
(2009) 10 AHC CK 0163
In the Allahabad High Court
Case No : Writ Petition No. 7838 (Ceiling) of 1988

Shanti Devi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

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

Citation : (2009) 10 AHC CK 0163

Hon'ble Judges : Anil Kumar, J

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri M.A. Siddiqui, learned counsel for the petitioner and Sri Nirmal Tewari, learned Additional Chief Standing Counsel for the opposite parties.

2. By means of present writ petition, the petitioner has challenged the order dated 26.12.1985 passed by the Prescribed Authority and the order dated 28.10.1987 passed by Additional Commissioner (Judicial) Faizabad Division, Faizabad, which are annexed as Annexures no. 4 and 6 to the writ petition.

3. The facts, as submitted by the learned counsel for the petitioner in brief, are to the effect that the controversy in the present case, relates to plot Nos. 640 and 549 situated in village Mahuwa, Pargana Khandasa, Tehsil Bikapur District Sultanpur (hereinafter referred as "plot in question"). In respect to plot in question the Prescribed Authority under U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred as an "Act") had issued a notice under Section 9(2) of the Act on 3.11.1973. In spite of the said fact, the petitioner did submit any statement in respect to details of her property. On 22.3.1974, a notice under Section 10(2) of the Act was again issued by the Prescribed Authority on the ground that 12 biswa 4 bisvanshi land was proposed to be declared as surplus out of the holding of the petitioner.

4. After receiving the said notice, petitioner submitted her reply on 10.5.1974 stating therein that plot No. 640 and 549 have already been sold out in the year

1970 and she was not in possession of those plots in question and in this regard the petitioner has stated in para 3 of the writ petition which are quoted below:

"That on receiving notice under Section 10(2) of the Act the petitioner filed her objection on May 10,1974 specifically stating therein that plot Nos. 640 and 549 have been sold in 1970 and she is not in possession of these plots and she therefore alleged that the land recorded in the name of Shri Thakur Ram Janki is the property of the Trust created by a registered waqf deed dated January 27,1959 in favour of Shri Thakur Ram Janki and she filed Khetau 1376 and 1378 Fasli and also Khasra extract of 1381 Fasli of village Mahuwa and also examined Radhika Prasad and Ganpati as her witnesses. In this way she claimed that the land of Shri Thakur Ram Janki should not and could not be clubbed to the land of the petitioner for ceiling purposes."

5. On that point of time, the Prescribed Authority after taking into consideration the submission and the averments made by the petitioner in her reply dated 10.5.1974 and in response to notice issued under Section 10(2) of the Act held that the property had already been sold out by means of sale deed in favour of Sri Thakur Ram Janki and the petitioner was only a "Sarvarakar" so by means of the order dated 14.12.1974 had dropped the proceedings.

6. Further on 27.9.1978, the SubDivisional Officer, Bikapur, District Faizabad issued a show cause notice to the petitioner under Section 16(1) of the Hindu Religious and Charitable Endowment Act, 1976 thereby calling upon the petitioner to get Sri Thakur Ram Janki Trust register. After receiving the said notice, the petitioner submitted her reply in which she stated that Sri Thakur Ram Janki temple had been constructed by her husband/parents so the same was not a trust rather her personal property, therefore, the registration is not required and accordingly she does not apply for registration under the provisions of Section 16(1) of the Hindu Religious and Charitable Endowment Act, 1976.

7. In the light of the above said fact, the Prescribed Authority on 5.8.1976 had again issued fresh notice under Section 10(2) of the Act to the petitioner clubbing the temple land with the land of the petitioner and the petitioner was required to submit his reply. Considering the reply submitted by the petitioner, the Prescribed Authority by means of order dated 23.12.1976 confirmed the notice and declared 12 bishwa 4 bishvanshi as surplus land.

8. Aggrieved by the said order, the petitioner filed an Appeal No. 100 of 1977 under Section 13 of the Act before the District Judge and the same was allowed vide order dated 23.11.1977 and the matter was remanded back to the Prescribed Authority to decide the same after affording opportunity of hearing to the parties concerned and to record the findings whether Sri Thakur Ram Janki property was public trust or not. The Prescribed Authority thereafter again hear the matter in question and after given ample opportunity to the parties concerned, and thereafter recorded the categorical findings to the effect that Sri Thakur Ram Janki is a private trust and declared 12 biswa 4 bisvanshi land as

surplus land.

