

(2003) 08 AHC CK 0224
In the Allahabad High Court
Case No : C.M.W.P. No. 30882 of 2003

Lady Parsan Kaur Charitable Educational Trust Society and
Another

APPELLANT

Vs

Principal Secretary, U.P. and Others

RESPONDENT

Date of Decision : 26-08-2003

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 6(1)

Citation : (2003) 6 AWC 5678 : (2003) 95 RD 560

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : P.K. Mishra and Shashi Nandan, for the Appellant; S.C, for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of certiorari to quash the impugned order dated 13.4.2003/13.5.2003 Annexure-1 to the writ petition and the order dated 16.6.2003, Annexure-2 to the writ petition.

2. Heard learned Counsel for the parties.

3. In our opinion, the Petitioner has been harassed by the Respondents even after the decision of this Court in Writ Petition No. 23641 of 1988 (connected with some other writ petitions) Lady Parsan Kaur Charitable Trust v. State of U.P. decided on 10.5.2001 (vide Annexure-5) against which SLP has been dismissed on 22.7.2002 by the Supreme Court vide Annexure-7 to the writ petition.

4. From a perusal of the judgment of this Court dated 10.5.2001 Annexure-5 to the writ petition it appears that notice u/s 10 (2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 was issued to the Petitioner which filed objection, inter alia, claiming that the land in dispute was owned by the Petitioner which is a charitable trust whose whole income was utilised for charitable purpose and

hence it was exempt from the purview of the Act vide Section 6 (1) (f) of the Act. After going through the evidence the Prescribed Authority held in favour of the Petitioner taking the view that the Petitioner was a charitable trust and its income was utilised for charitable purpose and hence it was exempt from the purview of the Act. This order dated 12.1.1968 became final. However, the Prescribed Authority issued another notice to the Petitioner to which the Petitioner objected on the ground that the earlier order dated 12.1.1968 has become final and hence no fresh notice could be issued u/s 10 (2). The prescribed authority dropped the proceedings by its order dated 25.10.1985 but the State Government filed an appeal which was allowed by order dated 11.10.1988 and the matter was remanded. The appellate authority was of the view that in view of Section 18B of the Act the order dated 12.1.1968 was not res judicata or a bar for re-initiation of the proceedings. However, the finding in the order dated 12.1.1968 that the entire income of the land in dispute was being utilised exclusively for charitable/educational purpose was not reversed. Against the appellate order the above mentioned writ petition was filed in this Court and this Court in its judgment dated 10.5.2001 was of the view that issuance of the second notice by the prescribed authority after the order dated 12.1.1968 was illegal. Accordingly, this Court allowed the writ petition by its judgment dated 10.5.2001. Against that judgment SLP was filed before the Supreme Court which was dismissed by the order dated 22.7.2002 Annexure-7 to the writ petition.

5. We would have expected that the matter would have been closed by the judgment of this Court dated 10.5.2001 against which SLP has been dismissed by the Supreme Court. However, surprisingly the impugned letter dated 13.4.2003 was issued by the Principal Secretary, U.P. Government in pursuance of some question of a member of the U.P. Legislative Council and the Principal Secretary directed that the sale of the land in question be stayed till further orders. Consequently, the District Magistrate, Gorakhpur has passed the order dated 16.6.2003 Annexure-2 to the writ petition restraining the Petitioner from selling the property till further orders.

6. We cannot understand how sale of the Petitioner's property can be prohibited by such executive order. If any one has any complaint or grievance against sale of the Petitioner's property he may file a civil suit in this connection but passing such executive order on the basis of some question of a member of the legislative council is in our opinion wholly illegal and improper.

7. The writ petition is, therefore, allowed. The impugned orders are quashed.