
(2013) 02 AHC CK 0039

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 13889 of 2003

Lakhan Lal Mishra and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10, 10(2), 13(A), 13A, 29

Citation : (2013) 5 ADJ 368 : (2013) 98 ALR 787 : (2013) 4 AWC 3375 : (2013) 119 RD 186

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Indra Raj Singh and Pradeep Upadhyay, for the Appellant;

Final Decision : Allowed

Judgement

B. Amit Sthalekar, J.—In this writ petition the petitioners are challenging the impugned notice dated 4.3.2003 issued u/s 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Act) for declaring of the land of the petitioners as surplus. The contention of the petitioner is that in respect of the same plots of the tenure holder the same authority had earlier issued notices and proceedings were commenced u/s 10 of the Act, 1960 and those proceedings had concluded by the order dated 25.11.1976 passed by the Prescribed Authority filed as Annexure-1 to the writ petition. Therefore, second proceedings on the same ground cannot be resorted too.

2. I have heard Sri Indra Raj Singh, learned counsel for the petitioners and learned Addl. Chief Standing Counsel for the State-respondents.

3. From a perusal of the Annexure-1 to the writ petition, there is absolutely no dispute regarding the fact that proceedings in respects of the same plots and between the same tenure holder had already been concluded by the order dated 25.11.1976 and those proceedings have become final between the parties and

therefore, the second notice u/s 10(2) by the impugned notice dated 4.3.2003 could not have been issued. This controversy had come up before the Supreme Court in the case in Devendra Nath Singh (Dead) through Lrs. and Others Vs. Civil Judge, Basti and Others, , wherein the Supreme Court interpreting the provisions of Section 10(2) read with Section 148(B) of the Act, 1960 has held that once proceedings have been concluded between the parties no fresh notices could have been issued by the Prescribed Authority u/s 10(2) in respect of the same plots on the question relating to the majority of the two sons of the tenure holder. Para 1 and 2 of the said judgment read as follows:

1. The sole question for consideration in this appeal is whether the Prescribed Authority in exercise of his powers u/s 13-A of the U.P. Imposition of Ceiling on Land holdings Act, 1960 can reopen a matter already decided and readjudicate the question whether the two sons of the original land holder, deceased Devendra Nath Singh, namely, Hamendra and Shailendra were major or minor. On a proceeding being initiated, pursuance to notice u/s 10(2) of the Act, the Prescribed Authority by his order dated 30th January, 1975 came to the conclusion that the deceased Devendra Nath Singh had no surplus land in his possession inasmuch as the two major sons Hamendra And Shailendra were entitled to their share in the property. Shortly thereafter a fresh notice was issued by the said Prescribed Authority in purported exercise of his power u/s 13-A of the Act, intimating thereunder that some other land has not been taken into account. In course of the subsequent proceeding which stood initiated, the Prescribed Authority came to the conclusion that the two sons of the deceased Devendra Nath, namely, Shailendra And Hamendra were not major on the appointed date and, therefore, they would not be entitled to any share while computing the surplus land in the hands of deceased Devendra Nath Singh, the land holder contested the proceeding on several grounds including the grounds that the Prescribed Authority had no jurisdiction to reopen the question of majority of the two sons, in exercise of his power u/s 13-A of the Act. The said contention, however, was negatived by the Authorities under the Act as well as by the High Court on the ground that Section 38-B clearly indicates that no finding or decision given before the commencement of the said section can be treated as bar against the principle of res judicate and, therefore, the Prescribed Authority could annul its earlier decision on the question of majority of the two sons, Hamendra and Shailendra.

2. The learned counsel appearing for the appellants contends that the power u/s 38-B will not enlarge the power of redetermination of surplus land conferred on the Prescribed Authority u/s 13-A of the Act and, therefore, the Prescribed Authority did not have the jurisdiction to reopen the question of the majority of the two sons. The learned counsel appearing for the respondent on the other hand contended that the land holder having subjected himself to the jurisdiction of the Prescribed Authority and having lead evidence in the proceeding after the matter was reopened, is not entitled to challenge the jurisdiction of the authority and, therefore, the findings arrived at by those authorities cannot be annulled at

this point of time.

