
(2008) 05 AHC CK 0227
In the Allahabad High Court

Ram Janki Mandir

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-05-2008

Acts Referred:

Citation : (2008) 05 AHC CK 0227

Hon'ble Judges : S.S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.S. Chauhan, J.—The present writ petition has been filed for quashing the orders dated 19.09.1991 and 28.08.1992 passed by opposite party No. 3 and opposite party No. 2 respectively.

2. The facts giving rise to the present writ petition are that a notice declaring 64.08 acres of surplus land was issued to Ram Kripal, who had already donated his part of land in the name of Ram Janki Mandir, Pure Dutta, Pargana, Tehsil and District Gonda, through its priest Jagdambika Prasad son of Shri Ram Kripal resident of Village Pure Dutta, Pargana, Tehsil and District Gonda. After issuance of the notice, an objection was filed by the petitioner before the Prescribed Authority claiming 18.04 acres of land belonging to the Trust, but the said objection was dismissed by the Prescribed Authority by means of order dated 25.03.1975. The petitioner feeling aggrieved with the aforesaid order preferred an appeal before the District Judge, Gonda and the same was allowed and the case was remanded to the Prescribed Authority. After the remand of the case to the Prescribed Authority an order dated 15.01.1976 was passed by it in Case No. 246 declaring 18.04 acres of land in the name of the petitioner and 46.04 acres of land to be the surplus land as against the holding of Ram Kripal. Thereafter, dispute ensued between the parties and on account of the redetermination the petitioner could not get possession of the land in question. The petitioner moved an application before the Prescribed Authority for giving physical possession of the land to the petitioner in pursuance of the order dated 15.01.1976 passed by

the Prescribed Authority. The Prescribed Authority instead of giving possession to the petitioner proceeded to reject the said application by means of order dated 19.09.1991. The petitioner feeling aggrieved with the said order again preferred an appeal before the Commissioner, Faizabad Division, Faizabad but the said appeal of the petitioner was also rejected by means of order dated 28.08.1992. Feeling aggrieved with the aforesaid two orders, the petitioner has preferred the present petition.

3. The submission of the learned Counsel for the petitioner is that once the matter has been settled by the Prescribed Authority by means of order dated 15.01.1976 declaring 18.04 acres of land in the name of the petitioner in accordance with the judgment of District Judge, then merely on the application of the petitioner to give possession, the claim of the petitioner could not have been rejected on merit. Both the Authorities i.e. the Prescribed Authority as well as the Commissioner, Faizabad Division, Faizabad have committed manifest illegality in treating the land of the petitioner as surplus, which is a Trust, to be the land of the individual tenure holders. It is further submitted that the Trust is a separate entity and it can own the land in its name, so the orders of the courts below are wholly illegal.

4. The learned Standing Counsel as well as the learned Counsel for the applicants, who are patta holders, submitted that the possession of the patta holders may not be disturbed and they have supported the orders passed by the courts below.

5. I have heard the learned Counsel for the parties and gone through the record.

6. The District Judge, Gonda while remanding the matter to the Prescribed Authority by means of order dated 26.11.1975 recorded a finding to the effect that the land of the tenure holders may be declared surplus to the extent 46.04 acres and the land measuring 18.04 acres may be left out from the ceiling proceedings in the name of the Trust. The Prescribed Authority in pursuance of the direction of the District Judge, Gonda by means of order dated 15.01.1976 declared the khata of the tenure holders to the extent of 46.04 acres as surplus and the rest 18.04 acres in the name of the Trust. This order has never been challenged by any of the parties and became final and binding between the parties. The procedural and consequential proceedings were drawn by way of an application for giving possession to the Trust but the Trust has not been provided possession of the entire land to which it was legally entitled. The function of the Prescribed Authority was only to give possession in pursuance to the order dated 15.01.1976. It was beyond the competence of the Prescribed Authority to review the order dated 15.01.1976, which has become final. The application moved on behalf of the petitioner was not for redetermination of the rights of the parties under the U.P. Imposition of Ceiling on Land Holdings Act but in fact it was only for the possession of the remaining land which was not handed over to the Trust. The reopening of the proceedings on merit was beyond the competence of the Prescribed Authority and, therefore, the its order dated 19.09.1991 is wholly

illegal and without jurisdiction. The appellate order passed by the Commissioner, Faizabad Division, Faizabad reiterating the same reasoning is also bereft of any merit. Merely because the son of the tenure holder is the Sarbarakar of the Trust Ram Janki Mandir, the land in question cannot be legally attached to the holding of the original tenure holder. The Trust is a separate entity having its own recognition under law and can sue or be sued in its name and, therefore, is fully entitled to hold property in its name. The reasoning given by the appellate authority is also without merit and does not have the sanction of law.

7. It has not been disputed by the parties that order dated 15.01.1976 was ever challenged before any forum. So once the determination became final, the Prescribed Authority ought to have not reopened the matter on merit and redetermined the validity of the land held by the petitioner. The evidence go to show that the authorities have acted beyond jurisdiction in rejecting the claim of the petitioner.

8. In view of what has been stated herein-above and the legal position emerging therein, the writ petition deserves to be allowed and is allowed. The orders dated 19.09.1991 and 28.08.1992 are set aside. The opposite parties are directed to give possession of the land to the petitioner in accordance with the order of the Prescribed Authority dated 15.01.1976 within a period of two months.

9. There shall be no order as to costs.