9. Feeling aggrieved by the above said order the petitioner filed an Appeal No. 58 of 1979 before the District Judge which was transferred subsequently from the Court of District Judge to the Court of IIIrd Additional District Judge, Faizabad for hearing and disposal of the matter in accordance with law. The IIIrd Additional District Judge, Faizabad after hearing the parties concerned, allowed the appeal vide judgment and order dated 30.5.1981 and set aside the order of Prescribed Authority dated 28.7.1979 and remanded back the matter to the Prescribed Authority to redetermine the surplus land from the holdings of the petitioner. After considering the fact whether the land of the temple standing in the name of Sri Thakur Ram Janki can be clubbed with the holdings of the petitioner or not and the said trust is a public trust or not.

10. Thereafter, the matter was again heard by the Prescribed Authority before whom the petitioner failed to establish by any cogent evidence in respect of income and expenditure of the trust and accordingly taking into entire fact and circumstances of the case, the Prescribed Authority had held that Sri Thakur Ram Janki trust is a private trust by means of order dated 26.12.1985 thereby declaring 12 bigha and 4 biswansi land as surplus land.

11. The order dated 26.12.1985 passed by the Prescribed Authority, was challenged by the petitioner by way appeal before the Additional Commissioner, Faizabad Division, Faizabad which was registered as Appeal No. 599 of 1986.

12. The Appellate Authority, after hearing the parties and after going through the material evidence and the pleadings on record, dismissed the appeal by means of order dated 28.10.1987.

13. The order dated 28.10.1987 passed by the Additional Commissioner, Faizabad Division, Faizabad and the order dated 26.12.1985 passed by Sub Divisional Officer, Bikarpur/Prescribed Authority (Celing) District Faizabad were challenged by the petitioner before this Court.

14. Learned counsel for the petitioner has argued the present case on the following points:

(a) The learned Prescribed Authority and the Additional Commissioner committed a manifest error of law in not treating that the judgment on merit dated December 14, 1974 (Annexure 3) which had not been challenged by either of the party rather both the parties submitted to that order and allowed the same to become final against them as such present proceedings were barred by the principle of resjudicata and the aforesaid judgment also operate as estoppel against both the parties i.e. the petitioner as well as the State as such the judgment and orders passed by the Prescribed Authority and Additional Commissioner (Judicial) are liable to be quashed.

(b) The authorities below has no jurisdiction to initiate the proceedings in the matter in question again by issuing notice under Section 10(2) of the Act.

(c) That the Courts below have wrongly held that Sri Thakur Ram Janki trust is a private trust and not a public trust.

15. In support of his submission, learned counsel for the petitioner has relied upon the following judgments:

(1) Devendra Nath Singh (Dead) through LRs. and others v. Civil Judge, Basti and others, (1999) 1 SCC71.

(2) Lady Parassan Kaur Charitable Educational Trust Society, Gorakhpur v. State of U.P. and others, 2002 (93) RD 663.

(3) In re India Financial Association of Seventh Day Adventist of Anna Nagar Madras, 1980 All LJ 435.

(4) Asghar Abbas v. State of U.P. and another, 2002 (93) RD 702.

(5) State of U.P. through Collector, Mirzapur v. Additional Commissioner (J), Varanasi Division, Varanasi and others, 2008(10)ADJ 509.

(6) Dasami Sahu v. Param Shameshwar Uma Bhairabeshwar Ban Lingeshar and another, AIR 1929 All 315.

