

(2015) 04 AHC CK 0208

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 20101 of 2015

Ramayan Singh and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4, 5, 5(2)

Citation : (2015) 5 ADJ 611 : (2015) 6 AWC 5689

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : A.P. Paul and B.B. Paul, for the Appellant

Final Decision : Disposed off

Judgement

Ran Vijai Singh, J—Learned counsel for the petitioner is permitted to correct the description of the respondent No. 60. Heard Sri B.B. Paul alongwith Sri A.P. Paul, learned counsel for the petitioners, learned Standing Counsel appearing for the State-respondents and the learned counsel for the Gaon Sabha.

2. This writ petition has been filed with the following prayers:

"1. Issue a writ of mandamus in the nature of declaration that upon start of consolidation operation and till closing thereof revenue Court has no jurisdiction, order of direction in the nature of mandamus prohibition commanding the respondent No. 2 personally arrayed as respondent No. 3 not to decide declaratory suit No. 87/211 of 2004 In re: Smt. Ramaraji v. State of U.P. and others and (2) Suit No. 88/212 of 2014 In re: Smt. Ramraji v. Ambika Prasad and (3) Suit No. 89/213 In re: Smt. Ramraji v. State of U.P. and others, now bearing composite Case No. 32/37/96/88/212/87/211/89/213 of 2015.

2. Issue a writ, order or direction in the nature of mandamus commanding the respondent No. 2 to abate declaratory suits between the parties under Section 5(2) of U.P. C.H. Act personally arrayed as respondent No. 3 to abate declaratory Suits No. 87/211 of 2004 in re. Smt. Ramaraji v. State of U.P.

3. Issue ad interim mandamus staying further proceeding of declaratory suits between the parties, being suit No. 87/211 of 2004 In re: Smt. Ramaraji v. State of U.P. and others and (2) Suit No. 88/212 of 2014 In re: Smt. Ramraji v. Ambika Prasad and (3) Suit No. 89/213 In re: Smt. Ramraji v. State of U.P. and others, presently bearing Case No. 32/37/96/88/212/87/211/89/213 of 2015 pending before S.D.O. Tehsil Lalganj, District Mirzapur.

4. Issue any other suitable writ, order or direction, which this Hon"ble Court may deem fit and proper in the facts and circumstances of the case.

5. Award cost of the writ petition in favour of the petitioner."

3. In substance the petitioner appears to be aggrieved by non abatement of the aforesaid suits under sub-section (2) of Section 5 of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act) on account of notification under sub-section (2) of Section 4 of the Act. It is contended by Sri Paul that aforesaid suits are pending since 2004 in which the petitioners are defendants. The land in dispute is situated in village Hateheda, Tehsil Lalganj, District Mirzapur. The village has been notified in the Gazette Notification dated 26th December, 2013 under sub-section (2) of Section 4 of the Act. It is submitted that the petitioners have filed an application for abatement of the suit under sub-section (2) of Section 5 of the Act but the Court concerned has rejected the petitioners' application on the ground that unless some written order from the higher authority is obtained the suits cannot be abated.

4. Sub-section (2) of Section 5 of the Act reads under:

"(2) Upon the said publication of notification under sub-section (2) of Section 4, the following further consequences shall ensure in the area to which the notification relates, namely:

(a) Every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any Court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending stand abated:

Provided that no such order shall be passed without giving to the parties notice by post or in any other manner and after giving them an opportunity of being heard.

(b) Such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in dispute in the said suits or proceedings before the appropriate consolidation authorities under and in accordance with the provisions of this act and the rules made thereunder."

5. In view of the provisions contained under sub-section (2) of Section 5 of the

Act all the proceeding regarding declaration of right etc. shall stand abated after notification under sub-section (2) of Section 4 of the Act after notice to the parties. The Sub Divisional Officer was exercising power of the Court while deciding the petitioners' application. For deciding the cases pending before the Court the direction of the authorities is not necessary. The cases have to be decided on the basis of the provisions contained under the Statute for such purpose. There is no scope of interference of the authorities in the judicial functions of the Court. The Sub-Divisional Officer has mislead himself by observing that unless a direction of the higher authority is given the cases cannot be abated. The view taken by the Sub Divisional Officer is patently illegal and arbitrary. The Sub Divisional Officer is directed to pass a fresh order on the petitioners' application ignoring the earlier order passed by him on 11.3.2015 on the basis of the statutory provisions as mentioned herein above and the arguments advanced by the counsel for the parties. With the aforesaid observation/direction this writ petition is disposed of.