
(1985) 03 AHC CK 0049

In the Allahabad High Court

Case No : Writ Petition No. 499 (along with W.P. Nos.718 and 790) of 1977

Rani chandra prabha devi

APPELLANT

Vs

Civil Judge, Sitapur and Others

RESPONDENT

Date of Decision : 01-03-1985

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 3(7), 38B

Citation : (1985) 03 AHC CK 0049

Hon'ble Judges : K.S.Varma, J

Final Decision : Allowed

Judgement

K.S. Varma, J.—These writ petitions arise out of orders passed under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (Hereinafter to be referred to as the Ceiling Act). The order under challenge is an appellate order passed by Civil Judge, Sitapur directed against an order passed by the Prescribed Authority (Ceiling) dated 3061976 in ceiling case No.137 of village Kamlapur, District Sitapur.

2. I propose to take up writ petition No.790 of 1977 first. In order to appreciate controversy between the parties, a short pedigree is reproduced below:

Raja Dinesh Pratap Singh (Petitioner)

Rani Chandra Prabha Devi (opposite party no.4)

Kr. Dibyakar Pratap Singh

Kr. Dinraj Pratap Singh

Raja Dinesh Pratap Singh is petitioner in Writ Petition No.790 of 1977. His wife Rani Chandra Prabha Devi is petitioner in Writ Petition No.490 of 1977. They had two sons Kunwar Dibyakar Pratap Singh and Kunwar Dinraj Pratap Singh who is petitioner in Writ Petition No.718 of 1977. Since the three Writ petitions are directed against the same order they are being disposed of by one common judgment.

3. The petitioner's case in writ petition No.790 of 1977 is that in 1959 a dispute arose between the petitioner and his wife Rani Chandra Prabha Devi and his two sons about their respective title in respect to certain agricultural properties. The dispute between the parties was adjusted by way of compromise in the shape of a family arrangement dated 27/5/1959 which has been filed as Annexure 1 to the writ petition. According to the petitioner this family arrangement which is a registered document was judicially recognised by mutation courts. The SubDivisional Officer, Sidhauri ordered mutation in the case of Rani Chandra Prabha Devi on the basis of family arrangement in respect of agricultural land situate in village Maholi. On the basis of family arrangement each party separated from the other and mutation was effected in their respective names and they enjoyed possession of their respective properties separately and made separate arrangements for their respective properties to the exclusion of the other. Rani Chandra Prabha Devi was recognised as exclusive owner of certain properties which are being included in the ceiling area of the petitioner. These properties are mentioned in Annexure 2 to the writ petition. In proceedings under the U.P. Large Holdings Tax Act in the year 1961, the Commissioner, Lucknow Division in appeal No.285 held that there had been separation between the petitioner and his wife and a certified copy of the said order is Annexure 3 to the writ petition. In 1962 there were proceedings under the Ceiling Act after the issue of a notice and the properties mentioned in Annexure 2 to the writ petition were held as the exclusive and separate properties of Rani Chandra Prabha Devi by an order passed by the then Prescribed Authority. He held that these properties were separately owned and managed by Rani Chandra Prabha Devi and could not be included within the ceiling area of the petitioner. Certified copy of the said order is tiled as Annexure 4 to the writ petition. The petitioner's case is that the order Annexure 4 to the petition dated 30/6/1963 became final as the order was not challenged in an appeal filed by the State. The further contention of the petitioner is that in spite of the fact that the order Annexure 4 has become final, the Prescribed Authority issued another [notice on 20/10/1975 for redetermination of the question involved under the Ceiling Act as amended. The said notice is Annexure 5 to the writ petition. There was further partition of the nonagricultural property between the petitioner and his wife Rani Chandra Prabha Devi and his sons in 1963. This partition was reduced in writing by a registered deed, a certified copy of which is Annexure 6 to the writ petition. Then a notice under Section 10(2) of the Act dated 29/10/1975 was issued to the petitioner. the said notice has been challenged by the petitioner on the ground that the earlier order passed by the Prescribed Authority dated 30/3/1963, Annexure 4, cannot be ripped open as it has become final between the parties. It is further contended that even after the enforcement of the Act as amended by the Act 2 of 1975 there is no power left in the Ceiling authorities to redetermine the surplus land in accordance with the principal Act as amended in 1975 and 1976. Notice Annexure 5 dated 29/10/1975 has been assailed as being invalid as according to the petitioner the determination of the ceiling area has already been made by the Prescribed Authority by order dated 30/3/1963.

