
(1978) 05 AHC CK 0116
In the Allahabad High Court
Case No : Writ Petition No. 443 of 1976

Rajendra Prasad

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 02-05-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 19, 226, 226(3), 31(1)
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 49
Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Ordinance, 1975 — Section 27(1)
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10, 10(1), 10(2), 11(1), 11(2)

Citation : (1978) AWC 657

Hon'ble Judges : S.C. Mathur, J; Prem Prakash, J

Bench : Division Bench

Advocate : D.N. Srivastava and Pradeep Kant, for the Appellant;

Final Decision : Allowed

Judgement

Prem Prakash, J.—This petition under Article 226 of the Constitution arises from the notification dated 28-1-1975, made u/s 14(1) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (to be hereinafter referred as the Act), as amended from time to time, declaring plots Nos. 1002 and 1003 measuring 1.77 acres of village Chandrasa Kalan as the surplus land of Durga Prasad, opposite party No. 5.

2. The Petitioner claims himself to be the bhumidhar of the plots; having purchased them from opposite party No. 5 by a sale-deed dated 3-11-1970. A copy of the sale-deed is on record. His name was mutated in the revenue records and during the consolidation operations he was recorded as the chief tenant of these plots, as it would appear from Annexure 2, the copy of the Khatauni for the year 1380-82 Fasli. When the Petitioner learnt that the land was being treated as the surplus land of opposite party No. 5, he filed an objection under the then

existing Sub-section (3) of Section 14 of the Act, it being Annexure 3. The objection could not be entertained by the time it came up for hearing, since Ordinance No. 31 of 1975 had deleted Section 14(3) from the Act. On 28-10-1975, the Prescribed Authority, therefore, instead of disposing of the objection consigned the matter to record. The Petitioner, finding himself without any remedy, seeks the intervention of this Court under Article 226 mainly on the ground that the declaration of his land as surplus land has unlawfully deprived him of his rights in the land which had been acquired by him as far back as the year 1970 and which were recognised during the consolidation proceedings, held under the U.P. Consolidation of Holdings Act.

3. In answer to the contention of the Petitioner, the affidavit has been filed on behalf of the State by the Naib Tahsildar (Ceiling), District Kheri. In the counter affidavit it has been stated that the plot belonged to the tenancy of the opposite party No. 5, that the entry of mutation was of no consequence as the land had vested in the State free from all encumbrances, title, claim or interest. Further, as regards the entry of the name of the Petitioner in the consolidation proceedings, it was said that the said entry "was of no assistance to him." In the submission of the State the land in question was rightly included in the holding of opposite party No. 5.

4. At the outset it shall be useful to have a look at the provisions of the Act and the amendments made by Ordinance 31 of 1975, which was replaced by the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976.

5. Section 9 of the Act enjoins a tenure holder holding land in excess of the ceiling area acquired by him to submit a statement in respect of his holdings. Sub-sections (1) and (2) provided for general notice to the tenure-holders and not for notice addressed to particular individuals, whereas Section 10 provides service of individual notice on them. The tenure-holder, to whom a statement has not been issued u/s 10(2) of the Act, is not entitled to file an objection to the statement prepared u/s 10(1) of the Act and issued to other persons u/s 10(2) of the Act. Section 11(1) of the Act does not provide for the filing of objections and no objection can, therefore, be filed. u/s 12(2) of the Act, however, a tenure-holder, to whom a statement u/s 10(2) has not been issued, is entitled to file an objection to the statement prepared u/s 10(1) of the Act and issued to other person u/s 10(2) of the Act subject to the restrictions imposed by Sub-section (2) of Section 11. If upon an objection made by a tenure-holder, to whom a statement u/s 10(2) has been issued, a tenure-holder, to whom no statement is issued, is added a party by the Prescribed Authority Under Order 1, Rule 10 CPC read with Section 37 of the Act, the latter tenure-holder can prefer a claim or objection. Similarly, if to a proceeding u/s 11(2) of the Act a tenure-holder, to whom a statement has not been issued, is added as a party by the Prescribed Authority, such tenure-holder can prefer a claim or objection u/s 11(2) of the Act. Subject to Section 13, an order of the Prescribed Authority is final and conclusive. Then there was Section 14(3) which, prior to the Amendment Act,

1976, afforded an opportunity to any person claiming interest as tenure-holder or a lessee in possession of the surplus land to file objection within thirty days from the publication of the notification made under Sub-section (2). The failure to file an objection resulted in the extinction of interest though no such consequence was attached to the failure on the part of a person upon whom no notice had been served u/s 10(2) to have the order u/s 11(1) set aside and to make an objection u/s 11(2).

6. The Amendment Act of 1976 deleted Sub-sections (3) to (7) of Section 14, besides making certain other changes in the Principal Act. The Amendment Act, 1976 had replaced the Ordinance promulgated on 10-10-1975. Section 27(1) of the Ordinance provided that all proceedings under Sub-sections (3) to (7) of Section 14 pending on 10-10-1975 shall abate. A mere notification u/s 14(1) is sufficient to extinguish the rights and interest of the tenure-holder and to vest it in the State Government. The remedy left to those, who are interested in the land declared as surplus and who could file an objection under Sub-section (3) of Section 14 had been thus taken away by the Ordinance replaced by the 1976 Amendment Act.