16. On the other hand, Sri Nirmal Tewari learned Additional Chief Standing Counsel has submitted that the Prescribed Authority was fully justified to issue notice under Section 10(2) of the Act. In the present case, when the first notice was issued on 22.3.1974, the proceedings in pursuance to the same, had been dropped only on the version/statement and the pleadings of the petitioner which was sought to be declared as surplus land belongs to Sri Thakur Ram Janki trust, is a public trust and cannot be clubbed with the holding of the petitioner. Subsequently the above said assertion/stand which was taken by the petitioner in the proceedings under Section 10(2) of the Act, was contradictory to the pleadings and the stand taken by the petitioner in the proceedings which had taken place under Section 16(1) of the Hindu Religious and Charitable Endowment Act, 1976 where the petitioner had categorically submitted that Sri Ram Janki trust and the temple was constructed by her husband/parents, it is not a public trust. In addition to the above said submission, it is also submitted by the learned Additional Chief Standing Counsel that in view of Section 29 of the Act, a fresh notice which was issued under Section 10(2) of the Act was valid because Section 29 of the Act is continuing process, thus issuance of second notice was a valid act on the part of the prescribed authority.

17. I have heard the learned counsel for the parties and perused the record as well as the decisions cited by the learned counsel for the parties.

18. For the purpose of just decision in the present case, the following statutory provisions of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 are relevant which are quoted as follows:

"Section 3. Definitions. In this Act, unless context otherwise requires

(2) "ceiling area" means the area of land not being land exempted under this Act, determined as such in accordance with the provisions of Section 5;

(17) "tenureholder" means a person who is the holder of a holding, but [except in Chapter III] does not include

Section 6. Exemption of certain land from the imposition of ceiling. [(1)] 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 a tenureholder.

Section 10. Notice to tenureholders failing to submit a statement or submitting an incomplete or incorrect statement.....

(2) The Prescribed Authority shall thereupon cause to be served upon every such tenureholder in such manner as may be prescribed, a notice together with a copy of the statement prepared under subsection (1) calling upon him to show cause within a period specified in the notice, why the statement be not taken as correct. The period specified shall not be less than ten days from the date of service of the notice.

Section 29. Subsequent declaration of further land as surplus land. Where after the date of enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972

(a) any land has come to be held by a tenureholder under a decree or order of any Court, or as a result of succession or transfer, or by prescription in consequence of adverse possession, and such land together with the land already held by him exceeds the ceiling are applicable to him; or

(b) any unirrigated land becomes irrigated land as a result of irrigation from a State irrigation work or any groveland loses its character as groveland or any land exempted under this Act ceases to fall under any of the categories exempted

the ceiling area shall be liable to be redetermined [and accordingly the provisions of this Act, except Section 16, shall mutatis mutandis apply]."

Section 30. Determination of surplus land regarding future acquisition. (1) Where any land has become liable to be treated as surplus land under

Section 29, the tenureholder shall, within such period as may be prescribed, submit a statement to the Prescribed Authority in the form and in the manner laid down under Section 9 indicating in the statement the plot or plots which he would like to retain as a party of his ceiling area.

(2)(a) Where the statement submitted under subsection (1) is accepted by the Prescribed Authority, it shall proceed to determine the surplus land accordingly.

(b) Where a tenure holder fails to submit a statement required to be submitted under subsection (1) or submits an incomplete or incorrect statement the

Prescribed Authority shall proceed in the manner laid down under Section 10.

(c) The provisions of this Act in respect of declaration, acquisition, disposal and settlement of surplus land, shall, mutatis mutandis, apply to surplus land covered by this Section.

Section 31. Land gained by the recess of river. Where after the imposition of ceiling under this Act, any land is, by intercession of any river, added to any holding, under any law or custom and the area of the land so added, together with the area of other existing land held by a tenure holder, exceeds the ceiling area applicable to him:

(i) such land shall, to the extent necessary to make up the ceiling area applicable to him and contiguous to his existing holding, be deemed to be settled with the tenureholder subject to the payment of proportionate additional land revenue and on the same terms and conditions as his existing holdings;

(ii) Bengal Regulation XI of 1825 The area in excess of the ceiling area applicable to tenureholder, shall, notwithstanding anything to the contrary in the Bengal Alluvion or Diluvion Regulation, 1825, or any custom or usage, for the time being in force, vest in the State Government; and

(iii) the land vesting in the State Government under the provisions of Clause (ii) shall be surplus land and shall be dealt with as such in accordance with the provisions of this Act.

Section 38B. Bar against resjudicata. No finding or reason 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 or such proceeding or issue under this Act, in accordance with the provisions of this Act as amended from time to time."

