
(2008) 10 AHC CK 0042
In the Allahabad High Court

Mahendra Pratap Singh

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 13-10-2008

Acts Referred:

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

Citation : (2008) 10 AHC CK 0042

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Judgement

Shishir Kumar, J.—By means of present writ petition petitioner has approached this Court for setting aside the order passed by respondent Nos. 2 & 3 dated 30.4.1991 and 30.6.1990 respectively.

2. The facts arising out of present writ petition are that a notice u/s 10(2) of U.P. Imposition of Ceiling on Land Holdings Act (hereinafter referred to as the Act) was issued against father of petitioner and in pursuance of aforesaid notice, proceedings were initiated and finally it was terminated on 16.10.1979. In the said proceeding the petitioner's father took an objection that land in dispute is shirkhudkast and grove coming out since the time of his ancestors and consequently the present petitioner having share in the property in dispute was born prior to the date of vesting. The Prescribed Authority found that petitioner was born prior to the date of vesting and land in dispute is shirkhudkast and ancestor, therefore, notices were issued against father of petitioner was discharged. After discharge of notice the father of petitioner executed a registered will in favour of their grandsons on 26.10.1978. The father of petitioner died in the year 1980. Proceeding against father of petitioner has become final.

3. Again notice u/s 10(2) was issued against petitioner in the year 1985 declaring 14.96 acres as surplus. An objection was taken by petitioner that a sale deed after finalization of proceeding against father of petitioner, father of petitioner executed a will deed in favour of their grandsons and they are in

possession of the land in dispute of their respective shares and they are adult, therefore, that land cannot be included in the holding of petitioner. But in spite of aforesaid fact, Prescribed Authority has not accepted the claim of petitioner and the Appellate Authority too has rejected the claim declaring an area of 14.96 acres as surplus.

4. Aggrieved by the aforesaid orders, petitioner has approached this Court by means of present writ petition.

5. Notices were issued to respondents-State to file a counter affidavit on 16.5.1991 and interim order was also granted in favour of petitioner to this effect that petitioner will not be dispossessed from the land in dispute. In spite of time granted to respondents-State, no counter affidavit has been filed as such, the matter is being decided with the consent of parties on merits.

6. Learned Counsel for petitioner submits that as proceeding against father of petitioner became final and after discharge of notice if the will has been executed, it cannot be said that it is in violation of Section 5(6) of the Act. Further submission has been made by learned Counsel for petitioner that in view of amending act, notice issued against petitioner is time barred as provided under the amending act, two years limitation has been provided from 10.10.1975. Admittedly, notice u/s 10 against petitioner has been issued in the year 1985, beyond period of limitation provided under the amending act.

7. In view of the aforesaid fact learned Counsel for petitioner submits that orders passed by respondents is wholly illegal and without jurisdiction and liable to be set aside.

8. Reliance has been placed upon a judgement of this Court reported in 1987 Revenue Decision 102, Syed Mohd. Iliyas v. Prescribed Authority and Ors. Reliance has been placed upon para 3 of the said judgement. The same is being quoted below:

The learned Counsel for the petitioner contended that the second notice u/s 10(2) of the Act, which had been issued to the petitioner was time barred u/s 31(3) of the aforesaid Amendment Act (U.P. Act No. 20 of 1976). Section 31 of the said Act is described as transitory provision. Sub Section 3 of the said section is as follows:

3. Where an order determining surplus land in relation to a tenure holder has been made under the Principle Act before the tenth day of October 1975, the Prescribed Authority (as defined in the principal Act) any, at any time within a period of two years from the said date, redetermine the surplus land in accordance with the principal Act as amended by this Act, whether or not any appeal was filed against such order and notwithstanding any appeal (whether pending or decided) against the original order of determination of surplus land.

It is not necessary to go into question whether the expression "two years from the said date" should be interpreted as two years from October 10, 1975 or from

the date of the order of the Prescribed Authority because, in the instant case, since two years has elapsed computing the same from October 10, 1975, therefore, much more than a period of two years elapsed from the date of the Prescribed Authority's order which as stated above, was passed on October 31, 1975. Indeed, in a case where the fresh notice is issued after more than 2 years from October 10, 1975, then the notice is bound to be hit by the rule of limitation because the date of the Prescribed Authority's order must be earlier than October 10, 1975 otherwise Section 31(3) itself will not be attracted. As stated above, the second notice was issued on November 14, 1978 which is more than two years from October 10, 1975. Accordingly, it must be held that the Prescribed Authority had no jurisdiction to issue the said notice and the entire subsequent proceedings are without jurisdiction.

