

(2009) 04 AHC CK 0238

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20934 of 2009

Lachman and another

APPELLANT

Vs

Addl. Commissioner (Judicial), Moradabad Division,
Moradabad And Others

RESPONDENT

Date of Decision : 29-04-2009

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 38B

Citation : (2009) 04 AHC CK 0238

Hon'ble Judges : A.P.Sahi, J

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Admit.

2. Issue notice to the respondent Nos. 4 to 18. Steps be taken within 10 days.

3. Learned Standing Counsel has accepted notice on behalf of the respondent Nos. 1, 2 and 3.

4. The matter had been adjourned to enable the learned counsel for the petitioners to file a supplementary affidavit bringing on record the details of the lands, which were purchased by the petitioners through sale deeds dated 26.5.1970. The learned counsel was also called upon to file a copy of the order of the prescribed authority dated 14.12.1976. Both these documents are on record through a supplementary affidavit duly filed today upon service on the learned Standing Counsel.

5. The contention advanced is that the land of the petitioners, which had been acquired through the sale deed dated 26.5.1970 are as follows:

Plot No. 83/1, area 19 Bighas 9 Biswa. Plot No. 84, area 10 Biswa. Plot No. 91, area 1 Biswa. Total area 20 Bighas.

6. The aforesaid plots have been shown as the holding of Khata Nos. 82 and 104 (new Khata Nos. 170 and 189), Village Chandain, Tehsil Bilaspur, District Rampur.

The said land continues to be recorded in the name of the petitioners.

7. The disputed plots became subject matter of ceiling proceedings against one Smt. Kartar Kaur, who is stated to be the real owner of the said plots and that the land had been transferred in the name of the petitioners, who were merely ostensible owners. The said proceedings culminated in the order of the prescribed authority dated 14.12.1976, where issue No. 1 was clearly framed in respect of the said land to the aforesaid extent. The issue was answered against the petitioners. The petitioners preferred an appeal and the said appeal was allowed by the appellate authority on 18.2.1977, copy whereof is Annexure 3 to the writ petition. According to this judgment the land of the petitioners were to be excluded from the ceiling notice after recording a finding that the order of the prescribed authority is erroneous on that score.

8. Learned counsel for the petitioners contends that the said appellate order became final between the State and the petitioners and therefore, the said issue which has already been decided by the appellate authority could not have been reopened, in so far as the petitioners are concerned to that extent. It was urged that the second notice, which was issued, was erroneous. The prescribed authority again including the said land, proceeded against the son of Smt. Kartar Kaur after her death in 1978 and thereafter held once again that the said land was surplus. An appeal was again filed against the order of the prescribed authority and the appellate Court allowed the appeal vide order dated 13.4.1989 and remitted it back to the prescribed authority. The petitioners aggrieved by the remand order approached this Court by filing a writ petition No. 12747 of 1989. The said writ petition was not entertained and this Court declined to interfere with the remand order on the ground that the petitioners can raise all their objections before the prescribed authority. The prescribed authority again proceeded with the matter and committed the same error by declaring the said land as surplus on certain other grounds. An appeal was again preferred by the petitioners which has been allowed but the matter has been again remitted back to the prescribed authority.

9. Learned counsel for the petitioners contends that once the order of the prescribed authority was found to be erroneous and the matter has been remitted back thrice then there was no occasion for the appellate authority to have remitted back the matter to the prescribed authority for writing a better judgment. Learned counsel for the petitioners had relied on the decision of Chhatar Mahto and others v. Chito Mahto and others, AI R 1967 Pat 378 (V 54 C 118) and the decision of the Apex Court in case of Ashwin kumar K. Pafe v. Upend Raj. Patel and others, AIR 1999 SC 1125 has urged that once the entire issues were dealt with by the appellate authority then there was no occasion to have remitted the case back to the prescribed authority, more so when the appellate authority itself was satisfied that the prescribed authority has committed an error.

10. Learned Standing Counsel on the other hand on the strength of the decision

of Escorts Farms Ltd. v. Commissioner, Kumaon Division, Nainital and others., AIR 2004 SC 2186 has urged that in view of the Section 38B of the U.P. Impost n of Ceiling on Land Holdings Act there was no error in the remand order and in it shall be open to the petitioners to put their defence before the prescribed authority, which is sought to be raised here. It has further been submitted that the said judgment squarely answers the aforesaid proposition.

11. Learned counsel for the petitioners has replied by relying on the decision of the three judges decision of the Apex Court in the case Devendra Nath Singh (Dead) through LRs. Andothers v. CivilJudgeandothers.MR 1999 SC 2264 has urged that the said decision has not been considered in the Supreme Court decision of Escorts Farms (supra). This aspect has been considered by this Court by a learned Single Judge in the case of Ram Bhau Singh v. Additional Commissioner, Jhansi Division, Jhansi and others, 2007 (5) ADJ 593. Learned counsel for the petitioners further relied on a decision of Hakim Khan v. State of U.P. and others, AIR 1981 All 426 and has urged that in spite of the provision contained in Section 38B it is not permissible for the authorities to rehear the same matter again and again on the same set of evidence.

12. Prima facie the contention of the learned counsel for the petitioners appears to be correct inasmuch as it is true that the bar of resjudicata has been taken away under the provision of Section 38B but in view of the decisions relied upon by the learned counsel for the petitioners it appears that such issues which had been finalized specifically with regard to the plots in question in the year 1976 and a judgment has been returned in favour of the petitioners in 1977 on the same issue of ostensible ownership then there was no occasion to have reopened the same and recorded findings therein. The question as to whether the petitioners were real owners on the strength of the sale deeds or not, had been examined in the first proceedings itself and the petitioners were found to be the real owners by the appellate authority. It is further to be noted that the decision of the appellate Court dated 18.2.1977 was not assailed by the State and has become final. The question of the sale deeds also could not have been proved in view of the law laid down in the case of Ramadhar Singh 1994 Suppl (3) SCC Page 702.

13. Prima facie the issues having almost been found in favour of the petitioners again and again by the appellate authority, which also stands supported by the judgments relied on by and learned counsel for the petitioners, there does not appear to be any justification for the appellate authority to have remitted the matter to the prescribed authority to write a better judgment. The appellate Court could have sufficiently dealt with the matter itself instead of again passing a remand order.

14. For this learned standing counsel prays for and is granted three weeks to file counter affidavit, thereafter one week to file rejoinder affidavit.

15. Until further orders of the Court, further proceedings pursuant to the order

impugned dated 16.1.2009 shall remain stayed and the petitioners possession shall not be disturbed by the respondents in any manner whatsoever.