

(2012) 09 AHC CK 0081

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10146 of 1999

Gopal Gaushala and Another

APPELLANT

Vs

Additional Commissioner (Judicial) Jhansi Divison Jhansi and
Others

RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2),
13A(1), 14, 27(3), 6

Citation : (2012) 11 ADJ 319 : (2013) 3 AWC 2730

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : G.N. Verma, R.K. Pandey, Shashi Kant Shukla, Rajeev Trivedi, B.P. Singh and Rajeev Tiwari, for the Appellant; P. Chandra, S.K. Shukla, V.K. Rai and C.S.C, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble B. Amit Sthalekar, J.—By this writ petition, the petitioners are challenging the orders dated 31.3.1995 and the order dated 6.3.1999 passed by the A.D.M. (Finance), Banda and by the Commissioner, Banda Division, Banda respectively. The case of the petitioners, in brief, is that the petitioner is a religious and charitable Society situate in Rasin, Banda and was established in the year 1928 by late Shri Shambhu Prasad. The Society was registered under the Societies Registration Act, 1860 in the year 1936 and registration No. 40/36-86 was allotted. The aims and objects of the Society was the promotion of Hindi and Sanskrit languages and to serve handicapped and disabled cows etc. For the purposes of improvement of Hindi and Sanskrit languages a Sanskrit Mahavidyalay in the name of Gopal Hindi Sanskrit Pathshala, Rasin was established and for the purposes of protection of disabled cows a Gopal Gaushala was established in Rasin itself. The Society has also established Sankatmochan, Smt. Phoolmati Devi and Radha Krishna temples. After the enactment of

Gaushala Adhiniyam, 1964 the Gaushala maintained and managed by the Society was also registered with the Registrar, Gaushala U.P. Lucknow.

2. The case of the petitioner further is that one Shesh Narain alongwith Shri Ram Chandra misappropriate and mismanaged the affairs of the Society whereupon the petitioner No. 2 filed a suit No. 146 of 1969 (Jamuna Prasad v. Hardeo Jee) u/s 92 of the Code of Civil Procedure. The suit was decreed in favour of the petitioner No. 2 who was appointed as Survroykar (trustee) of the entire Trust. Subsequently, the elections of the Society were held and the petitioner No. 2 was elected President thereof.

3. It is also submitted that in the year 1975 a notice u/s 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (the Act, 1960) was issued to the petitioner-Society wherein 57.754 hectares of land was declared to be surplus. The petitioner-Society filed its objections. The objections were duly considered by the Prescribed Authority-Dy. Collector (Revenue), Banda and thereafter the notice was withdrawn by order dated 30.6.1976 on the ground that since the objector was a religious and charitable Trust which was exempt under the provisions of Section 6-F of the Act, 1960, therefore, the notice was not maintainable so far as the Trust (petitioner) was concerned. Thereafter, after the expiry of about 13 years, a second notice was issued on 4.12.1989 declaring 50.454 hectares of irrigated land as surplus. The petitioner again filed his objections and contested the case before the Competent Authority. However, the Competent Authority by the order dated 31.3.1995 has rejected the objections and has declared 50.454 hectares of land as surplus.

Aggrieved by the order dated 31.3.1995 the petitioner preferred an appeal before the Commissioner, Banda Division, Banda which has also been rejected by the second impugned order dated 6.3.1999.

4. I have heard Shri B.P. Singh, learned Senior Counsel assisted by Shri Rajeev Tiwari, learned counsel for the petitioner and Shri Mata Prasad, learned Additional Chief Standing Counsel appearing for the State-respondents. Shri Pradeep Chandra, learned counsel has filed an impleadment application dated Nil but the affidavit of which was sworn on 17.12.1999 for impleadment of the persons to whom the land declared surplus was subsequently allotted. He has sought the impleadment of these persons as respondent Nos. 4 to 112. This application is being taken up at the outset. The dispute regarding declaration of land as surplus under the Act, 1960 is squarely between the tenure holder and the State Government and the subsequent allottees of the surplus land have no right or locus in any such dispute. That being the position this impleadment application is totally misconceived and is accordingly rejected.

5. Shri B.P. Singh, learned Senior Counsel has submitted that in the Suit No. 146 of 1969 which was subsequently decreed in favour of the petitioner No. 2, the petitioner No. 2 was declared to be the trustee of the entire Trust properties and it is this very property which became the subject-matter of first notice issued u/s

10(2) of the Act, 1960 in the year 1975. The petitioner No. 2 as trustee filed his objections to the said notice and ultimately the Prescribed Authority-Dy. Collector (Revenue) Banda Division, Banda withdrew the said notice by his order dated 30.6.1976. In the said order he has discussed in detail the properties which were part of the religious and trust properties including the Gaushala and the temples as well as the educational institution established by the Trust. The Prescribed authority thereafter referring specifically to the provisions of Section 6(1)(f) of the Act, 1960 has withdrawn the said notice u/s 10(2) on the ground that the trust properties are part of religious and charitable endowment and are therefore, exempted u/s 6 (1)(f) of the Act, 1960 from ceiling proceedings.

