
(2012) 03 AHC CK 0076

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35540 of 2011

Sampurnanand

APPELLANT

Vs

Commissioner, Gorakhpur Division, Gorakhpur and Others

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2),
13(2), 4A, 5(6)

Citation : (2012) 5 ADJ 148

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

Bench : Single Bench

Advocate : Harbansh Prasad Dubey and R.C. Singh, for the Appellant;
Krishnanand Yadav, Sanjay Goswami and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Hon'ble A.P. Sahi, J.—The petition questions the correctness and legality of the order of the learned Commissioner, Gorakhpur Division Gorakhpur dated 31st March, 2011 in an appeal filed by the State of U.P. in proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960. The appeal was filed by the State against the order of the prescribed authority dated 4.6.2009 u/s 10(2) of the said Act whereby the learned prescribed authority had dropped the ceiling proceedings against the petitioner holding that the petitioner had no surplus land under the aforesaid Act to be declared as such. The dispute has a chequered history since the year 1974. The petitioner is admittedly the adopted son of Ram Lagan Das who was the original tenure holder against whom notices were issued on 1.10.1974. vide order dated 18.12.1974 the prescribed authority declared an area of 31.59 acres as surplus land in the hands of the tenure holder. This order was passed ex-parte to the tenure holder Ram Lagan Das without any notice having been served on him as he had already died on 21.11.1974. The petitioner, who succeeded Ram Lagan Das, moved an application before the prescribed authority mentioning the aforesaid fact who set aside his order on 28.1.1975. Simultaneously, it appears that the proceedings under the Ceiling Act were

challenged on certain grounds in writ petition No. 1840 of 1975 and further proceedings had been stayed on 10.2.1975.

2. A fresh notice was issued to the petitioner on 22.5.1976 under the amended Act. The prescribed authority after calling upon the petitioner to file his return proceeded to consider the same as also the evidence on record and framed nine issues. Issue No. 3 related to transfer of the land under a gift deed dated 2.11.1970 said to have been executed by late Ram Lagan Das in favour of Ram Asni Devi to the extent of an area of 11.84 acres of Village Gopala. The other issues framed were in relation to the exemptions sought by the petitioner on account of reduction of area during consolidation operations, the distribution of land between the family members, the wrong inclusion of certain land of village Gidahi and Gopala which had already been subject-matter of proceedings under the Old Act of 1960 and had already vested in the State, land of abadi and land acquired for canal having been wrongly included in the ceiling proceedings, grove land and the dispute of irrigated and unirrigated land.

3. The prescribed authority vide order dated 26th July, 1976 declared 26.09 acres of land calculated in irrigated terms and the schedule of the land so declared surplus, also included the land of village Gopala, Sheeshgarh, Piparpati, Barwa Soniya, Hadkhauda, Bishunpur Ghat and Parsa Gidahi. The schedule appended to the said order describes the land which was declared surplus. A copy of the said order is on record of writ petition No. 2371 of 1985 in a supplementary affidavit filed by the petitioner sworn on 14th February, 2006. I had summoned the records of the said writ petition also in order to ascertain the orders which were passed from time to time and which have been referred to during the course of the arguments.

4. Aggrieved the petitioner filed appeal No. 492 of 1976 before the learned District Judge who was the then designated appellate authority. The appeal was allowed on the ground that the petitioner had already been served with an earlier notice on 1.10.1974 and therefore there was no occasion for the prescribed authority to issue a fresh notice on 27.5.1976. The matter was therefore disposed of setting aside the order of the prescribed authority with a direction that the proceeding pending before the prescribed authority in terms of notice the dated 1.10.1974 shall proceed.

5. The prescribed authority vide order dated 19th September, 1980 again declared 33.83 acres of land in the irrigated sense as surplus in village Sheeshgarh, village Barwa Soniya and village Gopala relating to bhumidhari and sirdari khatahs. The said judgment is also available in the supplementary affidavit of writ petition No. 2371 of 1985 referred to hereinabove. The petitioner filed an appeal before the learned District Judge against the said decision of the prescribed authority which was allowed on 26th August, 1981. The learned Additional District Judge held that the findings recorded over Issue Nos. 2, 3, 6 and 7 are not in accordance with law and therefore the findings on the aforesaid four issues were set aside and rest of the order was affirmed.

6. On remand the prescribed authority again declared 22.80 acres of surplus, land in the irrigated sense vide order dated 25.5.1983. The petitioner preferred an appeal which was dismissed on 16.1.1985 and both these orders were assailed in writ petition No. 2371 of 1985 where an interim order was passed in favour of the petitioner and ultimately the writ petition was allowed on 23.4.2007 by the following judgment:

Heard learned counsel for the petitioner.

