

(1977) 05 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 734 of 1977

Ghana Ram and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 19-05-1977

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974 — Section 38B, 9
Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 — Section 31, 31(3)
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 12(2), 38B, 5, 5(1)

Citation : (1977) AWC 415

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : G.N. Verma, for the Appellant;

Final Decision : Allowed

Judgement

R.M. Sahai, J.—Determination of 25.2 acres of irrigated land as surplus under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Act) by the Prescribed Authority, affirmed in appeal, has been assailed as it was contrary to the principles contained in Section 5 of the Act. The challenge is founded on the strength, firstly, of a judgment given by the Prescribed Authority declaring Jaipal (one of the sons) to be minor. Reliance was also placed on the partition decree between the father and sons passed in 1970, although given effect in revenue papers after 24-1-1971. The most interesting objection was denial of Srimati Saraswati being his wife.

2. In order to substantiate that Srimati Saraswati was not the legally wedded wife, Petitioner No. 1 examined himself, Srimati Saraswati and Nand Ram who was alleged to be her husband. The keenness to save as much land as possible prompted the Petitioner to disown, even, his wife. The statement of Lekhpal, cannot be taken as relevant evidence either for establishing the marriage or that

the Petitioner and Srimati Saraswati were living together and leading a marital life. But the lower appellate court has appreciated the oral evidence and has recorded a finding that Srimati Saraswati was the wife of the Petitioner. Apart from oral evidence, he has drawn support for his conclusion from the entry in the revenue extract wherein she is entered as the wife of the, Petitioner. The finding has not been shown to be erroneous or illegal.

3. The argument that the finding recorded in the earlier ceiling case that Srimati Saraswati was not the wife of the Petitioner operates as *res judicata* is untenable. Section 38B of the Act reads as under:

38-B. No finding or decision given before the commencement of this section in any proceeding or on any issue (including any order, decree or judgment) by any court, tribunal or authority in respect of any matter governed by this Act, shall bar re-trial of such proceeding or issue under this Act, in accordance with the provisions of this Act as amended from time to time.

It is admitted that the earlier judgment was given before the commencement of this section which became effective from October, 1975. The matter whether Srimati Saraswati is a member of the Petitioner's family is governed by the provisions of this Act. A re-determination of surplus area has to be done due to change in the definition of the word "family" which has a bearing on the Petitioner's case. The notice issued u/s 10(2) of the Act cannot be said to be invalid.

4. So far as the question of minority of Jaipal is concerned, it was decided in the earlier ceiling case against the Petitioner. Between the issue of the first notice and the second notice u/s 10(2) of the Act no amendment has been made in law which can be said to affect the question of minority. As such no re-determination could be done as contemplated u/s 31(3) of Act XX of 1976. The Prescribed Authority was, therefore, justified in rejecting the Petitioner's plea as the matter stood concluded by the earlier judgment. It is true that the appellate court did not record any specific finding on the question of minority or otherwise, nor did it reject the plea of the Petitioner as being barred by *res judicata* yet, in view of what I have stated above, I do not think there is any ground for interference on this score.

5. The partition decree of 1970 has been found by the Prescribed Authority to be fictitious. The Additional District Judge has, on curious reasons, dismissed the appeal. Kripa Ram and Chatur Ram, sons of Petitioner No. 1 and impleaded as Petitioners Nos. 3 and 4, were entered in the revenue extracts as tenure-holders in pursuance of the decree of 1970 since 1380 Fasli. The first question is whether the authorities under the Ceiling Act could go behind the decree and examine its validity or otherwise.

6. Sri Yudhisthira, the learned Standing Counsel, pitched his implicit faith in Section 38-B read with Section 9 of Act II of 1975 and Section 31 of Act XX of 1976. Section 9 of Act II of 1975 reads as under:

9. Transitory provision- Where an order determining the surplus land in relation to a tenureholder has been made under the Principal Act, before the commencement of this Act. the Prescribed authority may, at any time, within a period of two years from the commencement of this Act, re-determine the surplus land in accordance with the Principal Act as amended by this Act.

The provision obviously does not apply as re-determination is envisaged only if it is necessitated due to an amendment in the principal Act. That there has been no amendment or change cannot be disputed. The provisions of Section 31(3) of Act XX of 1976 are similar in nature and, for the same reasons, do not help the arguments of the Standing Counsel.

7. Nor can the provisions of Section 38B be of any assistance. The argument of the learned Standing Counsel that the section puts in jeopardy every judgment of any court and the ceiling authorities are not found by it does not appear to be correct. The Legislature could not have intended such a chaotic situation as is suggested by the learned Standing Counsel. As pointed out in Civil Misc. Writ No. 245 of 1976, it was in furtherance of Section 31 added by U.P. Act No. XX of 1976 that this section was inserted. Section 31 empowered the Prescribed Authority to re-determine the surplus land only if it was necessitated due to amendment in the principal Act. In other respects the judgment was final u/s 12(2). To remove any hurdle in re-determination, the finality of the judgment or finding has been taken away by this section. Sri Yudhisthira has relied on the words "including any order, decree or judgment by any court, tribunal or authority" and has vehemently argued that it is indicative that the bar has been lifted from any judgment given by any court and maintains that the ceiling authorities can adjudicate upon judgments given by civil or revenue courts.

8. If this argument is accepted, it shall bring forth anomalous results. The argument is in disregard of the words "in respect of any matter governed by this Act." The finding or decision shall not operate as res judicata only in respect of such matters. The matter governed by this Act is determination of the ceiling area. Any judgment or finding rendered in this regard before the commencement of Section 38B (October, 1975) by any court or authority shall not operate as res judicata. The use of the words is, I must confess, unhappy. But, on a close scrutiny and keeping in view the objective of its enactment, I have reached the conclusion stated by me above.

9. The lower appellate court for not accepting the decree has given two reasons: (1) The sons were not in physical possession on 24-1-1971 as the Amaldaramad was made in 1380 Fasli (2) Without disbelieving the statement of the Petitioners that they are living separately, he believed the statement of the Lekhpal that they were in joint possession. He also felt difficulty in believing that the property would be suddenly partitioned in 1970. Sub-section (7) of Section 5 reads as under:

5(7) - In determining the ceiling area applicable to a tenure-holder, any partition

of land made after the twenty-fourth day of January, 1971, which but for the partition would have been declared surplus land under this Act shall be ignored and not taken into account.

Provided that nothing in this Sub-section shall apply to a partition of a holding made in a suit or a proceeding pending on the said date.

Provided further that notwithstanding anything contained in the preceding proviso, the Prescribed Authority, if it is of opinion that by collusion between the tenure-holder and any other party to the partition, such other party has been given a share which he was not entitled to, or a larger share than he was entitled to, may ignore such partition.

Explanation I- if a suit is instituted after the said date for declaration that a partition of land has taken place on or before the said date, then such declaration shall be ignored and not be taken into account and it shall be deemed that no partition has taken place on or before the said date.

Explanation II- the burden of proving that a case falls within the first proviso shall rest with the party claiming its benefit.

It appears that the authorities passed the order in complete ignorance of this provision. They appear to have treated this case as one covered by Explanation II to Sub-section (1) of Section 5. A close reading of this sub-section along with the provisos and explanations makes it clear that the ceiling authorities shall be precluded from examining the validity or otherwise of a partition decree passed before 24-1-1971.

10. The result is that this petition is allowed and the orders passed by opposite-parties Nos. 2 and 3 are quashed. The Prescribed Authority is directed to recalculate the ceiling area in the light of the observations made above. Parties shall bear their own costs of this petition.