
(1978) 12 AHC CK 0011
In the Allahabad High Court
Case No : Writ Petition No. 3000 of 1977

Mahendra Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-12-1978

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 3(14),
5(1), 5(7), 6

Citation : (1979) AWC 165 : (1978) RD 4

Hon'ble Judges : K.N. Goyal, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh, for the Appellant;

Final Decision : Allowed

Judgement

K.N. Goyal, J.—The tenure-holder's contention in this writ petition arising out of proceedings under the U.P. Imposition of Ceiling on Land Holdings Act is two-fold. Firstly, it has been asserted that the land in question was inherited by the Petitioner before 1st July, 1952. It was his ancestral property. After his father's death, he and his mother became heirs in equal shares. Subsequently, the Petitioner's mother also obtained a partition decree in respect of one half share in 1952. The other contention was that some land, which was the site of a tube-well had acquired by reason of construction of the tubewell the character of abadi and should not, therefore, have been included in "land" as it had ceased to be land used for purposes of agricultural. So far as the second contention is concerned, it cannot be sustained in view of the authority Tribeni Engineering Works v. State 1978 AWC 33 in which Hon'ble Sahai, J. has held that the definition of land given in Section 3(14) of the U.P. Zamindari Abolition and Land Reforms Act, which has been adopted for purposes of U.P. Imposition of Ceiling on Land Holdings Act, has to be considered in the light of the provisions of Section 6 of the latter Act. So construed, it would include all land held under a bhumidhari, sirdari or asami tenure other than land which is specifically

exempted u/s 6. It is obvious thus that any land comprised in a holding does not cease to be "land" for the purposes of the latter Act, merely by reason of construction of a tube-well thereon. So far as the first contention is concerned, reliance has been placed on a khatauni of 1359 F. in which the Petitioner's name was entered over the land in question and he was shown as a minor under the guardianship of his mother Smt. Satyawati. It has been held in *Chaitanya Raj Singh v. Second Additional Civil Judge 1977 AWC 289* that if the land in question was ancestral sir, then even though the name of the tenure-holder alone may have been recorded, yet his sons born before 1st July, 1952, would have rights therein from birth under the Hindu Law. This decision has been approved by a Full Bench of this Court in *Ram Charan Vs. State of U.P. and Others*, , on a different question namely the effect of decisions of consolidation authorities on proceedings under the U.P. Imposition of Ceiling on Land Holdings Act. In the present case, one reason given by the Prescribed Authority and the appellate authority for rejecting the Petitioner's contention is that the Petitioner's mother had not raised any objection in this regard before the consolidation authorities. This reason cannot be considered to be a valid reason in view of this Full Bench decision

2. Learned Counsel for the State has, however, urged that it was for the Petitioner to have shown that the land was actually ancestral. True but there is no finding of either of the two authorities rejecting the Petitioner's contention" that the land was ancestral. Infact, there is no finding on this question at all. What the two authorities have done is merely to consider the partition decree of 1972 and to reject the same on the basis of the provisions of Section 5(7) of the Act. Section 5(7) merely requires that such partition has to be ignored as would result in any land, which but for the partition would have been declared surplus to be excluded. If the Petitioner's mother (as widow of the deceased zamindar sir-holder) had a share in the land before 24th January, 1971, then partition or no partition, the land to the extent of the share held by her, would have had to be excluded in any case. Section 5(1) read with Explanation I thereof lays down that only land held by the tenure-holder, whether in his own name or ostensibly in the name of any other person, is to be taken into account. If, therefore, any land was actually not held by the tenure-holder, then the same has to be excluded irrespective of the question whether a partition decree was obtained or not.

3. In the result, the writ petition is allowed in part, and the finding of the Prescribed Authority contained in its judgment dated 4th December, 1976, and of the appellate authority contained in its judgment dated 2nd May, 1977, annexures 4 and 6 respectively to the writ petition, in so far as the objection regarding the alleged one-half share of Smt. Satyawati is concerned, is hereby quashed. The Prescribed Authority shall consider the question afresh in accordance with law in the light of the observations made in this judgment. The other findings of the Prescribed Authority, as affirmed by the appellate authority, shall remain undisturbed. No order as to costs.