
(2011) 04 AHC CK 0276
In the Allahabad High Court
Case No : Writ C No. 2774 of 1985

P.N. Singh

APPELLANT

Vs

The Ivth A.D.J.

RESPONDENT

Date of Decision : 04-04-2011

Acts Referred:

Citation : (2011) 04 AHC CK 0276

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the parties.

2. The order which was passed on 20.01.2011 when judgment was reserved is quoted below:

Heard learned Counsel for the petitioner and learned standing counsel for the respondent. Learned Counsel for the petitioner has argued three points. One is that as the land in dispute was initially "sir" and "khudkashta", hence all the sons and grand sons should be treated to be different units and in this regard it has further been argued that earlier lower appellate court had remanded the matter but Prescribed Authority did not consider the said point. The other argument is that petitioners had claimed exemption of certain land as it was filled up with water/ sand, however in this regard complete relief was not granted and now the dispute remains in respect of Plots No. 1255/3, 1257/7, 1258/5, 270/40, 270/59, 270/70 and 270/71. It has further been argued in the writ petition filed by Bhupendra Singh that number of family members has wrongly been calculated. The authorities below decided that the family consisted of only 6 persons instead of 7 persons as asserted by petitioner. In the writ petition of Satyendra Singh, the argument is that family consisted of 6 persons, however authorities below wrongly decided that the family consisted of only 5 persons instead of 6 persons. Judgment reserved.

3. These very points (and none else) were raised before the lower appellate court.
4. These writ petitions arise out of ceiling proceedings under U.P. Imposition of Ceiling on Land Holdings Act 1960. All these writ petitions are directed against judgment and order dated 14.11.1984 passed by IVth A.D.J. Allahabad in seven ceiling appeals.
5. Petitioner of the first writ petition was appellant in ceiling appeal No. 142 of 1984. Petitioner of the second writ petition was appellant in ceiling appeal No. 138 of 1984. Petitioner of the 3rd writ petition was appellant in ceiling appeal No. 139 of 1984 and petitioner of 4th writ petition was appellant in ceiling appeal No. 141 of 1984. During arguments learned Counsel for the petitioners could not inform the court as to whether writ petitions against the said judgment in respect of other three ceiling appeals were filed or not. All the seven appellants before the lower appellate court were descendants of Ram Deen Singh alias Jagdev Singh. Petitioners in second, third and fourth writ petitions are sons of petitioner in the first writ petition Kunwar Praduman Singh.
6. Earlier through order dated 25.03.1980 the appellate court/IVth A.D.J. Allahabad had remanded the matter to the Prescribed Authority/S.D.O. Phoolpur. Thereafter, the Prescribed Authority decided the matter on 31.05.1983 declaring certain land as surplus against which the appeals decision of which is challenged through this writ petitions were filed.
7. In respect of plea of Sir and Khudkashta appellate court held that earlier none of the appellants had ever claimed that there were other co-sharers also and that even in the earlier Judgment of the learned A.D.J. dated 25.03.1980 there was no mention that any such plea was raised. The only point in this regard earlier argued was that even though the S.D.O. had recorded the names of certain persons in 1972 i.e. after 24.01.1971 still they must be deemed to be co-tenure holders. The said point was already decided in favour of the appellants at the earlier stage.
8. I do not find least error in the order passed by the lower appellate court in this regard. Such a plea for the first time taken in the second round of litigation at the appellate stage could not be accepted, it was purely afterthought. Through order dated 4.5.1972 passed by S.D.O. the names of lot of people were got recorded in the revenue records on this very ground that the land was Sir and Khudkashta and those people had birth right in the said land as they were born before Zamindari Abolition. In spite of it in the subsequent appeals the petitioners asserted that some more people were also entitled to the land on the same ground. It is inconceivable that if some more people were entitled to the said benefit and had been co-tenure holders, their names would not have been got entered. Hundreds of bighas of land was saved from being declared as surplus land under the Ceiling Act by getting the order dated 4.5.1972 passed still petitioners did not feel satisfied and gave some other pedigree starting from several generations before to claim that some more persons were also co-tenure

holders. It was an utterly fantastic plea which was rightly rejected by the courts below.

9. As far as second point relating to certain plots being sandy or submerged in water is concerned the lower appellate court held that some plots had already been treated as sandy or submerged in water and were excluded by the appellate court in its earlier judgment dated 25.03.1980, hence, the said point had become final and could not be repaginated.

10. Regarding number of family members of Bhupendra Singh and Sateyendra Singh the lower appellate court held that these points were not agitated when the appeal was earlier heard and decided on 25.03.1980, hence, they could not be permitted to be raised again. Ultimately, appeals were dismissed on 14.11.1984 "subject to this observation that the choice for the surplus land to be taken by the State indicated by the appellants Bhupendra Singh, Sateyendra Singh and Rupendra Singh in their applications moved in this Court shall be taken into account if possible".

11. Accordingly, I do not find least error in the impugned order. Writ petitions are utterly devoid of merit hence dismissed.