The appellate Court vide order dated 26.8.1981 while rejecting the appeal u/s 13(2) of the U.P. Imposition of land Holdings Act, 1961 had directed the prescribed authority to reconsider Issue Nos. 2, 3 and 7 on the basis of the observations made thereunder. With regard to the determination of irrigated land the appellate Court had categorically directed the Prescribed Authority to examine Khasra for the period 1378 to 1380 fasli. UP on remand the prescribed authority granted some benefit but did not consider the Khasra of 1378 to 1380 fasli nor the appellate Court has considered the said Khasras and on the issues have determined surplus land treating major portion of irrigated land as unirrigated land. Consequently on these issues the order cannot be sustained.

On the third issue, this Court finds that there is a gift deed dated 2.11.1970. It is alleged that the total area shown in the gift deed was 11.84 acres whereas the benefit has only been given for 5.25 acres on the ground that only 5.25 acres was shown in C.L.H. Form No. 3. In my opinion the authority has committed an error in computing the area on the basis of C.L.H. Form No. 3. In *Ram Adhar Singh v. Prescribed Authority and others*, 1994 (Suppl) SCC 702, the Supreme Court held that Section 5(6) of the Act does not confer jurisdiction on the authority to determine the validity of the gift deed which was executed prior to 24.1.1971. In the present case, the registered gift deed was executed prior to 24.1.1971. Therefore, the genuineness of that gift deed cannot be touched by the prescribed Authority. If the area is mentioned in the gift deed that area alone could be taken into consideration by the prescribed authority.

In view of the aforesaid the impugned orders passed by the Prescribed Authority and the appellate authority cannot be sustained and area hereby quashed. The writ petition is allowed. The matter is remitted back to the Prescribed Authority to redetermine the surplus land. If any on issue Nos. 3, 6 and 7 in the light of the observations made above. The Prescribed Authority is expected to pass a fresh order within six months from the date of the production of the certified copy of this order.

Dt./-23.4.2007 Sd./-Tarun Agarwal, J.

7. It is to be noticed that the orders of the prescribed authority and the appellate authority were both set aside and the writ petition was allowed with certain directions.

8. The prescribed authority after the judgment of the High Court proceeded

afresh and ultimately dropped the notice issued against the petitioner on 1.10.1974 vide order dated 22.11.2007 and held that there was no land surplus in the hands of the petitioner. A copy of the said order is on record as Annexure-2 to the present writ petition. The respondent State filed an appeal against the said order of the prescribed authority on 20.12.2007. The learned Commissioner stayed the operation of the order of the prescribed authority dated 22.11.2007. The petitioner was aggrieved by the grant of a stay by the learned Commissioner as such he preferred writ petition No. 29400 of 2008 questioning the jurisdiction and the discretion exercised by the learned Commissioner granting an interim order. The said writ petition was allowed on 3rd July, 2008 holding that the learned Commissioner in the background of the case had wrongly exercised his discretion by the grant of a stay and set aside the order dated 20.11.2007 with a further direction to the Commissioner to decide the appeal itself preferably within a period of three months. The judgment is on record as Annexure 5 to the writ petition.

9. The learned Commissioner vide order dated 24th December, 2008 held that the prescribed authority after the judgment of the High Court dated 23.4.2007 had summoned the area Lekhpal (Record Keeper) to produce the relevant khasras (Record of Possession) of 1378 to 1380 fasli in order to ascertain the status of the irrigated and unirrigated land in terms of Section 4A of the 1960 Act. The learned Commissioner found that since the aforesaid provision had not been followed appropriately, and even if the khasras were not available a spot could have been carried out in order to ascertain the extent of unirrigated land, grove, abadi about which there is no reference in the order of the prescribed authority.

10. The learned Commissioner further found that Issue No. 6 as framed by the prescribed authority on remand relating to the gift deed dated 2.11.1970 in favour of Ram Asni Devi area 11.84 acres had been rightly decided by the prescribed authority and accordingly upheld the said finding.

11. However in view of the defects in relation to the calculation of unirrigated land, grove and abadi the matter was again remanded and the appeal was partly allowed on 24.12.2008 with a direction to summon the records relating to the Khasra of 1378 to 1380 fasli and then to proceed to decide the other issues as referred to in the said judgment. A copy of the said judgment in appeal is Annexure 6 to the writ petition.

12. The prescribed authority thereafter proceeded to summon the records and also proceeded to record the statement of the revenue officials. One of the officials summoned was one Bhagwan Prasad, Supervisor Kanoongo who got his statement recorded in relation to village Barwa Soniya and its Khasras of 1378 to 1380 fasli. He stated that the Khasras are not available but he indicated the land which was unirrigated or in the shape of a grove, abadi etc. The said statement and cross-examination are on record as Annexure 7.