9. Further reliance has been placed upon Apex Court judgement reported in Jamil Ahmad and Others Vs. 5th Addl. District Judge, Moradabad and Others, . Placing reliance upon the aforesaid judgement learned Counsel for petitioner submits that this Court has taken a view that if the land has been determined by ceiling authority and it has been taken into consideration that there is no surplus land on or before 8.6.1973 or even thereafter, then that person is entitled to execute a registered will. It cannot be said that it has been done to defeat the purposes of the Act. Reliance has been placed upon paras 7 to 10 of the said judgement. The same are being quoted below:

7. Mr. E.R. Kumar, the learned Counsel for the appellants, contends that the lands given to the appellants under the Will of late Wali Mohammed could not be treated as lands inherited by Gulam Mohammed because those lands having been bequeathed became the property of the appellants in which Gulam Mohammed could not claim any right or interest.

8. In as much as the respondents did not enter appearance in spite of service of notice we requested Mr. Chandra Shekhar, Advocate, to assist us as amicus curiae. The learned amicus curiae submit that from the record made available to him he could gather the developments after the death of Wali Mohammed with regard to issuing of notice u/s 10(2) of the Act to Gulam Mohammed and his sister Moti Begum; the claim of the appellants under the Will of late Wali Mohammed depends upon the genuineness of the Will which is not proved and is subject to the U.P. Zamindari Abolition and Land Reforms Act, 1950 (for short, "ZALR Act"). He has invited our attention to Sections 169 and 171 of the ZALR Act to contend that though late Wali Mohammed was entitled to bequeath his land u/s 169 of ZALR Act, it has to be read subject to the principle of Mohammedan Law that no person can give away by way of bequest more than 1/3rd of his property. With regard to Section 171 the learned amicus curiae has argued that the principles of Mohammedan Law of inheritance do not apply as a different scheme of succession is provided with regard to the Bhoomidari land in which both the son and the daughter will have an equal share.

9. The question that falls for our consideration is: whether the Will of Wali

Mohammed is genuine and the land bequeathed by late Wali Mohammed in favour of the appellants under it could be treated as inherited land of Gulam Mohammed.

10. The property (both movable as well as immovable) left by a deceased Muslim is called Matraka. The scheme of distribution of Matraka among the heirs of a deceased Muslim is that first that part of the Matraka which is covered by a Will of the deceased, if there is a valid Will, (subject to maximum of 1/3rd of the total Matraka provided it is not in favour of an heir) will be separated and given to the legatee. The balance of Matraka alone is distributable among the heirs and in the proportion ordained under the Mohammedan Law. However, in regard to Bhoomiswami land the distribution of Matraka will be governed by Sections 169 and 171 of ZALR Act. Consequently the limitation placed under the Mohammedan law that the bequest should not exceed 1/3rd of the Matraka of the deceased and it should not be in favour of an heir, will not apply; so also classification of heirs and the proportion in which they will inherit Matraka under the Mohammedan Law is replaced with the provisions of Section 171 of ZALR Act in which a different order of succession is provided.

10. Further submission has been made by learned Counsel for petitioner that land for which father of petitioner has executed a registered will in favour of their grand sons has never been devolved upon petitioner, as such, the same cannot be taken into consideration for the purposes of holding of petitioner.

11. On the other hand, as no counter affidavit has been filed on behalf of respondent counsel but learned Standing Counsel has submitted that as land in dispute for which father of petitioner has executed a registered will, petitioner was in possession, as such, notice u/s 10 was issued and both the authorities have held that 14.96 acres land is surplus.

12. I have considered the submissions made on behalf of parties and have perused the record.

13. From the record it is clear that proceeding against father of petitioner has become final and it has been decided that no surplus land is there, therefore, father of petitioner was legally entitled to execute a will or sale of property in favour of anybody. It cannot be said legally that it is for the purposes to defeat the purpose of the act. From the record it is also clear that property has been devolved upon grandsons of father of petitioner. Petitioner at no point of time was in possession of the said land in dispute. Therefore, in my opinion, the land for which the will was executed by father of petitioner, same cannot be taken into consideration by ceiling authority as holding of petitioner. This Court has also taken a view that if after determination of ceiling area, if a tenure holder execute a registered will it cannot be said that is for the purposes to defeat the provisions of the act.

14. In view of the aforesaid fact the orders passed by respondents dated 30.4.1991 and 30.6.1990 respectively are not sustainable in law and is hereby

quashed. The matter is remanded back to the prescribed authority to decide as a fresh in the light of observation made above taking into consideration the judgement cited above after affording full opportunity to petitioner. Petitioner will be at liberty to lead fresh evidence and it is provided that Prescribed Authority will consider the same on merits. As the matter is very old, therefore, the same may be decided by the Prescribed Authority within a period of six months from the date of production of certified copy of this order.

15. No order as to costs.