19. A reading of the aforesaid statutory provisions reveals that if in reply of a notice issued under Section 9 of the Act, no return is filed, the Prescribed Authority may issue a notice to the tenureholder calling upon him to show cause as to why the land be not declared as surplus. The order passed by the Prescribed Authority is appealable. Appeal lies under Section 13 of the Act before the Appellate Authority. The order passed by the Prescribed Authority and the Appellate Authority are liable to be corrected in the proceedings under Section 13A of the Act. Similarly, Section 29 provide for subsequent declaration and determination of surplus land.

20. The submission made by the learned counsel for the petitioner to the effect that when the order dated 14.12.1974 passed by the Prescribed Authority thereby dropping the proceedings under Section 10(2) of the Act then the same will operate as a resjudicata, thus the subsequent notice issued by the Prescribed Authority dated 15.7.1974 clubbing the temple land with the land of the petitioner is arbitrary and contrary to Act, has no force in view of the following

points:

(a) In the instant case, initially the Prescribed Authority had issued a notice under Section 10(2) Of the Act on the ground that the land measuring 12 biswa and 4 biswanshi was proposed to be declared as surplus out of the holdings of the petitioner. In response to the said notice, the petitioner had submitted her reply interalia stating therein that the land which was said to be declared as surplus, was soled out by means of saledeed in favour of the Thakur Ram Janki Temple which is a public trust and the petitioner is only a Sarvarakar. Keeping in view the said statement/version of the petitioner, the proceedings under Section 10 (2) of the Act was dropped by order dated 14.12.1974 passed by the Prescribed Authority.

(b) On 27.9.1978, a notice under Section 16(1) of the Hindu Religious and Charitable Endowment Act, 1976 was issued by the competent authority under the Act thereby directing the petitioner to get Thakur Ram Janki trust registered under the said Act.

(c) After receiving the said notice under Section 16(1) of the Hindu Religious and Charitable Endowment Act, 1976, the petitioner submitted her reply that Sri Ram Janki temple had been constructed by her husband/parents so the same is not a public trust rather a private trust, therefore, the same does not require any registration under the provisions of Section 16(1) of the Hindu Religious and Charitable Endowment Act, 1976 and further the property of the temple is her personal property.

(d) In view of the above said submissions made by the learned counsel for the petitioner to the effect that the Ram Janki temple is a private trust and the property of the said temple is a private property of the petitioner as such again a fresh notice under Section 10(2) of the Act had been issued by the Prescribed Authority on 25.7.1976 clubbing the land 12 biswa and 4 biswanshi with the land of the petitioner and was required to submit her reply why the said land be not declared as surplus land.

21. In the light of the above said facts, initially the proceedings under Section 10(2) of the Act were dropped by the Prescribed Authority vide order dated 14.12.1974 only on the sole version/statement of the petitioner that the land which was sought to be declared as surplus land belongs to Ram Janki temple which is a public trust, was not a correct fact rather she had played a fraud upon the Court, with oblique motive and purpose with mala fide intention, further when the proceedings under Section 16(1) of the Hindu Religious and Charitable Endowment Act, 1976 the petitioner had admitted that the land which is sought to declare as surplus belongs to her and Sri Ram Janki Trust is not a public trust then in that circumstances, the action on the part of the Prescribed Authority "thereby issuing a fresh notice on 581976 under Section 10(2} of the Act was perfectly valid as no action upon Court or Tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wrangled through

fraud or misrepresentation of such a dimension as would affect the very basis of the claim because fraud and justice never dwell together. (Frans at Jus Nunquam Cohabitant) is a pristine maxim which has never lost its temper over all these centuries.

22. In *Smith v. East Elloe, Rural Distt. Council*, (1956) 1 All ER 855 the House of Lord held that the effect of fraud would normally be to vitiate any act or order.

23. In another case, *Lazarus Estates Ltd. v. Beasley*, (1956) 1 All ER 341 Denning L.J. said:

"No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

24. In the case of *Indian Bank v. Satyam Fibres (INDIA) Private Limited*, (1996) 5 SCC 550 Hon"ble Supreme Court after taking into consideration above two judicial pronouncement had held as under:

"The judiciary in India also possesses inherent power, specially under Section 151, CPC, to recall its judgment or order if it is obtained by fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all Courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business.

