
(1978) 07 AHC CK 0062

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 236 of 1978

Ram Nagina Choudhary

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-07-1978

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10, 10(2), 37, 38

Citation : (1978) AWC 610

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

Bench : Single Bench

Advocate : Sankatha Rai, for the Appellant;

Final Decision : Allowed

Judgement

M.P. Mehrotra, J.—The petition arises out of the proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960, here-in-after referred to as the Act.

2. The facts in brief are these:

The notice u/s 10(2) of the said Act was originally served on Bhagwat Chaudhari, father of the Petitioner on 10th May, 1974. He filed objections but during the pendency of the said objections he died and the name of his son Ram Nagina, who is the Petitioner before me, was substituted in the place of the deceased father - as the objector. The Prescribed Authority allowed the objections and held that the Petitioner did not have any surplus land. The notice u/s 10 was, therefore, discharged. A true copy of the said order dated 31-1-1975, has been annexed to the petition and marked as Annexure 1. Inter alia, in the said order it was held that the youngest son Radhey Shyam was also a major along with his two elder brothers, who, of course, were undisputably major. Subsequently, after the amendment of the ceiling law by the U.P. Amending Act No. 2 of 1975, the Prescribed Authority set out to re-determine the surplus land and issued a fresh

notice u/s 10(2) of the said Act. The Petitioner filed objections. The Prescribed Authority by its order dated 19-6-1976, rejected the said objection and declared 21.79 acres in term of the irrigated land as surplus land. Inter-alia, the Prescribed Authority this time held that Radhey Shyam, the youngest son of the Petitioner was not major but a minor on the relevant date, namely, 8th June, 1973. A true copy of the order of the Prescribed Authority dated 19th June, 1976 has been appended to the petition and marked as Annexure 3. The Petitioner filed an appeal against the said order dated 19th June, 1976 and the same was allowed and the case was remanded to the Prescribed Authority for fresh decision in accordance with the directions given by the lower appellate court in its remand order. A true copy of the remand order dated 28-8-1976 has been annexed to the petition and marked as Annexure 4. In the remand order the lower appellate court held that Radhey Shyam was a minor on the relevant date and not major. Thus the lower appellate court affirmed the Prescribed Authority's second order dated 19th June, 1976, insofar as this point was concerned. The lower appellate court also held that as the plots of khatas Nos. 181 and 621 of village Sisotar measuring 17.46 acres stood recorded in the names of five more persons as co-tenure-holders along with the Petitioner in view of the order of the S.D.O. dated 7-9-1968, the Prescribed Authority was not justified in treating the entire area of the said khatas as exclusively belonging to the Petitioner. The lower appellate court directed that the Prescribed Authority should make enquiries about the share of the Petitioner in the said khata taking into consideration that in all the names of six persons were recorded as tenure-holders in the said khatas under the orders of the S.D.O. The Prescribed Authority, despite the said remand order giving it the aforesaid directions, by its order dated 31-3-1977 again declared 21.79 acres to be the surplus land in the hands of the Petitioner. The Petitioner filed an appeal in the lower appellate court and the same was partly allowed. The surplus area was reduced from 21.79 acres of irrigated land to 20.01 acres of such land. A certified copy of the lower appellate court's order dated 16-8-1977, has been appended to the petition and marked as Annexure 6.

3. Now the Petitioner has come up in the instant petition and seeks the quashing of the aforesaid lower appellate court's order dated 16-8-1977 and the said order of the Prescribed Authority dated 31-3-1977.

4. Learned Counsel for the Petitioner made the following points:

(1) The Prescribed Authority and the lower appellate court were not justified in again including in the Petitioner's total area the entire 17.46 acres of land of Khatas Nos. 181 and 621 of village Sisotar which stood in the names of six tenure-holders. Apart from other aspects of the matter, the earlier remand order passed by the lower appellate court was binding on the Prescribed Authority and thereafter on the lower appellate court itself;

(2) Radhey Shyam, the youngest son of the Petitioner should have been held to be a major and not a minor. It was contended that he had been held to be a major in the first order dated 31-1-1975 by the Prescribed Authority and such an

order was subsequently binding on the said authority in the second order which was passed by it.

(3) The major portion of the land in dispute was covered by the river bed and was sandy and fell within the definition of "Usar" as defined in the Act.

(4) The Petitioner's choice was bound to be given effect to which was not done in the instant case.

5. in my opinion, the first contention raised by the learned Counsel for the Petitioner, is correct. It is not denied that the aforesaid remand order was not questioned by any of the parties in any higher forum. It cannot also be doubted that so far as the Prescribed Authority and the lower appellate court itself are concerned, the said order was binding them. In the judgment of the Division Bench reported in *Pritam Singh v. Asstt. Director of Consolidation* 1978 AWC 137 the implication and effect of a remand order have been considered and discussed. After a review of the case law, the Division Bench laid down certain propositions as emerging from such case law. The 7th proposition laid down in the said judgment is as follows:

So far as the court passing the remand order is concerned, it cannot question it at any subsequent stage and similarly the court below to whom the case has been remanded is bound to carry out the remand order and cannot allow it to be questioned. The remand order can be questioned only in a court higher than the court which passed the remand order.

