
(1981) 09 AHC CK 0063

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3587 of 1980

Masood Hasan Khan

APPELLANT

Vs

3rd Additional District Judge, Moradabad and Others

RESPONDENT

Date of Decision : 09-09-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1981 All 448

Hon'ble Judges : M.P. Mehrotra, J

Bench : Single Bench

Advocate : R.N. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

M.P. Mehrotra, J.—This petition arises out of the proceedings under the U, P. Imposition of Ceiling on Land Holdings Act. The facts, in brief, are these:

The petitioner was treated as the tenure-holder and the notice u/s 10 (2) of the Act was issued to him. He filed objections and they were decided by the prescribed authority, by his order dated 20-1-1975. Thereafter an appeal was filed but the same was dismissed by the appellate court. The petitioner then came to this Court in writ petition and the same was allowed by a learned single Judge of this Court by his judgment dated 31-7-1981, a true copy whereof is Annexure 2 to the petition. The case was remanded to the appellate court for a fresh decision in respect of a controversy specified in the said judgment of this Court. Thereafter the appellate court again heard the appeal and in accordance with the judgment of this Court in the said writ petition, it considered the evidence and the material on record and held that the claim set up by the petitioner in respect of the waqf in question was not sustainable. The appeal was, accordingly, dismissed. A certified copy of the appellate judgment is on the record. A true copy of the said judgment has also been placed on the record.

2. Feeling aggrieved, the petitioner has now come up in the instant petition and

in support thereof, I have heard Sri R. N. Singh learned counsel for the petitioner. In opposition, the learned single counsel has made his submissions. Learned counsel for the petitioner contended that the appellate court was wrong in thinking that Section 49 of the U. P. Consolidation of Holdings Act was a bar to the claim of the petitioner, based on the existence of the waqf deed. It is not necessary to go into the said aspect of the matter. However, in my view, it was open to the appellate court to have taken into consideration the fact that during the consolidation proceedings the petitioner had never set up any claim regarding the alleged waqf and the petitioner himself was treated as the tenure-holder of the land in dispute and not the waqf. This circumstance was undoubtedly relevant fact irrespective of the question whether Sec. 49 of the U. P. Consolidation of Holdings Act would come in the way or not. A controversy as to whether the alleged waqf was the tenure-holder or whether the petitioner was the tenure-holder is basically and substantially a question of fact and the finding recorded by the appellate court accordingly cannot be interfered within the narrow; ambit of a writ petition under Article 226 of the Constitution.

3. The petition fails and is dismissed, but there will be no order as to costs.