25. Since fraud affects the solemnity, regularity and orderliness of the proceeding of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practiced upon that Court.

26. In the case of *A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602 and *Budhia Swain and others v. Gopinath Deb and others*, (1999) 4 SCC 396 Hon"ble Supreme Court has further held under following conditions matter/judgment can be reopened:

"(i) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all and was shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented.

(ii) a judgment was obtained by fraud,

(iii) a party has had no notice and a decree was made against him and such party approaches the Court for setting aside the decision ex deft/to justitiae on proof of the fact that there was no service."

27. In the case of *S.P. Chengalvaraya Naidu (dead) by LRs. v. Jagannath (dead)*

by LRs. and others, 1994 (1) SCC 1 Hon"ble Supreme Court has held:

"Fraud avoids all judicial acts, ecclesiastical or temporal observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and nonexit in the eyes of law. Such a judgment decree by the first Court or by the highest Court has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings".

28. In the case of United India Insurance Company Limited v. Rejendra Singh and others, 2000 (18) LCD 586 (SC), the Hon"ble Supreme Court further held that:

"It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because appellant company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the company to file a statutory appeal against the award. Not only because of bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

The allegation made by the appellant Insurance Company, that claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further prove into the matter, for the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. Claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions it might certainly lead to serious miscarriage of justice."

29. In the present case a fraud had been played by the petitioner upon the Court, initially notice under Section 10(2) was issued on 23.3.1974 by the Prescribed Authority so keeping in view the authorities stated herein above when the fraud is committed by the person (petitioner), the matter can be reopened and reconsidered by the authority concerned and the said action will be in accordance with law. The authorities which have been cited by the learned counsel for the petitioner in the present case, namely, Devendra Nath Singh (Dead) through LRs. and others (supra), Lady Parassan Kaur Charitable Educational Trust Society Gorakhpur (supra), In re India Financial Association of Seventh Day Adventist of Anna Nagar Madras (supra), Asghar Abbas (supra), State of U.P. through Collector, Mirzapur (supra), Dasami Sahu (supra) have got no application to the facts and circumstances of the present case because in

none of the authority which have been cited by the learned counsel for the petitioner the controversy was considered taking into account the fact that if the proceedings under Section 10(2) of the Act was initially dropped on the version/ statement of the petitioner against whom a notice had been issued which was subsequently found to be dropped on the basis of the fraud and misrepresentation, and thereafter a fresh notice was issued under Section 10(2) of the Act against the petitioner was valid or not as such the above said authorities are not applicable in the present case. Moreover, the plain reading of Section 29 of the Act give a power to the authority concerned to reopen or redetermine the case under Act which is a continuous process.

30. For the forgoing reasons, the submission made by the learned counsel for the petitioner that the order dated 14.12.1974 passed by the Prescribed Authority thereby dropping the proceedings under Section 10(2) of the Act will operate as resjudicata and estoppel thus the Prescribed Authority had got no jurisdiction whatsoever to issue fresh notice under Section 10(2) of the Act against the petitioner thereby to declare the 12 biswa and 4 biswansi as surplus land as void ab initio and without jurisdiction has no force and is accordingly rejected.

31. Further, while the matter was being considered and adjudicated by the Prescribed Authority, who had given ample opportunities to the petitioner to produce the evidence in regard to income and expenditure of the said trust in order to prove the same is a public trust but the petitioner failed to do so by any cogent evidence and as such the prescribed authority had come to the conclusion that Sri Ram Janki Trust is a private trust and not a public trust and upheld the assertion and the stand of the petitioner that temple is constructed by her husband/parents and the property of the temple belongs to petitioner thereafter clubbed the land of the said trust with the land of the petitioner and declared 12 bigha and 4 biswanshi as surplus land so the order dated 26.12.1985 passed by the Prescribed Authority and the order dated 28.10.1987 passed by Additional Commissioner (Judicial), Faizabad Division, Faizabad are perfectly valid and need no interference.

32. In view of the above said facts, the present writ petition filed by the petitioner lacks merit. It is accordingly dismissed.

33. No order as to costs.