4. This judgment subsequently has been followed by this Court in the case in Kailash Babu Vs. Commissioner, Kanpur Division and another, , wherein, also this Court has held that once the proceedings u/s 10(2) have been initiated against the tenure holder and have been concluded and attained finality between the parties the second notice cannot be issued. Similar view has been taken by this Court in another case in Amar Jeet Singh and Others Vs. Upper Ayukta, Chitrakoot Dham, Banda Mandal, Banda and Others, , Paras 21 and 22 of the said judgment read as follows:

21. Having heard learned counsel for the parties and having considered the submissions raised the issue relating to the power of the Prescribed Authority to reopen a matter has to be considered in the light of the provisions of Section 13-A of the 1960 Act. The provisions of the said Act make it more than clear that it is only an empowerment to correct or rectify any error apparent on the fact of record and not a power of review. It is for this reason that the provisions for issuing a notice to the tenure holder is contained therein with a recital that such a notice should be issued only if the declared surplus land is sought to be increased. In such a situation, it would be in the nature of a fresh objection and for the said reason Sub Section (2) of Section 13-A provides for applicability of the other provisions mutatis mutandis. In that event, it will not be an exercise of review but a fresh decision of any future objections in the light of Section 29 of the 1960 Act.

22. In the instant case the same objection on the same issue had already been decided vide order dated 31st August, 1976. The issue relating to the parentage of the petitioners was very much raised and decided after giving opportunity of leading evidence to the petitioners and to the State. In such a situation, the question is, can that issue be permitted to be re-agitated under the garb of Section 13-A.

The answer on the basis of the reasoning already given by the Apex Court in the case of Devendra Nath Singh (supra) would be in the negative. The State will have no power to re-agitate or re-examine the question which has been finally decided as held by the Apex Court in paragraph 3 of the aforesaid judgment.

Not only this the same has been relied by a learned Single Judge in the case of Yashpal Singh (supra) and I see no reason or any novel argument raised by the respondent, to disagree from the view so taken. Accordingly, it is held that the Prescribed Authority had no power to invoke the provisions of Section 13-A and review the decision dated 31.8.1976.

Not only this, it appears that the Prescribed Authority had realized this legal impediment and had itself in the order dated 26.7.2007 indicated that this was not a case of error. Once the Prescribed Authority had admitted that it was not a case of any rectification or error then powers u/s 13-A could not have been invoked. Apart from this, the bar of limitation as prescribed u/s 13-A also stares

on the face of it. The power under the aforesaid section can be exercised only within two years of the passing of the order. In the instant case, it is obvious that the said power was sought to be exercised after 31 years. This according to the Section itself was impermissible.

5. Learned Standing Counsel has raised an objection that the notice u/s 10(2) is not required to state all the new facts and ground on which the second show-cause notice is being issued. This submission is absolutely fallacious inasmuch as by the second notice u/s 10(2) an explanation has been called for from the tenure-holder/tenure-holders and unless they are informed of the fact of which they have to submit an explanation how would they submit their explanation. Even otherwise, it is not possible to give an explanation to a vague notice. Besides the earlier adjudication proceedings have attained finality in the year 1996, and the second show-cause notice of 2003 would be barred by limitation prescribed u/s 13(A) of the Act, 1960.

6. From a perusal of the impugned notice dated 4.3.2003, it is not indicated as to what fresh grounds have been taken by the Authority for reopening the case for declaration of land of the petitioner tenure holder or his heirs as surplus and therefore it is not a case whether the respondent could have resorted to proceedings u/s 13-A of the Act, 1960. This fact has not been disputed by the learned Standing Counsel either.

7. In this view of the matter the impugned show-cause notice dated 4.3.2003 is quashed. The writ petition is allowed. There shall be no order as to cost.