4. Rani Chandra Prabha Devi was also served with a notice after the amended Act. She examined herself before the Ceiling authorities and stated that her separation from her husband Raja Dinesh Pratap Singh was complete in all respects and he was separate in mess also. The Prescribed Authority repelled the contention of the petitioner and his wife and, held that so far as Rani Chandra Prabha Devi is concerned, she cannot be treated to be a judicially separated (wife). The petitioner also contended that the Prescribed Authority, illegally and erroneously and contrary to law, has held the exclusive properties of Rani Chandra Prabha Devi mentioned in Annexure2 and in various other documents as the surplus area of the petitioner, by his order dated 2061978. A certified copy of the said order is Annexure7 to the writ petition. The order of the Prescribed Authority was challenged in appeal by the petitioner and the lower appellate court held that Rani Chandra Prabha Devi is not a separated wife. The Court also held that "judicially separated" means separaion in consequence of a decree of a court. The appellate order is dated 18121976 which is Annexure8 to the writ petition.

5. The case of the State of Uttar Pradesh as disclosed in the counter affidavit is that in view of the amended Act (U.P. Act 2 of 1975) it is open to the State Government to redetermine the ceiling area. It was also maintained that Rani Chandra Prabha Devi was not a separated wife within the meaning of the ceiling Act as there was no decree for judicial separation under Section 10 of the Hindu Marriage Act. By and large, the case of the State of Uttar Pradesh is that after the enforcement of U.P. Act 2 of 1975, earlier proceedings are wiped out and it is open to the State of U.P. to redetermine the surplus area.

6. In writ petition No.499 of 1977 Rani Chandra Prabha Devi has also assailed the order dated 3061976 passed by the Prescribed Authority and the order passed by the lower appellate Court dated 18121976. Her case is that the finding recorded by the lower appellate court that she is not a judicially separated wife is incorrect and liable to be set aside. It is further contended that the ceiling area in respect of her properties has already been determined and that determination cannot be ripped open by resort to the provisions of U. P. Act 2 of 1975. She has also maintained that the family partition was valid and proper and has to be given effect to between her, her husband and their sons.

7. Writ petition No.718 of 1977 has been filed by Dinraj Pratap Singh, son of Raja Dinesh Pratap Singh and he has also challenged the decision rendered by the appellate court dated 18121976 on the grounds the decision has been challenged by Raja Dinesh Pratap Singh.

8. In order to appreciate the various contentions raised on behalf of the parties, it would be appropriate to refer to the Ceiling Act as it stands amended by U. Act 2 of 1975. Section 9 of the amending Act reads as folio as :

"Transitory provisions. Where an order determining the surplus land in relation to a tenureholder has been made under the principal Act, before the

commencement of this Act, the Prescribed Authority may, at any time within a period of two years from the commencement of this Act, redetermine the surplus land in accordance with the principal Act as amended by this Act."

The argument on behalf of the State is that in view of the amending Act, the State of U. P. is within its right to redetermine the ceiling area at any time within a period of two years from the commencement of the amending Act. There is no dispute that the proceedings were initiated within two years but it is contended on behalf of the petitioners in these writ petitions that this power conferred by the Legislature does not authorize the State Government to rip open the controversy which has been settled by decisions which have become final. It is also contended on behalf of the petitioner that the effect of Section 9 of the amending Act, quoted above, is not to set at naught the decisions that have attained finality between the parties.