6. It is further submitted by the learned Senior Counsel that subsequently after a lapse of about 13 year son 4.12.1989 a second notice was issued u/s 10(2) of the Act, 1960. His preliminary objection is that the second notice having been issued after more than 13 years from the date of first notice, the second notice was wholly without jurisdiction in view of specific provision of Section 13-A(1) of the Act, 1960. The provisions of Section 13A(1) read as under :

13-A. Redetermination of surplus land in certain cases.--(1) The Prescribed Authority may, at any time, within a period of two years from the date of the notification under sub-section (4) of Section 14, rectify any mistake apparent on the face of the record:

Providing that no such rectification which has the effect of increasing the surplus land shall be made, unless the Prescribed Authority has given notice to the tenure-holder of its intention to do so and has given him a reasonable opportunity of being heard.

Learned counsel, therefore, submits that the statute itself provides a period of two years within which the Prescribed Authority may rectify any mistake apparent on the face of record in respect of the notification but if such an exercise has to be under taken it must be taken in time within a period of two years from the date of the first notification.

7. The second objection raised by learned Senior Counsel is that in the first order dated 30.6.1976 passed by the Prescribed Authority, while withdrawing the notice issued u/s 10(2) of the Act, 1960, has discussed in detail the very same properties, namely, Gaushala, Sanskrit Mahavidyalay and the temples established by the religious and charitable Trust-petitioner as well as the details of the land and the water bodies situate on the land in question and by a reasoned and detailed order has come to the conclusion that the entire land is liable to be granted exemption under the provisions of Section 6 (1)(f) of the Act, 1960. Learned Senior Counsel, therefore, submits that the findings recorded by the Prescribed Authority in the impugned order dated 31.3.1995 virtually amount to a review of the earlier order dated 30.6.1976 and the earlier order having become final inasmuch as no appeal against the said order was filed by the petitioner or by the State Government, it was not open for the Prescribed

Authority to re-examine the factual aspect of the land and Gaushala and temples managed by the petitioner-Trust.

8. The submission of learned Senior Counsel further is that the Civil Court in suit No. 146 of 1969 has dealt with the entire properties which formed the subject-matter of the religious and charitable Trust held by the petitioners and after examining the matter on merit proceeded to appoint the petitioner No. 2 Jamuna Prasad Tripathi as the trustee of the entire properties held by the Trust-petitioner.

9. In support of his submissions, learned Senior Counsel has referred to a decision of this Court in *Randheer Verma v. State of U.P. and others*, 1985 ALJ 423, wherein this Court while interpreting the provisions of Section 27(3) of the Ceiling Ordinance which provided that the determination could be made only within two years from the commencement of the Ordinance has held that redetermination could be made only within this period and not after expiry of the said period.

10. Per contra, learned Additional Chief Standing Counsel submitted that certain new facts have come within the knowledge of the Prescribed Authority, therefore, it was well within his power to issue a second notice u/s 10(2) and the impugned order dated 31.3.1995 is a detailed and reasoned order and, therefore, does not call for any interference by this Court. It is further submitted that there were certain amendments in the Act and it was well within the power of the Competent Authority to issue a second notice, notwithstanding the two years bar in the statute.

11. Having considered the submissions of learned counsel for the respective parties, the facts which emerge are that the properties, which have been discussed in the order of the Prescribed Authority dated 31.3.1995 were also the subject-matter of the earlier notice issued u/s 10(2) of the Act, 1960 and have been dealt with elaborately by the Prescribed Authority in his order dated 30.6.1976. It is also not in dispute between the parties that these very properties were also the subject-matter of the decree of the Civil Court passed in suit No. 146 of 1969 and it is only thereafter that the petitioner No. 2 was appointed as trustee of the entire property. The fact of the matter, therefore, remains is that if the entire property, which is part and parcel of the Society run by the petitioner-Trust, whether the petitioner is entitled for exemption u/s 6 (1) (f) and 6(1)(g) of the Act, 1960. This aspect of the matter has already been considered by the Prescribed Authority in his earlier order dated 30.6.1976 and it is only then the earlier notice was withdrawn.

12. So far as the question of certain amendments being made in the statute in Section 6 of the Act, 1960, in respect of lands which are exempt from the purview of the Ceiling Act, the only amendment is that clause (g) has been added in Section 6(1) of the Act which reads as follows :

6(1)(g)-land held from before June 8.1973, by a Goshala of a public nature, registered under the Uttar Pradesh Goshala Adhiniyam 1964, to the extent

prescribed.

It is to be noted that this amendment has been brought into effect by the U.P. Act No. 2 of 1975 w.e.f. 8.6.1973 and this itself was already in existence when the first notice u/s 10(2) was withdrawn by the Prescribed Authority by his order dated 30.6.1976 in view of the provisions of Section 6(1)(f) or Section 6(1)(g) of the Act, 1960. The reasons given by the Prescribed Authority while passing the impugned order dated 31.3.1995 relying upon the amendment, made in Section 6(1)(f) are therefore wholly inconsequential and unsustainable in law inasmuch as this amendment was already in existence when the U.P. Act No. 2 of 1975 was published and the amendment was enacted w.e.f. 8.6.1973.

Even otherwise, in view of the specific provisions of Section 13-A(1) of the Act, 1960, the second notice having been issued on 4.12.1989 was clearly barred by limitation prescribed in Section 13A(1) and the impugned order dated 31.3.1995 and the appellate order dated 6.3.1999 are, therefore, totally void.

In view of the above analysis of the fact situation and the legal position, the impugned orders dated 31.3.1999 and 6.3.1999 are absolutely illegal and without jurisdiction and in violation of the specific provisions of Section 13A(1) as well as Section 6(1) (f) and 6 (1)(g) of the Act, 1960 and are, therefore, quashed.

The writ petition is allowed. There shall be no order as to cost.