

(1978) 11 AHC CK 0035

In the Allahabad High Court

Case No : Civil. Miscellaneous Writ Petition No. 764 of 1977

Shantanand Giri

APPELLANT

Vs

First Addl.District Judge, Ghazipur and others

RESPONDENT

Date of Decision : 21-11-1978

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 38B, 6(f)

Citation : (1978) 11 AHC CK 0035

Hon'ble Judges : K.P.Singh, J

Final Decision : Dismissed

Judgement

K. P. Singh, J.

This writ petition is directed against the judgment of the 1st Additional District Judge, Ghazipur dated 8. 2. 77 whereby ceiling appeal no. 215 of 1976, Shri Brijraj Singh v. State, as well as ceiling appeal no. 211 of 1976 Sri Shanta Nand Giri v. State were decided. The Prescribed Authority through its judgment dated 30.8.76 has declared 52 Bigha 3 Biswa and 6 Dhors as surplus area of the tenureholder Mauni Gosain.

It appears from the record that a notice under section 10(2) of the U. P. Imposition of Ceiling on Land Holdings Act was issued to the tenureholder and the same was discharged and the proceedings was dropped through the order of the Prescribed Authority dated 20.1.76(annexure 1 to the writ petition). Later on a notice under section 10(2) was again issued to the tenureholder due to the subsequent amendments in the Ceiling Act. Again the tenureholder filed an objection in response to the notice and had asserted that the surplus area indicated in the notice was wrong and had claimed that the notice should be discharged in view of the order dated 20.1.75 (annexure 1 to the writ petition). The Prescribed Authority repelled the contention of the tenureholder on the ground that in the objection dated 20.5.76 the objector had asserted as his personal property whereas in the order dated 20.1.75 the area was treated as

Math property. Hence, due to the contradictory stands taken by the objector, his claim was negated by the Prescribed Authority. In appeal, the appellate authority confirmed the judgment of the Prescribed Authority as is evident from the impugned judgment dated 8.2.77. The petitioner has come to this Court under Article 226 of the Constitution against the judgment of the appellate authority dated 8.2.77.

The learned counsel for the petitioner has contended before me that the ceiling authorities were not justified to issue second notice under section 10(2) of the Ceiling Act to the tenureholder.

Second, he has contended that the objector was entitled to the benefit of the provisions of section 6(f) of the Ceiling Act and the Ceiling Authorities were not justified in ignoring the earlier order given by the Prescribed Authority on 20.1.75.

The learned counsel for the State has tried to refute the contentions raised on behalf of the petitioner and has submitted that the ceiling authorities have correctly not given the benefit of the provisions of section 6(f) of the Ceiling Act to the objector and the ceiling authorities were justified in issuing notice under section 10(2) of the aforesaid Ceiling Act as the definition of irrigated land has undergone a change since the decision of earlier case by the Prescribed Authority. Moreover he has submitted that the Prescribed Authority at the earlier occasion had committed a mistake in discharging the notice issued to the tenureholder and on that account also the ceiling authorities were justified in issuing notice second time to the tenureholder.

I have examined the contentions raised on behalf of the parties. It is not disputed before me that the ceiling authorities have ample powers to rectify their mistakes apparent on the face of the record and also that the term "irrigated land" has undergone a change. It is true that on 20.1.75 the prescribed authority had discharged the notice treating the property as Math property and had given benefit of the provisions of section 6(f) of the U. P. Imposition of Ceiling on Land Holdings Act to the tenureholder. After the amendment of Ceiling Act the present writ petition arises out of the objection filed by the tenureholder in the year 1976. On the date of the initiation of proceedings giving rise to the present writ petition section 38B of the U. P. Imposition of Ceiling on Land Holdings Act had come on statute Book and reads thus :

"No finding or decision given before the commencement of this section in any proceedings or on any issue (including any order, decree or judgment) by any court, tribunal or authority in respect of 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."

In view of the aforesaid provision I do not think that the earlier decision given by the Prescribed Authority on 20.1.75 would stand in the way of the ceiling authorities in redetermining the ceiling area surplus area of the tenureholder. In

the present case the objector was given full opportunity to show cause why the land indicated in the notice may not be declared as surplus area of the tenureholder. The objector took contradictory stand and the same was not accepted by the ceiling authorities. FJT the purpose of deciding the question as to whether the petitioner was rightly refused the benefit of section 6(f) of the aforesaid ceiling Act it is proper for me to quote the provisions of section 6(f) of the Ceiling Act which reads thus :

Sec. 6.. "Notwithstanding anything contained in this Act, land falling in any of the categories mentioned below shall not be taken into consideration for the purposes of determining the ceiling area applicable to, and the surplus land of a tenureholder, namely :

(f) Land held from before the first day of May, 1959, by or under a public religious or charitable waqf, trust, endowment, or institution the income from which is wholly utilized for religious or charitable purposes, and not being a waqf, trust or endowment, of which the beneficiaries wholly or partly are settlers or members of his family or his descendants.""

In the present case the petitioner has not led any evidence worth the name to indicate that the land was held by the tenureholder under a public religious or charitable waqf, trust or endowment. There is no trust deed nor there is any oral evidence to the effect that the land was held by the tenureholder under a public religious or charitable waqf, trust or endowment. No evidence has been led to the effect that the land was dedicated for religious or charitable purposes nor it has been established beyond shadow of doubt that the land was held by the objector solely for religious and charitable purposes. The appellate authority has mentioned in its judgment as below :

".....This contention was rejected and the State Government filed a judgment of the Hon"ble Board of Revenue dated 20.2.1969 in which the Hon"ble Board had held that the proper was not for religious and charitable purposes and was not held under a trust and that the property stood in the name of Shri Mauni Gosain Sarbarakar Sri Gauri Shankar Giri and that no trust had been created." I think that the judgment of the appellate authority is based on appraisal of the evidence and circumstances involved in the case and the judgment does not suffer from any manifest error of law.

During the course of the argument the learned counsel for the petitioner has placed reliance upon a ruling reported in 1977 A. W. C. page 442 in support of his contention that second notice could not be issued to the tenureholder. I do not think that the aforesaid ruling helps the petitioner in any manner. Rather, certain observations therein do indicate that the Ceiling Authorities have ample power to initiate proceedings for redetermination, if necessary, due to amendment in the principal Act. To my mind the learned counsel for the petitioner wanted to place reliance upon the ruling reported in 1977 A. W. C. page 460 Mahendra Pal Singh v. State of U. P. wherein it has been emphasized

that once a question has been considered in the light of the evidence adduced by the parties it cannot be said that under the garb of mistake apparent on the face of the record afresh notice can be issued. In my opinion the aforesaid ruling is inapplicable to the facts of the present case. Due to subsequent amendments in the aforesaid ceiling Act the ceiling authorities had power to issue notice to the objector in this case and in that circumstance the earlier order could be ignored by the ceiling authorities.

For the sake of argument even if it is assumed that the order dated 20.1.75 could act as final between the parties and the ceiling authorities were not justified in issuing notice second time to the tenureholder. I am not inclined to interfere with the impugned judgment of the ceiling authorities, in the subsequent proceedings as the earlier order dated 20.1.75 is a very sketchy order and does not appear to have dealt with the relevant evidence in the case and the petitioner has utterly failed to substantiate his claim that the land was held by the tenureholder under a public religious or charitable waqf, trust or endowment. To interfere with the impugned judgments in this case would mean nothing but to restore a wrong order which cannot be permitted in the exercise of writ jurisdiction.

For the reasons given above the writ petition lacks merit and it is accordingly dismissed but I make no order as to costs.