13. The prescribed authority proceeded to consider all the issues and the evidence on record and came to the conclusion that the issue relating to the gift deed dated 2.11.1970 has already attained finality with the judgment of the appellate authority where it has been held that the transfer being genuine and prior to 24th January, 1971 could not have been included in the holding of the tenure holder for the purpose of computation of surplus land. Accordingly, the prescribed authority held the said issue to be finally decided and then proceeded to redetermine the other issues relating to unirrigated, grove, abadi and other land for which directions had been issued by the appellate authority.

14. The prescribed authority in its order dated 4th June, 2009 recorded a finding that the petitioner was entitled to a benefit of total exclusion of 11.84 acres of land that was subject-matter of the gift deed dated 2.11.1970 and since only 22.80 acres of land had been earlier declared surplus on 25.5.1983, therefore the dispute only now remains of 10.96 acres of surplus land. This was decided while giving an opinion over Issue No. 7 relating to certain land which was being claimed as grove and abadi of village Sheeshgarh.

15. The prescribed authority further decided Issue No. 2 relating to village Barwa Soniya and he found that the statement of Kanoongo matches with an extract of the Khasra of 1378 fasli which was on record. He therefore ultimately answered Issue No. 2 in favour of the petitioner holding that the petitioner has produced the Khasra of 1378 fasli which indicates that as on the date of the issuance of the notice the said land was either in the shape of abadi or grove and which finds corroborated by the statement of the Kanoongo. Accordingly an area of 2.98 acres was further excluded and the benefit was given to the tenure holder.

16. While deciding issue Nos. 3 and 7 of land in relation to village Sheeshgarh it was found that since the relevant Khasra was not available, a spot inspection had been carried out about which a report was submitted on 3.3.1982 by the Naib Tehsildar. This spot inspection report was accepted and it was found that the evidence of the State itself indicated that the said land deserves to be excluded from the ceiling proceedings. He further held that the land which was subjected to consolidation operations also stood reduced and he accordingly gave benefit of a reduction of land during consolidation operations to the tenure holder-petitioner. Thus the petitioner succeeded before the prescribed authority. A copy of the said order is Annexure 8 to the writ petition.

17. The State went up in appeal against the said judgment and the learned Commissioner has now allowed the appeal and remanded the matter back to the prescribed authority for a fresh determination.

18. The learned Commissioner drew a conclusion that whatever finding has been recorded in relation to the gift deed deserves to be set aside. He further held that the basis for calculating and computing unirrigated, grove or abadi land has been carried out erroneously. It was also held that the proposed allottees of the land had no locus to contest the matter and their applications to be impleaded

was rejected. The Commissioner further held that only the photostat copy of the gift deed had been filed and was returned, and even otherwise only 5.25 acres of land of the gift deed had been taken into consideration while proceeding to issue notices to the tenure holder for which benefit had been earlier granted, as such the prescribed authority has committed an error by calculating the area of the entire land under the gift deed for the purpose of exclusion. He further held that whether the land is unirrigated or irrigated or abadi has to be determined on the basis of the date as mentioned in the Act, namely 24th January, 1971 which the prescribed authority has failed to do, and therefore the notice could not have been dropped. He has further referred the fact that the tenure holder has failed to file any Khasra in relation to the villages in question and therefore the prescribed authority has committed an error to proceed to decide the matter without calling for the relevant papers in relation thereto.

19. I have heard Sri R.C. Singh learned counsel for the petitioner, Sri Sanjay Goswami for the State and Sri Krishna Nand Yadav for the proposed allottees. The impleadment application filed by the proposed allottees has already been disposed of by a separate order today itself.

20. Sri R.C. Singh submits that the impugned order of the learned Commissioner dated 31.3.2011 records conclusions without upsetting the findings recorded by the prescribed authority and does not contain any reason for not accepting the findings so recorded on the basis of evidence on record. He submits that the entire evidence was available and even otherwise so far as the production of Khasra is concerned, the burden lay on the State to produce the same or to produce any evidence in relation to the said issues which was not done and the same could not have been made the basis for altering the onus on the petitioner, and then proceeding to decide the matter. He contends that the benefits which have been extended by the prescribed authority are founded on evidence that was on record and the conclusions so drawn did not require any interference by the learned Commissioner who has passed a cryptic and an unreasoned order. He further contends that the appeal was filed without authorization by the learned Collector by Sri Ramswaroop Pandey the D.G.C. Revenue, and in the absence of any such authorization the appeal was incompetent. He therefore contends that the impugned order deserves to be set aside and the petition deserves to be allowed.

