
(2011) 05 AHC CK 0406
In the Allahabad High Court
Case No : C.M.W.P. No. 3898 of 1994

Ram Nihore

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-05-2011

Acts Referred:

Citation : (2011) 5 AWC 4440 : (2011) 113 RD 639

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the parties.

2. This writ petition arises out of proceedings under U.P. Imposition of Ceiling on Land Holdings Act, 1960. The case of the Petitioner was that the agricultural land in dispute actually belonged to five persons and his share was only one fifth therein. The first order was passed by Prescribed Authority on 4.9.1976 declaring 13 bighas and odd land as surplus with the Petitioner. Salig Ram, one of the alleged co-sharer, Respondent No. 4 in this writ petition filed appeal against the said order. District Judge remanded the matter directing the Prescribed Authority to decide the same afresh after issuing notice to all the five alleged co-sharers (including Salig Ram) as their names had been mutated in the revenue records. The Prescribed Authority through order dated 24.12.1991 again declared that the entire property belonged to the Petitioner hence he possessed 13 bighas, 14 bishwansis land as surplus. The said order was passed by Additional District Magistrate (R.A.)/ Prescribed Authority, Allahabad under the Ceiling Act in Case No. 6 of 1991-92. Against the said order Appeal No. 3 of 1991-92 was filed. Additional Commissioner, Allahabad Division, Allahabad dismissed the appeal on 10.11.1993 hence this writ petition.

3. The Consolidation Officer on the basis of compromise passed an order on 5.8.1972 dividing the agricultural land in dispute among five persons i.e. Petitioner, Salig Ram-Respondent No. 4, Chhotey Lal-Respondent No. 5, Mishri Lal-Respondent No. 6 and 1/5th share jointly to Dhanush Dhari, Respondent No.

7 and Lal Mani (father of Respondent No. 8 Dayashanker).

4. The Lower Appellate Court referred to Section 5(7) of the Ceiling Act and held that as partition had taken place after 24.1.1971 hence it had to be ignored. In fact no partition had taken place in between co-sharers. Contesting Respondents whose names were not there in the revenue records had been declared as co-sharers. It was a case covered by Section 5(1) Explanation II of the Act. This explanation was substituted by U.P. Act No. 20 of 1976 w.e.f. 17.1.1975. There appears to be some overlapping between this explanation and Section 5(6) including its proviso and both the explanations. However, Sub-section (6) of Section 5 was there much before 1975 and only Explanation I was substituted by U.P. Act No. 2 of 1975 w.e.f. 8.6.1973. Accordingly, in respect of the position covered by both, Explanation II to Sub-section (1) added in 1976 will have to prevail. Both Sections 5(1) and 5(6) are quoted below:

5. Imposition of Ceiling--(1) [On and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972], no tenure-holder shall be entitled to hold in the aggregate through-out Uttar Pradesh, any land in excess of the ceiling area applicable to him.

Explanation I.-In determining the ceiling area applicable to a tenure-holder, all land held by him in his own right, whether in his own name, or ostensibly in the name of any other person, shall be taken into account.

Explanation II.-If on or before January 24, 1971, any land was held by a person who continues to be in its actual cultivatory possession and the name of any other person is entered in the annual register after the said date either in addition to or to the exclusion of the former and whether on the basis of a deed of transfer or licence or on the basis of a decree, it shall be presumed, unless the contrary is proved to the satisfaction of the prescribed authority that the first mentioned person continues to hold the land and that it is so held by him ostensibly in the name of the second mentioned person.

(6) in determining the ceiling area applicable to a tenure-holder, any transfer of land made after the twenty-fourth day of January, 1971, which but for the transfer Would have been declared surplus land under this Act, shall be ignored and not taken into account:

Provided that nothing in this Sub-section shall apply to-

(a) a transfer in favour of any person (including Government) referred to in Sub-section (2);

(b) a transfer proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a benami transaction or for immediate or deferred benefit of the tenure-holder or other members of his family.

Explanation I.-For the purposes of this Sub-section, the expression transfer of

land made after the twenty-fourth day of January, 1971, includes-

(a) a declaration of a person as a co-tenure-holder made after the twenty-fourth day of January, 1971 in a suit or proceeding irrespective of whether such suit or proceeding was pending on or was instituted after the twenty-fourth day of January, 1971;

(b) any admission, acknowledgment, relinquishment or declaration in favour of a person to the like effect, made in any other deed or instrument or in any other manner.]

Explanation II.-The burden of proving that a case fails within Clause (b) of the proviso shall rest with the party claiming its benefit.

5. However both the provisions may be reconciled if they are interpreted in a particular manner. Explanation I to Sub-section (6) is confined to declaration, admission, acknowledgement or relinquishment which has not been incorporated in the revenue records. However, if consequent upon declaration, acknowledgement or relinquishment, name of person is entered in the revenue records then the matter would be covered by Explanation-II to Sub-section (1).

6. There is one aspect of the matter which may require thorough consideration in some proper case. u/s 5(6), proviso (b), it is provided that a transfer in good faith and for adequate consideration will not be ignored. Thereafter, under Explanation-I it is provided that the expression "transfer of land" includes declaration of a person as co-tenure-holder or admission etc. made to that effect by the original tenure-holder. An admission, acknowledgement or relinquishment can never be bona fide (in good faith) if it is made for consideration. However if it is made without consideration then it will not be ignored under the main part of Section 5(6). A sale-deed may satisfy the twin conditions of being in good faith and for adequate consideration, however an admission, acknowledgement or relinquishment can never satisfy both these conditions. Either it will satisfy one or the other.

7. In the instant case, if names were recorded in the revenue records after passing of the order of the Consolidation Officer then the case is covered by Explanation-II to Sub-section (1).

8. Accordingly, if the names were recorded then it is to be decided as to whether after recording of the names of contesting Respondents in the revenue records, entire land in dispute remained in cultivatory possession of the Petitioner or not? if the answer in negative then the property which was given to other four co-sharers i.e. 4/5th in the land in dispute cannot be treated to belong to the Petitioner. In that eventuality each of the five co-sharers would be deemed to be independent tenure holders of their shares hence not liable to surrender any land as surplus. However, if it is held that in spite of order dated 5.8.1972 and consequent entries of contesting Respondents in the revenue records, land remained in cultivatory possession of the Petitioner, then the area declared as

surplus through the impugned orders will again have to be declared as such.

9. Accordingly, the impugned orders are set aside and the matter is remanded back to the Prescribed Authority to decide the case in accordance with observation made above.

10. The orders which were challenged through this writ petition were also challenged by the other three brothers of the Petitioner i.e. Salig Ram, Chotey Lal and Lal Mani and Dhanush Dhari and Daya Shanker through writ petition No. 19244 of 1994. However that writ petition is also listed but it cannot be decided for the reason that it was dismissed in default by Hon"ble Sudhir Agarwal, J. on 2.9.2008 and restoration application is pending. However, learned Counsel for the Petitioners in the said writ petition under takes that all the Petitioners would be present before the Prescribed Authority on the date fixed by this Court. Accordingly it is directed that the Petitioner of this writ petition as well as Petitioners of the writ petition No. 19244 of 1994 shall appear before the Prescribed Authority on 14.7.2011 along with certified copy of this judgment. This order shall amount to sufficient notice to the brothers of the Petitioners i.e. Petitioners of the other writ petition.

11. With the aforesaid observations the writ petition is disposed of.