
(1997) 10 AHC CK 0055

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9796 of 1997

Dharmendra Rai and Ors.

APPELLANT

Vs

State of U.P., through Collector, Padrauna & Ors.

RESPONDENT

Date of Decision : 24-10-1997

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 11(2)

Citation : (1997) 10 AHC CK 0055

Hon'ble Judges : R.H. Zaidi, J

Final Decision : Dismissed

Judgement

R.H. Zaidi, J.—Instant petition under Article 226 of the Constitution of India, arises out of the proceedings under U.P. Imposition of Ceiling on Land Holdings Act, 1960 (for short the Act), and is directed against the order dated 1921997, passed by the Appellate Authority in exercise of powers under Section 13 of the Act, allowing the appeal filed by the respondent No. 1, against the order passed by the Prescribed Authority.

2. Relevant facts of the case are that plot No. 1210/2, measuring 3.25 Acre (new plot Nos. 153 "ka" and 153 "kha" hereinafter referred to as the land in dispute, situated in village Mathia Jai Kishun, Tppa Dandopur, Pargana Sidhua Jobna, Tehsil and District Padrauna, was treated as part of the holding of Smt. Mohini Devi and others and was declared as surplus by the Prescribed Authority, vide its judgment and order dated 304 1994, which has become final. Petitioners thereafter filed objection under Section 11(2) of the Act. claiming that they were the tenureholders of the land in dispute on the basis of gift deed alleged to have been executed by Sri Maheshwari Rai in their favour. It was pleaded that the petitioners were in possession of the land in dispute, the same was therefore liable to be excluded from the holding of Smt. Mohini Devi and others long before the enforcement of the Act, they, became the owners of the land in dispute. Their names were also mutated in the revenue papers. The land in dispute was wrongly treated as part of the holding of Smt. Mohini Devi and others, and was

illegally declared as surplus vide judgment and order dated 30/4/1994. As soon as the petitioners came to know about the aforesaid order they filed an application under Section 11 (2) of the Act, and prayed for exclusion of the land in dispute from the surplus land. In support of their cases petitioners have filed extract of Khatauni for the years 1359F, 1362F and 1366F, besides other documentary evidence and also produced petitioner No. 1, Dharmendra Rai as witness. The application filed by the petitioners was opposed by the respondent No. 1, the State of U.P., and not by the recorded tenureholders. Prescribed Authority referred to the Khatauni entries, and relying upon the documentary evidence, noted above, held that Maheshwari Rai, father of Dharmendra Rai was the owner and in possession of the land in dispute. After him the petitioners were in possession of the same and allowed the application filed by the petitioners. The land in dispute was directed to be excluded from the surplus land declared out of the holding of Smt. Mohini Devi and others by its judgment and order dated 22/11/1996. Aggrieved by the judgment and order passed by the Prescribed Authority, the State of U.P., respondent No. 1, filed an appeal before the Appellate Authority. The Appellate Authority, for the reasons recorded in the judgment disbelieved and discarded the aforesaid revenue entries and on the basis of the said entries declined to recognise the petitioners as owners/tenureholders of the land in dispute. After reversing the findings recorded by the Prescribed Authority, the appeal was allowed by the judgment and order dated 19/2/1996. The petitioners thereafter filed the present petition challenging the validity of the order passed by the Appellate Authority, referred to above.

3. Learned Counsel for the petitioners vehemently urged that the appeal was filed by the respondent No. 1 against the order passed by the Prescribed Authority beyond the period of limitation, the same was, therefore, liable to be dismissed, the Appellate Authority exceeded in its jurisdiction in allowing the appeal without condoning the delay. It was also urged that the Appellate Authority reversed the order passed by the Prescribed Authority without reversing the findings recorded by it, and without taking into consideration the relevant evidence on the record, particularly oral evidence.

