

(2012) 03 AHC CK 0256
In the Allahabad High Court
Case No : C.M.W.P. No. 2052 of 1997

Mam Chand and others

APPELLANT

Vs

Commissioner, Meerut Division, Meerut and another

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 13, 29, 38B

Citation : (2012) 5 ADJ 118 : (2012) 116 RD 14

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : A.N. Verma, G.N. Verma and Pramod Kumar Srivastava, for the Appellant;

Final Decision : Allowed

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri Pramod Kumar Srivastava holding brief of Sri A.N. Verma learned Counsel for the petitioners and the learned Standing Counsel for the State. The State does not appear to have filed any counter affidavit and the same is not on record inspite of time having been granted again on 18.11.2010. This petition has been filed by the tenure holders assailing the order of the learned Commissioner, Meerut whereby the appeal filed by the State u/s 13 of the U.P. Imposition of Ceiling on Land Holdings Act 1960 has been allowed with a direction to the prescribed authority to rehear the entire matter again and dispose of the objections raised on behalf of the State in relation to the land which had been shown not to be surplus by the Prescribed Authority.

2. The petitioner tenure holders took up a defence that the provisions of section 38-B of the 1960 Act did not allow the reopening of issues which had been decided finally and they are only a protection to the State that any decision given at any earlier occasion will not operate as res-judicata if the said issue is being retried in accordance with the provisions of the Act. The Act after the matter is finalized, makes a provision for issuance of a subsequent notice provided there is increase in the area of the tenure holder u/s 29 of the Act or even otherwise if

any other claim has remained pending or is being adjudicated upon by the authorities. In the instant case none of these contingencies arose and therefore the issuance of notice u/s 38-B was in my opinion totally unwarranted.

3. The prescribed authority after objections were filed came to the conclusion that the same issues had been determined by the appellate authority on 8th January, 1979 which order became final 16 years hence. None of the parties had assailed the said decision and the State had also not challenged it. In the absence of any such challenge to the order of the appellate authority u/s 13 of the Act, there was no occasion nor any material for the prescribed authority to issue any fresh notice u/s 38-B. The retrial of the same issues is therefore against the doctrine of finality, inasmuch as, the order passed in appeal u/s 13 foreclosed all issues so far as the State was concerned. There is nothing on record to indicate that the State tiled any writ petition challenging the appellate order dated 8.1.1979.

4. In my opinion, the Prescribed Authority rightly dropped the proceedings. The State preferred an appeal and the learned Commissioner without adverting to these issues simply allowed the appeal on the ground that the principles of res-judicata will not apply in case the proceedings have been reopened. As explained above the proceedings itself have to be validly initiated and the question of applicability of res-judicata comes later on. The learned Commissioner has erroneously proceeded to allow the appeal against the provisions of law and therefore the appellate order dated 19th December, 1996 cannot be sustained. The writ petition is allowed. The order dated 19th December, 19% is quashed. The order of the prescribed authority is confirmed.