
(1981) 09 AHC CK 0041

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11587 of 1981

Ram Bilas Singh and others

APPELLANT

Vs

State of U.P and others

RESPONDENT

Date of Decision : 25-09-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 5(1)

Citation : (1981) 09 AHC CK 0041

Hon'ble Judges : M.P.Mehrotra, J

Final Decision : Allowed

Judgement

M. P. Mehrotra, J.

This petition arises out of the proceedings under the U. P. Imposition of Ceiling on Land Holdings Act. The facts, in brief are these:

One Sumer Singh was treated as the tenureholder and the notice under Section 10(2) of the Act was issued to him some time in the year 1976. It seems that an exparte order was passed by the prescribed Authority by his order dated 1471976, a true copy of which is annexure 4 to the petition. It seems that thereafter an application was moved for setting aside the said order on the ground that the said tenureholder Sumer Singh had died long back in 1971, therefore, the entire proceedings were void and without jurisdiction and, therefore, the exparte order dated 1471976 should be set aside. This application was rejected by the Prescribed Authority by his order dated 1781977, a true copy of which is annexure 5 to the petition. Against the said order dated 1781977 an appeal was filed and a true copy of the memorandum of appeal is annexure 6 to the petition. In ground No. 2 it is clearly stated that the said Sumer Singh died in the year 1971. The appeal was filed by the sons of the tenureholder. This appeal was dismissed in default on 1541978 (vide annexure 7), Thereafter an application was given for setting aside the said order dated 1541978. The application was belated and, therefore, condonation of delay was

sought under Section 5 of the Limitation Act. An affidavit was given in support of the aforesaid application. The said application for restoration was dismissed in default on 27th October, 1978. Thereafter other application were filed for getting rid of the orders which were passed in default. At one stage the petitioners succeeded but subsequently again the restoration application was dismissed in default on 621980, which was passed in Misc. Case No. 68 of 1978. Again a restoration application was made for setting aside the order dated 621980 but the same was dismissed by the appellate Court on 1941980 by the impugned order. Whose true copy is annexure 15 to the petition. Feeling aggrieved, now the petitioners have come up in the instant petition and, in support therefore, I have heard the learned counsel for the petitioners. In opposition, the learned standing Counsel has made his submissions.

Normally I would not have interfered with the orders passed by authorities below because basically, the question of sufficiency of case is for the said Courts to decide. However, this is a peculiar case in which I feel that interference is called for because there has been no denial for the fact that the tenureholder concerned, namely Sumer Singh died in the year 1971 and obviously in such circumstances the provisions of Section 5 (1) readwith Section 9 (2) of the Act were not applicable. In the Division Bench pronouncement in Horam Singh v. District Judge and others (1978) A.W.C. 758 (D.B.). It has been clearly laid down that on the date of the general notice under Section 9(2) the tenureholder must be alive. If the tenureholder is dead on the date of such general notice then the proceedings will be void and without jurisdiction. In such a case it is the heirs of the deceased tenureholder who should be proceeded against under Section 5 (1) readwith Section 10 of the Act. Therefore, there can be no doubt that the entire ceiling proceedings which were taken against the tenureholder Sumer Singh were wholly void and without jurisdiction and they should not be allowed to remain on the record. On this basis I am interesting in the writ petition, otherwise as I have stated above, so far as the sufficiency of the cause is concerned, I would not have interefered in the rinding recorded by the appellate Court.

This petition is accordingly allowed and the order passed by the Prescribed Authority dated 1471976 annexure 4 is hereby quashed and the notice under Section 10 (2) of the Act issued to Sumer Singh shall stand discharged. All subsequent orders passed by the authorities from time to time whether by Prescribed Authority or by the appellate Court in persuance of the ceiling case shall stand automatically quashed. In the circumstances there will be no order as to costs.