4. On the other hand learned standing Counsel submitted that the delay in filing the appeal was condoned by the Appellate Authority on an application filed by the State and thereafter the appeal was decided in accordance with law. It has also been submitted that the Appellate Authority has taken into consideration the entire relevant evidence on the record and after reversing the findings recorded by the Prescribed Authority rightly set aside the order passed by the Prescribed Authority in accordance with law, the findings recorded by the Appellate Authority are findings of fact, which are based on evidence on the record, and the same cannot be interfered with under Article 226 of the Constitution of India.

5. I have considered rival submissions made by the learned Counsel for the parties and perused the record.

6. It is evident from the objection filed by the petitioners before the Appellate

Authority (paragraph 7 on page 57 of the writ petition and also from AnnexureSA 2 to the Supplementary Affidavit, whereby the delay in filing the appeal was fully explained) that the petitioners objected to the condonation of delay in filing the appeal. However, before the Appellate Authority objection regarding limitation and condonation thereof was not raised as in the impugned order there is no reference of the said objection. It appears that the said objection was either given up by the petitioners, or the delay was condoned by the Appellate Authority. From the material on record the learned Counsel for the petitioners has failed to substantiate his argument that the appeal was decided by the Appellate Authority without condoning the delay. It is a question of fact, therefore, I decline to permit the learned Counsel for the petitioners to raise the said point for the first time before this Court under Article 226 of the Constitution of India.

7. So far as the objection regarding reversal of the order passed by the Prescribed Authority without reversing the findings recorded by it is concerned, it is apparent from the record that the Prescribed Authority allowed the objection merely relying upon the documentary evidence produced by the petitioners. Oral evidence, consisted of the statement Dharmendra Rai, the sole witness of the petitioners, which although was referred to in the judgment of the Prescribed Authority, but it was neither believed nor disbelieved, and in presence of documentary evidence on the record, the oral statement of Dharmendra Rii was of no consequence. The Appellate Authority examined the revenue entries referred to and relied upon by the petitioners. It has been held that in 1356 F the land in dispute was recorded as Dhoos. It was for the first time in the year 1359 F that the name of Sri Maheshwari Rai was entered that too on the basis of alleged order of some one known as Shiv Shankar, Kanoongo. Neither the copy of the order was produced before the authorities below nor has been filed alongwith the writ petition. Learned Counsel for the petitioner has shown his inability to produce the copy of the said order. In the absence of an order of a competent authority/Court the name of Maheshwari Rai could not be entered in the revenue papers. The Appellate Authority, therefore, rightly doubted the genuineness and validity of the entry of 1359 F. The entries of 1360 F and 1362 F were based on the entry made in the year 1359F, they were therefore rightly discarded. It has rightly been observed by the Appellate Authority that ceiling record was prepared on the basis of the basic year, entry i.e. of 1378F, which was conspicuously not filed by the petitioners. The Appellate Authority, therefore, rightly declined to recognise the petitioners as owners/tenure holders of the land in dispute. Since the Prescribed Authority itself did not rely upon the statement of Dharmendra Rai, the petitioner No. 1, even if the Appellate Authority did not refer to the said statement, the same did not cause any prejudice to the petitioners and on that account the order passed by the Appellate Authority cannot be said to be bad in law. Under the facts and circumstances the Appellate Authority rightly arrived at conclusion that the revenue papers referred to and relied upon by the petitioners were farzi and fictitious and on the basis of the

same the petitioners cannot acquire title in the land in dispute.

8. Learned Counsel for the petitioners referred to and relied upon the decisions of Supreme Court in the case of Smt. Sawamiv. Smt. Inder Kaur and others, AIR 1996 SC 2823, wherein it has been ruled that without reversing the findings recorded by the trial Court, the Appellate Court cannot reverse the decree passed by the trial Court. The said decision is not applicable to the present case, inasmuch as, stated above the findings recorded by the Prescribed Authority have specifically been reversed by the Appellate Authority after discussing the relevant evidence which formed part of the record.

9. In view of the aforesaid discussion, no case for interference under Article 226 of the Constitution of India is made out. Writ petition has got no merit and is liable to be dismissed.

10. Writ petition fails and is dismissed in limine Petition dismissed.