21. Sri Goswami on the other hand contends that the prescribed authority had proceeded to decide the issues on facts on the basis of incomplete evidence and on a misreading of the evidence on record and as such the Commissioner has rightly remitted the matter back to the prescribed authority for decision afresh. He further contends that the reduction in area in relation to the gift deed had been erroneously calculated in favour of the tenure holder, inasmuch as, if the entire land of the gift deed had not been subject-matter of the notice itself, then it was only that part of the land which had to be taken into consideration, and not the whole area of 11.84 acres. He further submits that the benefit of the said

reduction also had already been given and as such the conclusion drawn by the prescribed authority on that count has been found to be erroneous. He submits that even if the finding on the validity of the gift is final yet the calculation part being erroneous the same has to be redetermined and hence the impugned order does not require any interference.

22. I have considered the aforesaid submissions and have perused the records of present writ petition as also the writ petition No. 2371 of 1985 decided on 23.4.2007.

23. Coming to the first issue relating to the gift deed dated 2.11.1970 there is no doubt that the validity of the said gift deed is no longer open to scrutiny in view of the fact that even in law the execution of the said gift deed being prior to 24th January, 1971 the same could not have been ignored by the prescribed authority. This issue even otherwise in the intervening contest between the petitioner and the State has attained finality with the order of the Commissioner dated 24.12.2008 and the earlier judgment of the High Court dated 23.4.2007 which orders were never challenged by the State. The aforesaid two orders therefore finally hold that the gift deed is valid and the tenure holder is entitled to the benefit of exclusion of the land that was subject-matter of the ceiling proceedings and was also included in the said gift deed dated 2.11.1970.

24. The only issue which appears to be contested between the parties is to the extent of calculation of the said land. Sri Goswami vehemently contends that if the entire land under the gift deed was not subject-matter of the ceiling proceedings itself, then the benefit to the petitioner will accrue only to the extent of the land which was subject-matter of ceiling proceedings and not the entire land.

25. The same is therefore only a matter of calculation now and the prescribed authority while proceeding to consider the same can calculate it as well. The learned Commissioner has noted that the photostat copy of the gift deed had been filed and had been taken back by the petitioner and which has been produced. The issue relating to the extent of the land covered by the gift deed is a matter of sheer calculation which the learned Commissioner could himself have gone into by calling for the records but instead the matter has been remitted to the prescribed authority. The prescribed authority in my opinion can examine the same if it is required to be done but the opinion of the Commissioner that all the findings of the prescribed authority relating to the gift deed do not survive, cannot be accepted. The gift deed dated 2.11.1970 has already been held to be valid and to that extent the said issue is no longer open to scrutiny by the prescribed authority.

26. The next issue relates to the findings of unirrigated, grove, abadi land and land which has been reduced during the consolidation operations etc. The finding recorded by the learned Commissioner is that this ought to have been examined on the basis of the status of the land as existing on 24.1.1971. I have perused

the order of the prescribed authority and the evidence which has been referred to by the prescribed authority. It is by now settled by this Court that the burden lies on the State to prove the status of the land as exhibited in the notice issued to the tenure holder to be either irrigated or unirrigated or otherwise. The State produced its witnesses and also obtained a spot inspection report of the Naib Tehsildar which has been referred to hereinabove and has been indicated by the prescribed authority while deciding Issue Nos. 2, 3 and 7. The learned Commissioner has nowhere reversed the specific findings recorded by the prescribed authority to that effect, and has to the contrary, held that the petitioner has failed to produce any Khasras in relation to the land in question. This approach of the learned Commissioner is absolutely erroneous and against law, inasmuch as, it is the burden of the State to have produced the same. The petitioner however did produce one Khasra of 1378 fasli which has been discussed by the prescribed authority. Needless to mention that 1378 fasli connotes 1971 AD and is therefore the relevant year for the purpose of Section 4A of the Act. Apart from this, the report of the Naib Tehsildar is in consonance with Section 4A which is a spot inspection carried out as the relevant Khasra was not available. The said spot inspection report is corroborated by the statement of the Supervisor Kanoongo which was already on record. The learned Commissioner has not given any valid or cogent reason for not accepting the said finding and has again reiterated that the relevant Khasra has not been filed by the petitioner. The Commissioner has therefore adopted the converse process to reverse the order of the prescribed authority which is unsustainable.

27. Accordingly, the writ petition succeeds and is allowed. The order of the learned Commissioner dated 31.3.2011 is set aside leaving it open to the prescribed authority to calculate the land which deserved to be excluded on a calculation of the same on the strength of the gift deed dated 2.11.1970 and the notice issued to the tenure holder on the basis of the calculation, to be determined by the prescribed authority in the event it is so required and after hearing any objection thereon to be invited from the petitioner in accordance with law. Subject to the aforesaid liberty to the prescribed authority, the order of the prescribed authority dated 4.6.2009 is confirmed.