

(1993) 11 AHC CK 0058

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition. No. NIL of 1993

Radhey Shyam

APPELLANT

Vs

Additional Commissioner (Judicial) 1st and Others

RESPONDENT

Date of Decision : 23-11-1993

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (1994) 1 AWC 247

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : S.D. Pathak, for the Appellant;

Final Decision : Partly Allowed

Judgement

R.R.K. Trivedi, J.—Heard learned counsel for the Petitioner and learned Standing Counsel.

2. This petition has been filed challenging the order dated 25-8-93 passed by Additional Commissioner (Judicial) 1st, Bareilly Division, Bareilly. He has allowed the appeal of the Petitioner and remanded the matter to Prescribed Authority for deciding the case afresh in view of the judgment of this Court dated 11-5-89 in the writ petition No. 4899 of 1978.

3. The facts giving rise to this petition are that Prescribed Authority in proceedings u/s 10 (2) of U.P. Imposition of Ceiling on Land Holdings Act had determined 37.10 acres of land as surplus, by its order dated 30-6-76. In this order Prescribed Authority had partly accepted the contention of the Petitioner with regard to sale deed dated 21-12-71 executed in favour of Rameshwar. However, another sale deed dated 16-3-73 was ignored. Against this order, Petitioner went in appeal. The appeal was allowed in part and the other sale deed dated 16-3-73 which was ignored by the Prescribed Authority was also accepted by Appellate Authority by its order dated 30-11-76. Thereafter,

Petitioner approached this Court under Article 226 of the Constitution of India by filing writ petition, which was allowed by this Court by its order dated 11-5-89. From the perusal of the said judgement it appears that this Court had considered only paras 4 and 6 of the Appellate judgment which dealt with the finding on the question of area held to be irrigated land by prescribed authority and remanded the matter to Appellate Authority for deciding afresh. Against the order of this Court dated 11-5-89 State of U. P, went in special appeal in Hon'ble Supreme Court of India which was rejected on 6-5-91. Thus the order of this Court dated 11-5- 89 has become final.

4. Now, the apprehension of learned counsel for Petitioner is that even the finding on issue No. 7 which was in favour of Petitioner have been set aside by the impugned order dated 25-8-93 and the whole matter has been reopened. The submission of learned counsel for Petitioner is that the earlier orders so far as issue No. 7 is concerned they become final and cannot be reopened.

5. In my opinion, the contention of the learned counsel for Petitioner is justified as two sale deed dated 21-12-87 and 16-3-73 were accepted one by Prescribed Authority and another by Appellate Authority and thus the findings on issue No. 7 has become final. The findings with regard to the aforesaid sale deeds were not challenged by State in this Court, in the circumstances, the Appellate Authority could not reopen the same, by the impugned order.

6. For the reasons stated above, this petition is allowed in part. The order of the Appellate Authority dated 25-8-93 is maintained, however, the order shall be deemed to be modified to the extent that findings on issue No. 7 recorded in orders dated 30-6-76 passed by Prescribed Authority and order dated 30-11-76 passed by Appellate Authority shall not be reopened. There will be no order as to costs.