

(1978) 11 AHC CK 0045

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4462 of 1976

Rajendra Singh and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 09-11-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 5, 9

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 18

Citation : (1978) 11 AHC CK 0045

Hon'ble Judges : K.N.Seth, J

Final Decision : Allowed

Judgement

K. N. Seth, J.

A notice under section 10 (2) of the U. P. Imposition of Ceiling on Land Holdings Act was issued to Hanumant Singh. In the objection filed by him it was asserted that the entire land recorded as his holding was ancestral Sir and Khudkasht before the abolition of Zamindari and that his sons Rajendra Singh and Lallu Raja had a share in it by birth as they were born prior to the date of vesting. The objection was overruled by the Prescribed Authority and the appeal preferred by the tenureholder also proved infructuous. Rajendra Singh and Lallu Raja, the sons of the tenureholder, filed this petition challenging the legality of the orders of the ceiling authorities. In the petition Hanumant Singh was impleaded as a respondent. An application has been moved praying that respondent no. 4 be transposed from the array of respondents to the array of the petitioners. I have allowed that application today.

The only question involved in the petition is whether land recorded in the name of Hanumant Singh could be treated as his exclusive holding. There is no dispute that the land was ancestral Sir and Khudkasht. There appears to be further no dispute that Rajendra Singh and Lallu Raja were born prior to the date of vesting. On these admitted facts the legal position is clear that Rajendra Singh

and Lallu Raja had an interest in the property and that it was not the exclusive property of Hanumant Singh. On the abolition of Zamindari the land held by the aforesaid persons as their Sir and Khudkasht became their Bhumidhari property in the same share in which they hold the land as their Sir and Khudkasht. The fact that in revenue papers only the name of the father was mutated would not result in depriving the sons of their interest in the property. By mere entry of his name in the revenue records Hanumant Singh did not acquire exclusive Bhumidhari rights over the entire property to the exclusion of the rights of his sons. Under section 18 of the U. P. Zamindari Abolition and Land Reforms Act Bhumidhari rights were acquired by all the intermediaries who held that land as their Sir and Khudkasht. Since there was no conflict of interest between the father and the sons, it has to be presumed that the name of the father was recorded in the revenue papers in a representative capacity. The view taken by the ceiling authorities that since Bhumidhari right was a fresh right conferred under the U. P. Zamindari Abolition and Land Reforms Act, the fact that the property was ancestral Sir and Khudkasht, and the sons had an interest in it prior to the abolition of Zamindari was not of any significance, is wholly erroneous, Bhumidhari rights under the U. P. Zamindari Abolition and Land Reforms Act was acquired by all the three persons who held the land exclusively in his own right.

In the result this petition is allowed. The orders of the Prescribed Authority dated 29.2.1975 and that of the appellate authority dated 22.7.1976 are quashed. The Prescribed Authority is directed to redetermine the surplus area, if any, in accordance with the view expressed above. Parties shall bear their own costs.