**(2012) 07 AHC CK 0315**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 19018 of 1996

Resham Singh APPELLANT

Vs

Additional Commissioner (Judicial) and Others RESPONDENT

**Date of Decision :** 25-07-2012

**Acts Referred:**

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 12(A)(d), 5(6)(b)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143

**Citation :** (2012) 10 ADJ 372 : (2012) 6 AWC 5682

**Hon'ble Judges :** A.P. Sahi, J

**Bench :** Single Bench

**Advocate :** Ramendra Asthana, for the Appellant; Arif and C.S.C., for the Respondent

## Judgement

Hon''ble A.P. Sahi, J.—Heard Sri Ramendra Asthana for the petitioner, Sri Mohd. Arif for the respondent No. 4 and the learned Standing Counsel for the Respondent Nos. 1, 2 and 3. This petition arises out of proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960. The Prescribed Authority issued notices to the petitioner and the other tenure holders to file their objections. So far as the petitioner is concerned, he raised three objections namely that his adult sons should be granted an area of two hectares each on the basis of them having become major and that the sale-deed executed by the petitioner ought not to have been ignored by the prescribed authority and he should have been given a benefit thereof. Another objection raised by the petitioner was that certain land was in the shape of Abadi (human habitation) which could not have been treated as agricultural land for determining the ceiling area. In relation to the sale-deeds the petitioner appears to have contended that he required the money for the marriage of his children as sought to be explained by the petitioner in Para 18 (b) of the petition. The prescribed authority ignored the sale-deeds as they were executed after the appointed date i.e. 24.1.1971. The Prescribed Authority also did not grant exemption to the claim of the petitioner for his adult sons on the ground that no evidence had been adduced for the purpose of establishing that the sons were adult. The prescribed authority, however, granted an exemption for abadi land while deciding issue No. 5.

2. Three appeals were filed before the appellate authority. One by the petitioner and the two other appeals by the transferees. The appeal filed by the petitioner was dismissed whereas the appeal filed by Darshan Singh and Bhupendra Singh was disposed of with a direction that their claim u/s 12(A)(d) of the 1960 Act shall be considered for offering an alternative land which had been declared surplus and to that extent the matter was remanded to the prescribed authority.

3. Since the objections filed by the petitioner had been rejected and the appeal had been dismissed in its entirety the petitioner filed this petition for quashing the impugned orders of the appellate authority as well as the prescribed authority. Supplementary affidavit was filed bringing on record the grounds of appeal and a counter-affidavit has been filed on behalf of the State to which a rejoinder-affidavit has been filed by the petitioner.

4. Sri Asthana contends that on all three counts the impugned orders deserve to be set aside inasmuch as there was no evidence to indicate that the sons of the petitioner were not adult and there being no evidence to the contrary the burden had wrongly been shifted on the petitioner to prove the same. He further contends that so far as the sale-deeds were concerned they were bona fide transactions which ought to have been examined in terms of Section 5(6)(b) of 1960 Act. Neither the prescribed authority nor the appellate authority had adverted to the same nor have they examined the purpose for which the sale-deeds had been executed. In the circumstances the findings recorded are perverse. On the third issue relating to Abadi Sri Asthana submits that the land of Abadi which was actually found had been exempted while deciding issue No. 5 by the prescribed authority but the appellate authority has committed a manifest error by commenting upon it adversely. He, therefore, submits that the appellate order on that count is erroneous.

5. Learned Standing Counsel on the other hand contends that since the sale-deeds were executed after the appointed date, therefore, they had rightly been ignored and since there was no evidence relating to the petitioner''s son being adult as found by the prescribed authority the exemption as sought under the Act by the petitioner was not available. On the issue relating to the finding recorded by the prescribed authority that a part of the land was Abadi learned Standing Counsel could not make out any case in defence of the observations made by the appellate authority which according to the petitioner was contrary to record.

6. Sri Asthana contends that no declaration u/s 143 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 is required as a matter of necessity for seeking any such exemption. Therefore, the said observation of the

 

appellate authority is erroneous.

7. I have considered the aforesaid submissions and it is found that so far as the issue relating to the adulthood of the sons of the petitioners are concerned, the family register itself indicates the date of birth of the sons of the petitioner. In order to determine as to whether the sons were entitled to such an exemption or not the birth certificate or any other material ought to have been produced but the finding of the prescribed authority is that no such material was adduced. In such circumstances, if the petitioner failed to discharge his burden of proving the adulthood of his own sons the findings recorded by the prescribed authority on the issue cannot be faulted with.

The issue relating to the sale-deeds needs a consideration inasmuch as, the words used by the legislature in Section 5(6)(b) are clearly to the effect that the prescribed authority while proceeding to ignore such a sale-deed will take into consideration as to whether the transaction is bona fide or not and that it is not a Benami transaction entered into for any ostensible purpose.

8. In my opinion neither the prescribed authority nor the appellate authority have entered into this question to find out as to whether the transaction was bona fide inasmuch as the conclusion has been drawn that the sale-deed appears to have been executed after 1971 only for the personal purpose of the petitioner and, therefore, the exemption cannot be granted.

The sale-deed and the statement of the executor thereof, therefore, ought to have been examined in order to find out as to what was the real intention and the purpose of executing the sale-deed the petitioner contends that the sale-deed had been executed for the purpose of performing the marriage of his children. In such circumstances the said issue which has been dealt with by the prescribed authority by simply recording that the transaction was entered into only for a personal purpose does not appear to be correct. The third issue relating to Abadi has also not been correctly appreciated by the appellate authority. There was no material to contradict the findings of the prescribed authority on facts that the land as claimed by the petitioner to be Abadi was standing as such. To the contrary the statement of the Lekhpal which has been indicated by the prescribed authority reveals the existing of the building. The appellate authority has proceeded to reverse the said observations without reversing the findings on the grounds that there was no declaration of Abadi u/s 143 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act. To my mind the Ceiling Act does not require any such pre condition for the purpose of treating the land to be Abadi and the evidence as led on the facts was sufficient enough to treat it to be abadi.

9. If agricultural land is put to any other use then the tenure holder has the right to get a declaration u/s 143 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 or even otherwise the authority can make such a declaration. But a formal declaration u/s 143 is not required under the Ceiling Act. The only

 

effect of such a declaration is that the land would no longer be governed by the provision of CH IX A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950. A declaration u/s 143 of the Zamindari Abolition Act simply takes an agricultural holding outside the purview of CH IX A of the Zamindari Abolition Act. Revenue is not attracted and succession to the holding would no longer be governed by the Act. So far as exemption of Abadi under the Ceiling Act is concerned, the same has to be determined on existing material, evidence and the statement of the parties. The physical existence of the structure and its period of existence has to be established through evidence. It is not dependent merely on a declaration u/s 143 of the Zamindari Abolition Act

Accordingly the writ petition succeeds partly. The observations made by the appellate authority in relation to the Abadi claimed by the petitioner are set aside and the findings recorded by the prescribed authority on issue No. 5 is upheld. So far as the issue of the sale-deed is concerned and the finding in relation thereto, the impugned order is set aside to that extent as well, with a direction to the appellate authority to redetermine the aforesaid issues relating to the bona fide nature of the sale-deeds executed by the petitioner in accordance with law.

The writ petition is partly allowed.