

(1995) 02 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 15239 of 1988

Ram Abhilakh and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 16-02-1995

Acts Referred:

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

Citation : (1995) 02 AHC CK 0035

Hon'ble Judges : S.K.Verma, J

Judgement

S.K.Verma, J.—The present writ petition has been filed for issuing a writ of certiorari for quashing the judgment dated 25.4.1988 passed by the respondent No. 2 Commissioner, Allahabad Division.

The following pedigree would facilitate in understanding the dispute raised in this petition :

Shist Narain

Ram Abhilakh Ashwini Prasad Ram Lal Babu Lal Panna Lal

(Petitioner No.1) (Petitioner No. 2) Shist Narain had filed a suit No. 85 of 1959 under Section 176 of U.P. Zamindari Abolition and Land Reforms Act, 1950 for partition of his 1/6 share. A preliminary decree was passed and then a final decree was also passed on 11.7.1959, a copy of which is Annexure 7. Notice under Section 10(2) of U. P. Imposition of Ceiling on Land Holdings Act, 1961 (hereinafter called the Act) was issued which was served on 5.1.1975. However, Shist Narain had already died in 1973. His five sons filed objections but before the objections could be decided the proceedings abated on 6.4.1976 because of the amending Act. Hence fresh notices were issued under Section 10(2) of the Act on 12.6.1976 wherein the (Petitioner No. 3)

holdings of the five sons had been clubbed alongwith Shist Narain's holdings. The Prescribed Authority dismissed the objection vide order dated 21.9.1976. An appeal was filed before the District Judge which was decided on 26.11.1976 and

the learned District Judge accepted the contention of Babu Lal and Panna Lal and allowed the appeal but failed to consider the objections of the present petitioners who were also sons of Shist Narain and had a similar objection. He declared 56 bighas . 3 biswas 16 biswansrs as" surplus. Against this judgment, writ petition No. 1014 of 1977 was filed by the present petitioners which was decided on 12.4.1989. The petition was allowed and the judgment of the appellate Court was quashed and the" " case was remanded to the appellate Court with a direction that the appeal shall be reheard and decided by a more comprehensive and full judgment. The appellate Court was directed to deal with the evidence on record and then give its findings. The parties were to be heard and allowed to lead evidence before the appellate Court, if necessary and the appellate Court was .directed to allow such opportunity in its discretion in accordance with the provisions of Order LXI, Rule 27, C.P.C. The petitioners were also allowed to refile the documents which they had taken back from the file of the appellate Court.

2. After the aforesaid directions of this Court the appellate authority instead of deciding the appeal itself remanded the case on 13.2.1984 to the Prescribed Authority. The Prescribed Authority allowed the objections of the petitioner vide orders dated 18.3.1986 the copy of which is Annexure "9" to the writ petition and discharged the notice. The State of UP. filed appeal before the Commissioner, Allahabad Division against the aforesaid order. The Commissioner, Allahabad Division vide judgment dated 25.4.1988 again quashed the order of the Prescribed Authority and remanded the matter to the Prescribed Authority, after criticizing the manner in which the Prescribed Authority had decided the question and also making some remarks regarding matters which had already been decided earlier in the writ petition as well as in the First Appeal filed before the District Judge, Allahabad which had been decided on 26th November, 1976. It is against this order that the present writ petition has been filed.

3. It appears that after the directions of this Court, the appellate Court, namely, the District Judge concerned instead of deciding the appeal according lo the remand order, remanded the matter back to the Prescribed Authority. The Prescribed Authority passed a sketchy order accepting the contention of the petitioners. The appeal filed by the State of U.P. against the Prescribed Authority"s order has been decided by the Commissioner, Allahabad Division but it is argued that the respondent No, 2 the Commissioner, Allahabad Division has not taken into consideration the decision of this court in writ petition No. 1014 of 1977 mentioned above. This Court"s" judgment in the aforesaid writ petition clearly considered the fact that there were five sons of Shist Narain. The District Judge in his earlier appellate order had accepted the contention of two of the sons, namely Babu Lal and Panna Lal but had not accepted the contention of the present petitioners. This Court, therefore, found that where specific objection was taken that each of the five sons of the deceased tenureholder had his separate khatas and objection was taken that the same should not have been included in the holdings of the deceasedtenureholder, the appellate Court seems to have been under some confusion and misconception inasmuch as it granted

relief in the case of the aforesaid two sons of Babu Lal and Panna Lal but refused the same in respect of the other three sons. There was 3 specific direction while allowing that writ petition that the case is being remanded to the appellate Court with a direction that the appeal shall be reheard and decided by a more comprehensive and full judgment. The appellate Court was also directing to deal with the evidence on record and give its findings.

4. To my mind the learned Commissioner had no occasion to make the remark that partition was possible only in case of co sharers and the land holder cannot partition his land amongst his sons unless they are cotenants. There is yet another remark in the impugned judgment that he agrees with the contention of the learned counsel for the State that the land in question was in the name of Shist Narain and he cannot assign it to his sons under the U. P. Zamindari Abolition and Land Reforms Act. If these two findings have been recorded by the appellate Court itself what is left there for the Prescribed Authority to do. In fact, the Prescribed Authority as well as the learned appellate Court have not followed the direction of this Court in the aforesaid writ petition which has resulted in miscarriage of justice. All the objections raised by the petitioners have to be considered in detail by the appellate authority as per direction of this Court and this job should have been done by the appellate Court itself. Since now appeals are to be decided by the Commissioner and not by the District Judge it would not be proper to quash the impugned order dated 25.4.1988 passed by the Commissioner and to direct the appellate authority namely, the Commissioner to himself decide the matter in appeal in respect of the objections raised by the petitioners regarding which directions have been made by this Court in writ petition No. 1014 of 1977. In doing so the Commissioner has to take into consideration the evidence already on record and has also to give opportunity to the parties to lead further evidence, if any, under Order XLI, Rule 27, C.P.C. and to file those documents which had been taken away after the decision of the earlier appeal. The Commissioner has also to take into account the fact that the State Government had not filed any writ petition against the judgment of the appellate Court dated 26.11. 1976 passed by the Additional District Judge, Allahabad and therefore, in so far as the objections of Babu Lal and Panna Lal were concerned, those objections stood allowed and were not challenged. The Commissioner has to decide the objections of the present petitioners keeping in mind this fact also.

5. In the result the writ petition stands allowed. The impugned order dated 15.4.1988 passed by the respondent No. 2 is hereby quashed and the case is remanded back to the respondent No. 2 for deciding the matter afresh according to law and according to the directions contained in the judgment. There is no order as to costs.