9. The learned counsel for the petitioners in this respect have placed reliance upon a decision rendered by this court in *Ram Lal v. State of U.P. and others* (1978 All LJ 1197). The contention advanced on behalf of the petitioner is that the earlier decision declaring surplus area is *res judicata* between the parties and cannot be challenged under the amending Act. On behalf of the State reference was made to Section 38B of the Ceiling Act which provides that no finding or decision given before the commencement of this section in any proceeding or any issue (including any order, decree or judgment) by any court, tribunal or authority in respect (if any matter governed by this Act shall bar the retrial of such proceeding or issue under this Act, in accordance with the provisions of this Act as amended from time to time. By reference to this provision of the Ceiling Act] it is submitted that the bar of *res judicata* will not apply to the instant case. It may be noted that the decision rendered by this Court in *Ram Lal v. State of U.P. and others* (*supra*) deals with both the points. The said decision has categorically held that if the change in law does not touch the question decided by the competent court, the decision is not affected and will continue to be binding upon the parties. According to the learned Judge dealing with that case any change in law will affect the decision of a court only to the extent that the decision becomes contrary to law. By reference to Section 38B of the Ceiling Act, the learned Judge observed that Section 38B of the Ceiling Act contemplates that if by the amendments made in the principal Act certain findings or decisions had become contrary to law, those findings or decisions would be reopened and the principle of *res judicata* would not bar a retrial of those issues in accordance with the provisions of the principal Act so amended. According to the learned Judge, this provision did not authorise the Ceiling authorities to ignore the decisions rendered or decrees passed by competent courts, tribunals or authorities in respect of matters which were not affected by changes made in the principal Act. It has been clearly observed by the learned Judge that such decision would continue to be binding on the parties and would operate as *res judicata* between them. In *Ram Lal's* case (*supra*) at page 1200, the learned Judge observed as follows:

?In our opinion, a general review of the earlier orders was not the intendment of the provisions permitting redetermination. It was confined to cases which required redetermination in view of the amendments incorporated in the principal Act. The question in the case is whether the amendments incorporated in the principal Act affected the decision in the earlier proceeding as regards a part of the petitioner's holdings. If they did not affect that question, it seems to us that a reopening of the earlier proceedings was not called for and the findings recorded and the decisions reached in them could not be set aside in the instant proceedings. We shall examine the scope of Section 38B of the Act in this regard. While examining its scope and effect, it will have to be borne in mind that judicial and legislative fields are distinct from one another. Courts cannot legislate while legislature cannot decide. In *Madan Mohan Pathak v. Union of India*, *Ram Prakash Manchanda v. Union of India*, (1978 2 SCC 50: AIR 1978 SC 803) it was held that an Act of legislature cannot annul a final judgment conferring rights on parties. It can only amend a law either prospectively or retrospectively, but the judgment rendered in a case stands unless reversed in an appeal or review.?

10. In my opinion, the decision rendered in Ram Lal's case (supra) is applicable to the facts of the present case. It is not in dispute that the surplus area was determined earlier and the order declaring the surplus area had become final. After the decision had reached a stage of finality, U.P. Act 2 of 1975 came into force. This amending Act has not the effect of Annulling the decisions that have already become final. The learned Judge also held in the abovementioned case that Section 38B of the Ceiling Act would not be of any assistance in annulling the decisions that have become final between the parties. The effect of the said decision is that the U.P. amending Act did not authorise the ceiling authorities to ignore the decisions rendered or decrees passed by competent courts, tribunals or authorities in respect of matters which were not affected by the changes made in the principal Act, and such decisions would continue to be binding upon the parties and would obtain as *res judicata*.

11. For the reasons stated above, I am of the view that the determination of ceiling area made prior to the enforcement of U.P. Act 2 of 1975 cannot be reopened as the said decisions have attained finality. This finding recorded by me shall govern all the writ petitions.

