
(1977) 08 AHC CK 0064
In the Allahabad High Court
Case No : Writ Petition No. 556 of 1971

Kailash Bux Singh and Another	Vs	APPELLANT
Gauri Shankar and Others		RESPONDENT

Date of Decision : 09-08-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 202

Citation : (1978) AWC 75 : (1978) RD 116

Hon'ble Judges : D.N. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Jha, J.—The Petitioner has filed this petition under Article 226 of the Constitution praying for quashing of the order dated 22-12-1970 passed by the Board of Revenue.

2. In brief the facts are that opposite parties 1 and 2, Gauri Shankar Hansrajeshwari Ji Deity and Mahabir Swami Ji Deity, instituted a suit u/s 202 of the U.P. Zamindari Abolition and Land Reforms Act about the land situate in village Bihi Nadura, Pergana Isoli, Tahsil Musafirkhana. District Sultanpur, on the ground that the Petitioners were held to be Asamis. This suit was filed on the ground that the deities wanted to bring the land in suit under their personal cultivation. The suit was resisted on behalf of the Petitioner. The Judicial Officer, Sultanpur, by this order dated 25-11-1966 dismissed the suit. Opposite parties 1 and 2 went up in appeal but the same was dismissed by the Additional Commissioner, Faizabad, on 26-10-1967. This order is Annexure 4, The opposite parties then went up in second appeal before the Board of Revenue decreed the suit of the opposite parties. This order is dated 22-12-1970 passed by Sri P.P. Bhatnagar, Hon'ble Member, Board of Revenue and is Annexure 5. This is how the matter has now been brought before this Court and it is urged that the order passed by the Board of Revenue is manifestly erroneous and the right of the

Petitioner have been seriously affected. This petition has been contested on behalf of opposite parties 1 & 2 and a counter affidavit has also been filed.

3. I have heard learned Counsel for the parties. The sole contention raised by learned Counsel for the Petitioner is that the Board of Revenue erred in holding that the deities could cultivate the land through their Mutwalli and cultivation on their behalf by the Mutwalli shall be deemed to be the personal cultivation of the Plaintiff-Appellants. Learned Counsel maintained that the deities cannot cultivate the land personally and placed reliance on the case of *Shri Kalanka Devi Sansthan Vs. The Maharashtra Revenue Tribunal, Nagpur and Others*, . Hon'ble Grover, J. speaking for the Court placed reliance over the observations made in the case of *Shri Keshoraj Deo Sansthay Karanja v. Bapurao Deoba* 1964 Mah. LJ 589 where in it was observed:

It should thus appear that the legislative intent clearly is that in order to claim a cultivation as a personal cultivation there must be established a direct nexus between the persons who make such a claim, and the agricultural processes or activities carried on the land. In other words, all the agricultural operations, though allowed to be done through hired labour or workers must be under the direct supervision, control or management of the landlord. It is in that sense that the words "personal supervision" must be understood. In other words, the requirement of personal supervision under the third category of personal cultivation provided for in the definition does not admit of an intermediary between the landlord and the labourer, who can act as agent of the landlord for supervising the operations of the agricultural worker. If that is not possible in the case of one landlord, we do not see how it is possible in the case of another landlord merely because the landlord in the latter case is a juristic person.

4. It appears, therefore, that the intention of the legislature was clear that the cultivation of the land concerned must be by natural person and not by legal person. I find that the learned Member, Board of Revenue, has imported the concept that through Mutwallis cultivation is possible and that would be deemed to be personal cultivation of the deities. The learned Member has not tried to analyse the whole thing and it appears that he proceeded to decide it on the assumption that the deity has a juridical status with the power of suing and being sued and since its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, permit the manager to work for deity like the manager or guardian who looks after the interest of a minor. It may be mentioned that the basic idea behind the enactment of the U.P. Zamindari Abolition and Land Reforms Act basically was to remove the intermediaries. The learned member should have looked into the various provisions of the Act and should have analysed whether such intermediaries as Mutwallis could be permitted to cultivate and the cultivation by Mutwallis on behalf of the deities could be deemed to be personal cultivation by the deities. I may mention that the learned Member, Board of Revenue, in a most wanton manner disposed of

the real issue between the parties. If personal cultivation was not possible within the provisions of law then the suit irrespective of any other legal position could not be held to be maintainable. The maintainability of the suit as a matter of fact was the basic question involved in the dispute raised between the parties. This required a deeper study. It is obvious that the view expressed by the Board of Revenue is not in accordance with law enunciated by the Supreme Court in *Kalanka Devi Sansthan v. The Maharashtra Revenue Tribunal, Nagpur* (supra). The order passed by the Board of Revenue is manifestly contrary to law. It will, however, be open to the parties to assist the Board of Revenue in the light of the various provisions contained in the U.P. Zamindari Abolition and Land Reforms Act to satisfy about the maintainability or non-maintainability of the suit. This question is being left open as, the entire evidence is not brought on the record of this Court.

5. The result is that the writ petition succeeds and is allowed. The order passed by the Board of Revenue and contained in Annexure 5, dated 22-12-1970, is quashed. Let certiorari issue accordingly. I further direct that the Board of Revenue will restore the second appeal to its original number and proceed to dispose it of in the light of the observations made above and in accordance with law. Let mandamus issue accordingly.

6. I, however, make no order as to costs.