
(1969) 09 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3909 of 1967

Latur Singh

APPELLANT

Vs

Prescribed Authority, Hasanpur, Moradabad and Others

RESPONDENT

Date of Decision : 11-09-1969

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 4

Citation : (1970) 40 AWR 67

Hon'ble Judges : Hari Swarup, J

Bench : Single Bench

Advocate : S.K. Tewari, for the Appellant; S.C. for opp. parties., for the Respondent

Final Decision : Allowed

Judgement

Hari Swarup, J.—This petition is directed against the order of the prescribed authority under the UP Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Act) and the order of the District Judge dismissing the appeal against that order.

2. The following pedigree is necessary for the facts of the case:

3. Harpal Singh filed a suit for partition of the holding and decree for partition was passed on 12-3-1959. The property was divided into five parts. 85.94 acres went to Harpal Singh, 12.26 acres to Latur Singh and 12.26 to Chhote Singh and 61.39 acres jointly to the remaining Defendants, namely, Durga Singh, Smt. Bisalo, Bhartu Singh, Man Singh and Ram Baran. These three sons of Durga Singh were minors. From the decree it is apparent that the shares of Durga Singh, his wife and his children were all treated as equal, 1/7th was given to Chhotey Singh, 1/7th to Latur Singh and remaining 5/7th to the other five persons. The property which fell to the share of Durga Singh, his wife and the three minor sons remained joint.

4. On the coming into force of the Act, proceedings were taken for determining

the ceiling area in accordance with Section 4 of the Act. The prescribed authority held that the land 61.39 acres was held by Durga Singh and was recorded in his name and ostensibly in the name of three minor sons and wife. Treating the property to be held by a family under the Act he declared that the land in excess of 40 acres would be surplus land. The appeal filed by the Petitioners was dismissed by the Addl. Distt. Judge on the ground that the land allotted to Durga Singh, his wife and three minor sons was held by Durga Singh and was recorded in his name and therefore, it will be treated as the property belonging to Durga Singh representing the family. He, therefore, dismissed the appeal.

5. u/s 4 of the Act, the ceiling area applicable to a tenureholder has to be calculated after taking into account all the land in any holding held by him in his own right whether in his own name or ostensibly in the name of any other person. Authorities below have thought that the land was held by Durga Singh as it stood in his name. But the question is whether held it in his own right or the land was held by his wife and children also in their own rights although ostensibly in the name of Durga Singh. On partition only those persons are entitled to get a share in the property who have a right therein. No person who has no existing right gets any share. The decree shows that Durga Singh, his wife and children, all got a share in the property, which means that all of them had an existing right in the property. The property was Bhumidhari property. The share of Durga Singh, his wife and three minor sons had remained joint on partition. Each one of them, therefore, became cobhumidhar of the property. Although it was held jointly the rights of the parties continued to exist in the Bhumidhari. It is immaterial that the land was recorded in the name of Durga Singh alone. Section 4 takes into account also the property recorded ostensibly in the name of other persons. Here the shares of Smt. Bisalo and the three minor sons of Durga Singh were ostensibly recorded in the name of Durga Singh but these persons continued to remain the co bhumidhars of the property.

6. The court below committed the error in thinking that the land was held by Durga Singh alone and that he was the sole bhumidhar of the land in dispute. And for this reason it wrongly treated the property as belonging to Durga Singh and gave him the benefit of being a family because a person within the meaning of the Act includes a family. The error crept in probably because the Petitioners themselves did not put their case in the right prospective before the authorities concerned.

7. Tenureholder under the Act, means an individual or a person who is the holder of a holding. The Petitioners Smt. Bisalo, Bhartoo Singh, Man Singh and Ram Baran were all individual's and were, therefore, tenureholders. Holding has been defined to mean the land or lands held by a person as a Bhumidhar, Sirdar etc. The Petitioners 3 to 6 were cobhumidhars and therefore, tenureholders in respect of the holding and entitled to be treated as separate tenureholders under the Act in respect of their individual shares.

8. Accordingly the petition succeeds and is allowed. The impugned orders are set

aside and a direction is issued to the prescribed authority to decide the matter in accordance with law in the light of the observations made above. In the circumstances of the case the parties will bear their own costs.