
(1978) 11 AHC CK 0016

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1244 of 1978

Sewak Ram and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 20-11-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10

Citation : AIR 1979 All 187

Hon'ble Judges : M.P. Mehrotra, J

Bench : Single Bench

Advocate : Dharampal Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

M.P. Mehrotra, J.—This petition arises out of the proceedings under the U. P. Imposition of Ceiling on Land Holdings Act. The facts, in brief, are these:

2. The petitioner No. 1 is the father and the petitioners Nos. 2 and 3 are the major sons of the petitioner No. 1. Separate notices u/s 10 (2) of the Act were issued to each of them. The petitioner No. 1 filed his objections on 26th June, 1976. On the same day the Prescribed Authority fixed the next following day i.e. 27th June, 1976 for recording of evidence. It seems that the Prescribed Authority was in undue haste to decide the case. It will be seen that notice had been issued to the petitioners Nos. 2 and 3 and they had not filed their objections on 26th June, 1976. The statutory time within which they could file their objections was not still over and as a matter of fact, these petitioners filed their objections on 27th June, 1976. The petitioner No. 1 examined five witnesses and then he filed an application, a true copy whereof is Annexure 3. It was pointed out in the said application that certified copies of certain documents had already been applied for but the same had not been received by the petitioners and, therefore, some time should be granted for filing the said copies. The Prescribed Authority

granted only one day's time and fixed 28th June, 1976 in the case.

On 28th June, 1976 another application for time was given by the petitioner No. 1, a true copy whereof is Annexure 4. The application was rejected by the Prescribed Authority and on the same day the Prescribed Authority disposed of the objections of the petitioners. Thereafter an appeal was filed against the order of the Prescribed Authority and in the appellate court below the petitioner No. 1 moved an application praying that certain certified copies should be allowed to be brought on the record which supported his contention that certain plots were Sir and Khud Kasht before the abolition of the zamindari and in the same the petitioners Nos. 2 and 3 had acquired vested interest by virtue of their births before the abolition of the zamindari and that the said plots subsequently became bhoomidhari plots in the hands of the petitioner No. 1 wherein the petitioners Nos. 2 and 3 had also equal interest along with their father. The appellate court below, however, rejected the application by his order which has been reproduced in Para 13 of the writ petition. Thereafter the appellate court below decided the appeal.

3. Learned counsel for the petitioner, Sri D. P. Singh has contended before me that no real opportunity was granted to the petitioners to substantiate their aforesaid contention. I have been impressed with this contention. From the facts which I have stated above, it will be seen that no real opportunity was given to the petitioners to substantiate their aforesaid allegation, In the normal course in the writ jurisdiction no interference is made with the orders passed by the authorities and courts below refusing to grant time or granting time to the parties to adduce evidence. However, the instant case is an extraordinary one and I cannot treat it as a case where any opportunity whatsoever was really given to the petitioners. In such circumstances where there is almost a total denial of opportunity to the litigant to substantiate his contention, this Court can interfere in its writ jurisdiction.

4. I accordingly quash: the judgment of the appellate court below and remand the case to the said court with a direction that the documents which were sought to be brought on the record by the petitioner No. 1 shall be allowed to be filed in the appeal. However, it will be for the appellate court below to consider the probative value of the said documents. I am not saying anything in respect of the same. Learned counsel for the petitioners has informed me that the said certified copies have been filed in this petition as annexures 15 to 18. These documents are as follows:

(1) Annexure 15 is a certified copy of the khatauni of 1359 F. of village Sahao.

(2) Annexure 16 is a certified copy of the decree passed in Suit No. 127 of the year 1971-72 u/s 229-B decided by the SDO Jalaun on 24-1-1972 Sheo Balak Ram v. Sewak Ram.

(3) Annexure 17 is a certified copy of Khatauni for, 1381 F. to 1383 F of village Sahao.

(4) Annexure 18 is a certified copy of some Kutumb register.

5. Learned counsel has, therefore, prayed that the petitioner should be given adequate opportunity to obtain fresh copies and file the same before the appellate court below. I accordingly direct that after remand the appellate court below shall fix the hearing of the appeal not before 31st December, 1978 and in the meantime the petitioner shall obtain the aforesaid certified copies and file the same before the appellate court below in the appeal, which shall now be freshly decided in the light of the aforesaid fresh evidence. It is made clear that so far as other findings recorded by the appellate court below are concerned they shall not be disturbed in any manner whatsoever. The only controversy which shall be considered is in respect of the, aforementioned contention that certain plots having been formerly ancestral sir and khud kasht before the abolition of the zamindari, the petitioners Nos. 2 and 3 have each vested interest in them in specific shares. In the circumstances, there will be no order as to cost.