindari and held 21.76 acres of single crop land as surplus. The petitioners went up in Appeal which was heard and dismissed vide order as contained in Annexure 6.

The Submission :

4. Shri K.N Saxena, the learned counsel for the petitioners, submitted as follows:

(i) Assuming that the land in dispute was Sir and Khudkasht, they being ancestral, the petitioner No. 2 would have held to half share in it. The Appellate Authority has committed an apparent error of record while making observation that none of the witnesses of the petitioners have stated that the land was inherited by Deokinandan from ancestors inasmuch as petitioner No. 1 in his deposition (copy appended as Annexure3) categorically stated that the name of

(ii) The "certified copy of the birth certificate of the Police Station filed by the petitioners clearly recorded the fact that a male child was born on 25.12.1948 to Deshpat Singh which coupled with the statements of petitioner Nos. 1 and 2 and Munna proved the fact that it was petitioner No. 2 alone who was born but the Appellate Authority did not consider that Birth Register which was a public document. There was no evidence from the side of State to show that petitioner No. 2 was not born before the abolition of Zamindari.

(in) The finding of the Appellate Authority about the second marriage of Deshpat Singh was also perverse inasmuch as it was performed before 1954 when second marriage was not prohibited. Accordingly, 2 acres of additional land should have been given as there were 8 members in the family including the second wife of petitioner No. 1.

5. Shri S.C. Mamgian, the learned Standing Counsel appearing on behalf of the respondents, on the other hand contended that the authorities have correctly recorded their findings and held petitioner No. 2 to be minor having born after abolition of zamindari and not entitled for any unit.

My finding :

6. I find substance in the contentions made by the learned counsel for the petitioners. The deposition of Petitioner has been appended as Annexure3. Petitioner No. 1 categorically stated in his deposition that the name of his father was Deokinandan and that of his grandfather Moolchand. When cross-examined by the State he had also categorically stated that the entire lands were Sir and Khudkasht lands from the time of his grandfather. Thus, the Appellate Authority has committed an apparent error of record in observing that none of the witnesses had stated that Deokinandan received lands from his ancestors. It appears that the Appellate Authority was not aware of the well settled principle of Hindu Law that a member of Hind Joint Mitakshara Family acquires an interest from birth. Further there was no question of receiving land from ancestors.

7. Coming to the findings recorded by the authorities in regard to the birth of petitioner No. 2, I find that they have not considered the documentary evidence adduced by the petitioners in accordance with law with whom was attached the presumptions of their correctness. I also find substance in the contention of the learned counsel for the petitioners that they have committed an apparent error in making capital out of trivial contradictions in the evidence of the witnesses of the petitioners which, if properly considered, would have led to the only conclusion that Petitioner No. 2 was born before the "abolition of zamindari and was, thus, entitled to a unit.

8. For the aforementioned reasons, I find that the findings recorded by the authorities are erroneous and stand vitiated.

9. In the result, this writ petition is allowed in part. The impugned Appellate Order is set aside and the appeal of the petitioners is remitted back for fresh consideration in accordance with law and in the light of the observations made as above.

10. In the peculiar facts and circumstances, I make no order as to cost.

11. Let a writ of certiorari issue accordingly. W.P. Party allowed.