
(1968) 08 AHC CK 0023
In the Allahabad High Court
Case No : Sp. A. No. 274 of 1966

Ram Das

APPELLANT

Vs

State of UP and others

RESPONDENT

Date of Decision : 07-08-1968

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4, 5(b)(i)
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10

Citation : (1968) 38 AWR 617

Hon'ble Judges : V.G. Oak, C.J; Lakshmi Prasad, J

Bench : Division Bench

Advocate : Hargur Charan Srivastava, for the Appellant; Chief Standing Counsel for Respondents, for the Respondent

Final Decision : Dismissed

Judgement

Lakshmi Prasad, J.—This special appeal directed against the judgment of a learned single Judge dismissing the Appellant's petition Under Article 226 of the Constitution has its roots in proceedings under the UP Imposition of Ceiling on Land Holdings Act.

2. The Appellant did not file any objection u/s 9 of the said Act. Subsequent to the receipt of notice u/s 10 of the Act the Appellant preferred an objection on 3-3-1962. The village was notified under the UP Consolidation of Holdings Act on 16-3-1963. The Appellant objected to the notice issued u/s 10 on the ground that he did not actually own the area shown in the notice as his holding. It appears that the proceedings under the Imposition of Ceiling on Land Holdings Act dragged on for some time because of the two remands made by the appellate authority one after the other. The decision of the prescribed authority after the second remand was given on 4-7-1964. Aggrieved by this decision the Appellant went in appeal as provided under the said Act. Before the appellate authority the Appellant wanted to file the decisions of the consolidation authorities dated 27-12-1963, 28-12-1963, 2-1-1964 and 8-1-1964 which had

the effect of reducing the area of the holding of the Appellant from what was indicated in the notice issued u/s 10 or held to be the area of his holding by the prescribed authority by its decision dated 4-7-1964. The appellate authority refused to receive these documents at that stage. The reason given by the appellate authority in its own words for that refusal is:

If the papers came into existence after repeated decisions of the prescribed authority and the appellate court, they could not be taken into account, if they were not filed at the earliest opportunity.

After refusing to accept those decisions of the consolidation authorities, the appellate authority dismissed the appeal. It is in these circumstances that the Appellant preferred his petition Under Article 226 of the Constitution giving rise to this special appeal.

3. As appears from a perusal of the judgment under appeal, two points were urged before the learned single Judge. Before us also same two points have been urged on behalf of the Appellant. The first point urged is that in view of the notification issued u/s 4 of the UP Consolidation of Holdings Act on 16-3-1963, the proceedings under the Ceiling Act had to be stayed as required by Section 5 of the UP Consolidation of Holdings Act. The relevant portion of Section 5 as it then stood provided:

Upon the publication of the notification u/s 4 in the official Gazette, the consequences, as hereinafter set forth, shall....ensue in the area to which the declaration relates, namely--

(a) ...

(b)(i) all proceedings for correction of records and all suits for declaration of rights and interests over land, or for possession of land, or for partition, pending before any authority or court, whether of first instance, appeal, or reference, or revision, shall stand stayed....;

(ii) the findings of consolidation authorities in proceedings under this Act in respect of such rights or interests in the land shall be accepted by the authority or court before whom the proceeding or suit was pending which may, on communication thereof by the parties concerned, proceed with the proceeding or suit, as the case may be;

(c) ...

The learned single Judge did not accept the Appellant's contention that as a result of the notification issued u/s 4 of the UP Consolidation of Holdings Act the proceedings under the Ceiling Act should have been staged for the reason which may be stated in his own words:

There is nothing in record to suggest that any question of the right of the Petitioner in any of the lands held by him in his own right on 3-1-1961 was raised. The mere fact that certain orders were passed does not mean that the

persons in whose favour those orders were passed possessed those rights on 3-1-1961.

We are unable to appreciate this reasoning. Once in an objection u/s 10 the Appellant took the stand that what was recorded in his name in the record of rights did not actually constitute his holding, it necessarily liaised a dispute which required to be stayed u/s 5(b)(i), of the UP Consolidation of Holdings Act reproduced above. On that point there has been no serious controversy before us by the other side either. We are accordingly of opinion that that provisions of Section 5(b)(i) stood attracted on the facts of the present case with the result that the authorities proceeding under the Ceiling Act had to stay their hands and wait for the decision of the dispute, raised by the Appellant regarding his title to the holding entered in revenue records in his name, by the consolidation authorities.

4. The other contention raised on behalf of the Appellant is that the appellate authority acted wrongfully in not accepting the decisions of the consolidation authorities referred to above and produced before it. This contention too did not find favour with the learned single Judge for the reason that by virtue of Section 38 of the Ceiling Act, Order 41, Rule 27, CPC applied to the acceptance or otherwise of the additional evidence tendered by the Appellant before the appellate authority and there existed no case for accepting that additional evidence which had factually come into existence prior to the decision of the prescribed Authority on 4-7-1964. Here again we are unable to agree with the view expressed by the learned single Judge. Having regard to the mandatory language of Section 5(b)(ii) of the UP Consolidation of Holdings Act reproduced above, there was probably no scope for the appellate authority to refuse to look into the decisions of the consolidation authorities when produced before it by one of the parties before the appellate authority. According to Section 5(b)(ii), the authority before whom the proceeding is pending has to accept the decisions given by the consolidation authorities and is to dispose of the proceeding before it in accordance with those decisions on the communication of the same by the parties. The word used in Section 5(b)(ii) is "communication." This word "communication" cannot possibly be equated with the tendering of additional evidence which of course, if tendered, has got to be done in conformity with the requirements of Order 41, Rule 27, CPC the provisions of which no doubt apply to the proceeding under the Ceiling Act by virtue of Section 38 of the Ceiling Act. Even if for the sake of argument we accept the suggestion raised on behalf of the other side that notwithstanding the language of Section 5(b)(ii) of the UP Consolidation of Holdings Act the communication referred to therein has to be made in accordance with the rules of the Code of Civil Procedure, it can be said that having regard to the relevant provisions of the UP Consolidation of Holdings Act the appellate authority should have accepted those documents Under Clause (c) of Rule 27 of Order 41 of the Code of Civil Procedure. Under the said Clause (c) the appellate Court may receive additional evidence at the appellate stage if it requires the same to enable it to pronounce judgment or "for any other

substantial cause". Having regard to the language of Section 5(b)(ii) of the UP Consolidation of Holdings Act there is no escape from the conclusion even if Order 41, Rule 27 be held to be applicable that there was a good case within the meaning of the words "substantial cause" occurring in Clause (c) of Order 41, Rule 27, CPC for accepting the additional evidence consisting of the decisions of the consolidation authorities and tendered by one of the parties to the dispute before the appellate authority. We are accordingly of the view that the appellate authority committed a manifest error of law in refusing to take the decisions of the consolidation authorities into consideration in order to dispose of the appeal which it was bound to do in view of the provision contained in Section 5(b)(ii) of the UP Consolidation of Holdings Act.

5. For the reasons given above, we allow the special appeal and setting aside the order of the learned single Judge, quash the impugned order passed in appeal a copy of which is annexure 2 to the petition and direct that the appeal be decided according to law after taking into consideration the decisions of the consolidation authorities dated 27-12-1963, 28-12-1963, 2-1-1964 and 8-1-1964. We further direct that the Appellant shall get costs both in the petition and in this special appeal.