12. Another point involved in Writ Petition No.790 of 1977 is about the partition made by Raja Dinesh Pratap Singh. In this respect the Appellate Authority has recorded a finding that the partition between Raja Dinesh Pratap Singh, his wife Rani Chandra Prabha Devi and their two sons has to be given effect to. On the basis of the said partition, Raja Dinesh Pratap Singh, his wife Rani Chandra Prabha Devi and their sons were to be treated as separate tenureholders. Once the appellate court recorded a finding that the partition has to be given effect to, the determination of the surplus area made prior to the coming into force of U.P. Act 2 of 1975, based on the said partition, cannot be reopened. It has also to be noted in this respect that the decision in Ram Lal's case (supra) was relied upon

by another learned Judge of this Court in Budh Pal Singh v. Vth Additional District and Sessions Judge, Badaun (1979 All LJ 552).

13. Now I take up Writ petition No.718 of 1977 filed by Din Raj Pratap Singh. He is one of the sons of Raja Dinesh Pratap Singh. The partition between father and son has been accepted by the Ceilinging courts and kunwar Din Raj Pratap Singh has been treated as separate from his father. After the enforcement of U. P. Act 2 of 1975 a notice was issued to him for redetermination of ceiling area. The petitioner's case is that ceiling area has already been determined by orders passed by the Prescribed Authority and the said orders have become final and cannot be ripped open. For the reasons that I have already discussed above, the orders in favour of Kunwar Din Raj Pratap Singh which have become final cannot be ripped open under U. P. Act 2 of 1975. The determination of the ceiling area already made earlier has become final and cannot be reopened by resort to U.P. Act 2 of 1975.

14. Now I take up Writ Petition No.499 of 1977. In this writ petition, apart from the points that have been dealt with above, there is a controversy whether Rani Chandra Prabha Devi can be treated as a judicially separated wife. The appellate court has held that she cannot be treated as a judicially separated wife unless there is a decree of any court decreeing judicial separation and since in this case there is no such decree, Rani Chandra Prabha Devi shall be treated as a member of the family and the land belonging to her shall be taken into consideration for ceiling purposes. This finding recorded by the lower appellate Court has been challenged by the learned counsel for the petitioner on the basis of the principles enunciated in Gangotri Devi v. State and others (1982 All LJ 103). At page 104, the learned Judge observed as follows:

"The expression "judicially separated" comprises of two words "judicially" and "separated". Separation between husband and wife may take place in numerous ways, for instance desertion by husband of the wife or being cruel .to her which may force her to live separately from him. But it is not every separation which is recognised by the ceiling Act. It should be judicial. It has been seen above that the words "judicial separation" cannot be understood in technical sense of grant of decree under Section 10 of H.M. Act. The word "judicial" according to Chambers Dictionary means, "arising from process of law".....Therefore, if separation between husband and wife is recognised by a process of law it should be sufficient to establish judicial separation under Ceiling Act. In broader or liberal sense it should be understood as separation which is recognised by any court of law not necessarily a decree of judicial separation; for instance separation may be recognised by custom, may have the approval of a law court. It may be recognised by Nyaya Panchayat. It cannot be said that such recognition does not amount to judicial separation because no decree has been passed. Similarly, a wife or husband may file a suit?

15. There is ample evidence on record to indicate that Rani Chandra Prabha Devi is living separately from her husband in pursuance of a partition and the

separation between the two has been judicially recognised in a large number of cases which have been referred to in detail in the writ petition. In view of the principles enunciated in *Gangotri Devi v. State and others* (1982 All LJ 103), I am of the view that the appellate authority was not correct in taking the view that unless a decree under Section 10 of the Hindu Marriage Act was passed, there could be no judicial separation between husband and the wife.

16. It accordingly, set aside the order passed by the appellate court that the land standing in the name of Rani Chandra Prabha Devi shall be included in the land standing in the name of her husband Raja Pratap Singh and the ceiling area will be worked out on that basis.

17. For the reasons stated above, the writ petitions are allowed and the orders passed by the Prescribed Authority and the appellate court are set aside. The costs will, however, be borne by the parties.

(Petitions allowed)