7. The present amended Section 14 now declares:

As from the beginning of the date of the notification under Sub-section (1), all such surplus land shall stand transferred to and vest in the State Government free from all encumbrances and all rights, title and interest of all persons in such land shall, with effect from such date, stand extinguished.

8. Counsel for the Petitioner has contended that although there was legislative power to enact these laws in the State Legislature, but since as to some persons, who held their interest and right in the land, the power was exercised in disregard of constitutional limitations contained in Articles 19 and 31(1) of the Constitution, the law so far it provides for taking away their rights and interests could not be enforced against them. Further, it was rightly maintained that where the quasi judicial act is thus unconstitutional, it is liable to be quashed by a writ of certiorari. On the other hand, learned Standing Counsel has strenuously argued that the writ of certiorari is not a flexible remedy and is inadequate to either raise or dispose of questions of fact. Such questions are not considered. Nor is it generally admissible to adjudicate questions of title on weighing the evidence.

9. The law is now well settled that a writ of certiorari will lie to control a statutory body if it purports to act without jurisdiction or in excess of it or in violation of the principles of natural justice, provided that it can be said that the statutory body was a quasi judicial body entrusted with quasi judicial matters. It cannot be gainsaid that the Prescribed Authority under the Act performs quasi judicial functions and, therefore, the orders made by the Prescribed Authority are amenable, subject to the limitations aforesaid, to a writ in the nature of certiorari. "But there is a difference between the hearing and determination of an

application for the issuance of the writ, and the final hearing and determination upon the writ itself, and the return made thereto. It is usual to allow the writ, or grant an order to show cause, why it should not issue, if the petition on its face shows merit. But the court may in its discretion, resort to evidence outside the record for the purpose of determining whether or not, despite irregularities injustice may be done if the writ is issued" (see Ferris on the Law of Extraordinary Legal Remedies, Page 213).

10. In the instant case, the averments made in the petition and in the counter affidavit show on its face that the Petitioner was the tenure-holder of the plots in question having purchased them from opposite party No. 5 by the sale-deed obtained in the year 1970. Besides his name having been entered in the revenue records, in the proceedings held under the U.P. Consolidation of Holdings Act he was recognised as the tenure-holder of these plots, an averment which is supported by the Khatauni for 1380-82 F. (vide Annexure 2) and has not been controverted in the counter affidavit. Instead of disputing the correctness of the adjudication made by the consolidation authorities, the counter affidavit contents by saying that "the said entry in favour of the Petitioners is of no assistance to them." When once an adjudication of the rights of the tenure-holders in respect of the land lying within the consolidation area has been made, Section 49 of the U.P. Consolidation of Holdings Act makes such determination of title conclusive. Section 49 in a way lays down a rule of *res judicata* so far as the question relating to the declaration and adjudication of the rights of tenure-holders in respect of the holdings are concerned; the jurisdiction of the civil or revenue court to question the correctness or otherwise of the entries, which are made in the revenue records as a result of the consolidation proceedings, is, therefore, completely passed on the face of the petition. It is therefore demonstrably clear that the Petitioner was the tenure holder of the plots in question on the date the Prescribed Authority made the impugned order. The adjudication of title having thus already been made, the court in exercise of the extraordinary jurisdiction under Article 226 of the Constitution should step in to give relief to a person whose right to property was being infringed without any authority in law. It is true that as a rule, *certiorari* does not issue at the instance of one not named as a party to the proceeding in which the judgment or order sought to be reviewed was entered. But where a person not a party to the proceedings shows that the decision sought to be reviewed is directed against him or his property in the sense that the enforcement of the decision would involve special, immediate and in its effect a direct injury to his interest, the rule will issue.

11. Learned standing counsel has next urged that it is open to the Petitioner to make an application u/s 13-A to rectify the mistake apparent on the face of the record, if any, by the Prescribed Authority. The period of limitation within which such application is to be given, is two years from the date of the notification under Sub-section (1) of Section 14. Article 226(3) of the Constitution would have disabled the Petitioner to seek his remedy. It is a case in which the claim of the Petitioner is that the order of the. Prescribed Authority takes away his right

to hold property to enforce which the jurisdiction of the Hight Court under Article 226, as amended by the Constitution (Forty Second Amendment Act), 1976, has been left intact. Article 226(3) excepts writs complaining of the infringement of a fundamental right guaranteed by the Constitution. The contention is accordingly overruled.

12. For the discussion in the above, the Rule succeeds and the petition is allowed. By a writ of certiorari the Notification made in the Gazette dated 28-1-1975, is quashed to the extent it declares plots Nos. 1002 and 1003 measuring 1.77 acres situate in village Chandrasa Kalan, Pergana Firozabad, Tehsil Nighasan, District Kheri, as the surplus land of Durga Prasad, opposite party No. 5. We further forebear opposite parties Nos. 1 to 4 from causing interference in or disturbing the possession of the Petitioner over the aforesaid plots. In the circumstances, costs shall be borne by the parties.