6. It is not necessary to pause here to examine whether the Prescribed Authority is a court or not. Even if the officer acting as the Prescribed Authority be held to be not a presiding officer of a regular court, still, in view of Section 37 of the U.P. Imposition of Ceiling on Land Holdings Act, he undoubtedly has all the powers and privileges of a civil court and he has to follow the procedure laid down in the Code of Civil Procedure, 1908 for the trial and disposal of suits relating to immovable property. Similarly, Section 38 vests in the appellate court all the powers and privileges of a civil court and enjoins that the procedure for the hearing and disposal of appeals laid down in the Code of Civil Procedure, 1908 should be followed. It seems to me that the aforementioned 7th proposition laid down by the Division Bench would be applicable to a remand order passed by an appellate authority under the U.P. Imposition of Ceiling on Land Holdings Act also. In this view of the matter, I have reached the conclusion that it was not open to the Prescribed Authority to act contrary to the directions given in the remand order passed by the lower appellate court and the Prescribed Authority was indeed bound to carry out the said directions. The lower appellate court in its remand order had, inter alia, observed-

Plots of khata No. 181 of village Sisotar and 621 of village Sisotar measuring 17.46 acres were recorded under the orders of the S.D.O. of Bansdih dated 7-9-1968 as tenure not only of the Appellant but also of five other persons. The Prescribed Authority treated the entire area as belonging to the Appellant

himself. This was wrong. The Prescribed Authority should have made enquiries to find out as to what was the share of the Appellant in those plots. The learned Counsel for the Appellant tells me that the Appellant did not own the entire area and that the Appellant's share should prima facie be not more than 1/6. I think that the case should go back to the Prescribed Authority for fresh decision after enquiry in this respect.

In the operative part of the remand order the lower appellate court directed as under:

I, therefore, allow this appeal, set aside the impugned order and remand the case to the Prescribed Authority for fresh decision after allowing the parties reasonable opportunity of being heard and in the light of the observations made above.

7. In view of the Said position, it was not open to the Prescribed Authority to hold that the Petitioner alone was the exclusive holder of the entire 17.46 acres of Khatas Nos. 181 and 621. When no evidence was forthcoming in respect of the respective shares of the recorded tenure-holders, the ordinary presumption would be that all the six co-tenure-holders had equal share in the said khatas and the Prescribed Authority should have proceeded on the said base. Therefore, the order of the Prescribed Authority and the subsequent order of the lower appellate court affirming the decision of the Prescribed Authority must be held to be illegal and the mistakes are apparent on the face of the record.

8. So far as the second contention of Sri Sankatha Rai is concerned, in my opinion, the same is untenable. I have already held in the fore-going paragraphs that the remand order was binding on the Prescribed Authority and on the lower appellate court itself at the subsequent stages. In the said remand order Radhey Shyam was held to be minor and, therefore, the Prescribed Authority was bound by the said finding after the case went back to the said authority after the remand order.

9. So far as the third contention of Sri Sankatha Rai is concerned, again in view of the said remand order he is not entitled to raise the said question. Certain specific directions were given in the remand order and the Prescribed Authority could not go beyond the said directions. It will further be seen that the point which Sri Sankatha Rai seeks to raise, was not raised before the Prescribed Authority after the case was decided by it after the remand order. In the order of the lower appellate court also no such point was raised as was sought to be raised by Sri Sankatha Rai. In my opinion, therefore, this question cannot be allowed to be raised now by the Petitioner.

10. So far as the fourth contention of the learned Counsel for the Petitioner is concerned, in my view, it is not necessary for me to go into the said question, inasmuch as I am sending back the case to the Prescribed Authority and the Petitioner will be free to raise the question of choice before the said authority.

11. I accordingly allow this petition and quash the orders of the Prescribed Authority, a true copy whereof is Annexure 5 to the writ petition and the order dated 16-8-1977, passed by the lower appellate court, a certified copy whereof is Annexure 6 to the writ petition. I should like to make it clear that the said orders are being quashed only to the extent and in the manner that the Prescribed Authority will include in the total area of the Petitioner only 1/6th portion of 17.46 acres of land of Khatas Nos. 181 and 621 of village Sisotar. All the other five co-tenure-holders shall also be treated as having 1/6th share each in the land of the said khatas and necessary consequential amendments and changes will be made in the ceiling area and in the surplus land of the Petitioner in view of the said directions. I should also like to make it clear that the lower appellate court's order dt. 16-8-1977 will otherwise be treated as final and the aforesaid adjustment will be made on the basis of the figures laid down in the said appellate order. As. stated above, the Petitioner will be entitled to agitate the question of choice before the Prescribed Authority. In the circumstances of the case there will be no order as to costs.