
(2004) 09 AHC CK 0279
In the Allahabad High Court
Case No : C.M.W.P. No. 235 of 1986

Smt. Awadh Rani

APPELLANT

Vs

Ist A.D.J. and Another

RESPONDENT

Date of Decision : 27-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 4A, 5(2), 5(6)

Citation : (2005) 2 AWC 1436 : (2004) 97 RD 715

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Advocate : V.S. Singh, for the Appellant;

Judgement

Krishna Murari, J.—By means of this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order dated 24.8.1983 and 18.9.1985, passed by the Prescribed Authority and 1st, Additional District Judge. Jhansi, respectively, under U. P. Imposition of Ceiling on Land Holdings Act (for short the Act) declaring an area of 4.09 acres in terms of irrigated land as surplus in the hands of the petitioner.

2. The facts are that the notice u/s 10 (2) of the Act was served upon the petitioner proposing to declare 27.57 acres in terms of irrigated land as surplus.

3. The petitioner contested the said notice denying having any surplus land on the following grounds inter alia :

(a) During the consolidation operation on area 6 acres has been reduced from her holdings.

(b) 19.83 acres of land has wrongly been shown to be irrigated.

(c) An area of 29.42 acres of land from her holding has been declared as sirdari of Anand Kumar, Gopal Singh and . Kailash Narain during consolidation on the

basis of adverse possession and the said area has been wrongly clubbed with her holding.

(d) An area of 9.64 acres was gifted to Bhudan Samiti vide gift deed dated 2.2.1965 and the said area has been wrongly clubbed with her holdings.

(e) Plot No. 339 area 0.7 acres and plot No. 312 area .50 acres being abadi and marghat are liable to be excluded from her holding while determining the ceiling area.

4. The prescribed authority vide order dated 15.12.1978 declared 4.89 acres in terms of irrigated land as surplus in the hands of the petitioner. Feeling aggrieved the petitioner filed an appeal which was allowed vide order dated 15.12.1978 and the matter was remanded back to the prescribed authority to re-determine the ceiling area after reconsidering the following points.

(i) Whether, plot Nos. 527, 531 and 533 can be treated to be an irrigated land.

(ii) Whether the area of plot Nos. 239/1 and 351 declared as sirdari of Anand Kumar, Gopal Singh and Kailash Narain on the basis of adverse possession during the consolidation operation is liable to be excluded from the holding of the petitioner.

(iii) Whether area of plot Nos. 174, 264, 533, 534, 535 and 536 which were gifted by the petitioner to the Bhudan Samiti vide gift deed dated 2.2.1965 is liable to be excluded from the holding of the petitioner while, determining the ceiling area.

(iv) Whether the area reduced during consolidation proceedings is liable to be excluded while determining the ceiling area.

The prescribed authority vide judgment dated 24.8.1983 decided the aforesaid issues against the petitioner. The appeal filed by him was also dismissed on 18.9.1985.

5. I have heard Sri V.S. Singh, learned counsel for the petitioner and learned standing counsel and gone through the impugned judgments.

6. In so far as point No. CO is concerned the prescribed authority after considering the evidence recorded a finding that the land is irrigated by Betwa canal which is placed in schedule "1" of the notification notifying irrigation rates. On the examination of Khasra of 1377-1378 fasli, the prescribed authority found that the plots have been shown to be irrigated by the canal (Nahar Tora) and growing two crops. Based on the aforesaid, he has held the plots to be irrigated. The said finding of the prescribed authority has been confirmed by the appellate court. These are findings of fact based on proper appraisal of evidence and in conformity with the requirements laid down by Section 4A of the Act and do not call for any interference by this Court.

7. With regard to point No. 2, the courts below have refused to exclude the area,

over which the three persons namely Anand Kumar, Kailash Narain and Gopal Singh obtained declaration of sirdari rights on the basis of adverse possession from the holding of the petitioner on the ground that the said declaration was made by the consolidation authorities on 15.1.1980, i.e., after the appointed date.

