
(1996) 05 AHC CK 0103

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3450 of 1988

Rameshwar Prasad

APPELLANT

Vs

Additional Commissioner, Jhansi and Others

RESPONDENT

Date of Decision : 14-05-1996

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 13A

Citation : (1996) 05 AHC CK 0103

Hon'ble Judges : Aloke Chakrabarti, J

Final Decision : Disposed Of

Judgement

Aloke Chakrabarti, J.—When a notice under Section 10(2) of the U.P. imposition of Ceiling on Land Holdings Act was issued on 3151977, an objection was filed and there upon the prescribed authority discharged the notice by order dated 481979. The appeal against the said order was allowed sending back the matter on remand. The writ petition challenging the said order was again allowed and the matter was again sent back to the appellate Court. This time appeal was allowed by order dated 6121983. The petitioner's writ petition challenging the said order was admitted and is still lying pending and the dispossession of the petitioner from the land declaring surplus was stayed therein. The writ petition filed by the State of Uttar Pradesh against the said order dated 6121983 was dismissed by order dated 2671984. Thereafter, a notice was served upon the petitioner dated 521987 and this notice was under Section 13A of the said Act and proposal was made for treating further land of the petitioner as surplus. Upon an objection filed by the petitioner, by order dated 18387 the notice was made absolute and further land was declared surplus. The petitioner preferred an appeal which was also dismissed on 18111987. Challenging the said orders dated 521987, 1831987 and 18111987 this writ petition was filed.

2. Counter and rejoinder affidavits were filed. When the writ petition was taken up for consideration parties agreed to final disposal thereof.

3. Heard the learned counsel for the petitioner as also the learned Standing

Counsel.

4. It appears that on behalf of the petitioner only two contentions were made. First contention is that in view of the decision by the writ court on the writ petition filed by the State "of Uttar Pradesh the matter was finally decided and the question having been decided once, could not be reported as the same amounts to violation of the principle of res judicata. Second contention is that the proceeding under Section 13A of the said Act is barred as it was initiated after a period of two years from the date of notification.

5. Learned Standing counsel representing the respondents contended that as there was no gazette notification, the proceeding under Section 13(A) of the said Act can not be barred. Next contention of the learned Standing counsel is that the principle of resjudicata does not apply as the petitioner's writ petition is still pending.

6. Reliance was placed by the respective parties on various case laws, including the judgment in the case of Kamla Devi v. Second Addl. D, J., Fatehpur and others reported in 1986 R.D. 384, R.S. Sial v. State of U. P. and others reported in AIR 1971 (Alld) 375, State of Maharashtra and another v. Shri Prabhakar Bhikaji Ingle reported in JT 1996 (3) SC 567 and Union of India and another v. Ranchi Municipal Corpn., Ranchi and others reported in JT 1996 (3) SC 171 : 1996(2) JCLR 231.

7. After considering the respective contentions of the parties and perusing the case laws as also the materials available on record I find that the question of bar of two years for initiating a proceeding under Section 13(A) of the said Act does not arise as the gazette notification has not been made as yet. In this connection the contention made in paragraph No. 10 of the counteraffidavit is very categorical while it says that there was no gazette notification has yet been" made. Rejoinder affidavit only made a bold denial and no particulars have been stated showing a gazette notification as referred to in Section 13A of the said Act. Thus, the fact remains that the petitioner has failed to show any gazette notification and accordingly, the bar of two years as provided in Section 13A of the said Act does not stand.

8. With regard to question of resjudicata, the learned counsel for the petitioner relied upon the case of Kamla Devi (supra) wherein though the proceeding under Section 10(2) of the said Act was decided ex pane but still as the party affected therein subsequently participated in the proceeding and asked for quashing of the said order, it was held that the party so affected could have urged the said point before the said authority and in the writ petition, when the party so participated in the said proceeding. "The mistake apparent on the face of record" as contained in Section 13A of the said Act as been interpreted as not a disclosure of a new fact but it means an error in misconstruing any statutory provision of law.

9. In the present case admittedly after the proceeding under Section 10(2) of the

said Act was over, the petitioner filed a writ petition which was allowed and the matter was remanded back to the appellate Court. The appellate Court declared some of the lands of the petitioner as surplus. The writ petition filed by the State of Uttar Pradesh was dismissed though summarily but it was recorded clearly that the writ petition was concluded by findings of facts and on that ground interference was refused by the Hon"ble Judge.

10. In the aforesaid circumstances and in view of the law explained already in similar circumstances in the case of Kamla Devi (*supra*) the proceeding under Section 13A of the said Act is barred by the principle of *resjudicata*. As no misconstruction of any statutory provision of law has been shown in course of hearing and so there was no mistake apparent on the face of the records.

11. The writ petition succeeds and is allowed. The proceedings initiated by the order dated 521987 at Annexure No. III to the writ petition, impugned order dated 1831987 passed by the Prescribed Authority at Annexure No. VI to the writ petition and the order dated 18111987 passed by the respondent No. 1, Addl. Commissioner, Jhansi Division Jhansi, dismissing the appeal at Annexure No. VII to the writ petition, are hereby set aside. There will be no order as to costs.