8. Section 5 (6) of the Act provides that while determining the ceiling area of the tenure holder any transfer of land made after 24.1.1971 is liable to be ignored and is not to be taken into account. Section 5(6) of the Act reads as under :

"(6) In determining the ceiling area applicable to a tenure holder, any transfer of land made after the twenty-fourth day of January, 1971 which but for the transfer would have been declared surplus land under this Act, shall be ignored and not taken into account:

Provided that nothing in this sub-section shall apply to--

(a) transfer in favour of any person (including Government) referred to in Sub-section (2) ;

(b) a transfer proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a benami transaction or for immediate or deferred benefit of the tenure-holder or other members of his family.

Explanation I.--For the purposes of this sub-section the expression transfer of land made after the twenty-fourth day of January, 1971 includes--

(a) a declaration of a person as a co-tenure-holder made after the twenty-fourth day of January, 1971 in a suit or proceedings irrespective of whether such suit or proceeding was pending on or was instituted after the twenty-fourth day of January, 1971 ;

(b) any admission, acknowledgement, relinquishment or declaration in favour of a person to the like effect, made in any other deed or instrument or in any other manner.

Explanation II.--The burden of proving that a case falls within Clause (b) of the proviso shall rest with the party claiming its benefits.

9. By the legal fiction created by Explanation I to the aforesaid section a declaration made in favour of any person has been included in the expression "transfer of land".

10. Explanation I (a) refers to declaration of a person as a co-tenure-holder made in any suit or proceedings after 24.1.1971. Since, in the present case, there is no declaration that the said three persons are co-tenure-holders along with the petitioner as such the case would not be covered under Explanation I (a). Now, the question which arises for consideration is whether the provisions of Explanation I (b) are attracted for if the same get attracted, the declaration of

rights in favour of aforesaid three persons would amount to transfer and would be hit by mischief of Section 5 (6) of the Act and liable to be ignored, while, computing the surplus area with the petitioner.

11. Clause (a) of Explanation 1 speaks of declarations as a co-tenure-holder in any suit or proceedings whereas Clause (b) speaks of any admission, acknowledgement relinquishment or declaration in favour of any person to the like effect made in any deed or instrument or in any other manner. It is obvious that the expression "to the like effect" occurring in Clause (b) qualifies for the words "co-tenure-holder" used in Clause (a), Reading the two clauses together the admission, acknowledgement, relinquishment or declaration referred to in Clause (b) must result in bringing into existence a co-tenure-holder.

12. It is golden rule of construction of Statute that Legislature does not use redundant word while enacting a statute. The expression "to the like effect" used in Clause (b) by the Legislature has to be interpreted with reference to Clause (a) otherwise, the meaning of the said expression would be rendered redundant and indeterminate:

13. Since, declaration of rights in favour of Anand Kumar, Gopal Singh and Kailash Narain on the basis of adverse possession does not make them a co-tenure-holder with the petitioner, the said declaration in their favour would not amount to transfer of land as envisaged by Explanation I of Section 5(6) so as to attract the provisions of said section.

14. This view also finds support from the decision of a learned single Judge, in the case of Zile Singh v. State 1978 ALJ 772, wherein, in identical situation while interpreting the provisions of Explanation I (b) of Section 5 [6], it was held that the said Explanation cannot be construed to include each and every transfer of property, and the plots of a tenure-holder transferred by declaratory decree of the court in favour of another on the ground of perfection of title of the later by adverse possession are liable to be excluded from the holdings of the tenure holder while computing the ceiling area. In view of the above discussions, the finding of the prescribed authority and appellate authority on point No. 2 cannot be sustained and are liable to be quashed. The area pf plots declared sirdari of Anand Kumar, Gopal Singh and Kailash Narain by the consolidation authorities vide order dated 15.1.1980 is liable to be excluded from the holding of the petitioner while calculating the surplus area in her hands.

15. Coming to the point No. 3 courts below have refused to exclude the area of plot Nos. 134, 264, 533, 534. 535 and 536 gifted by the petitioner to Bhudan Samiti vide gift deed dated 2.2.1965, from the holdings of the petitioner on the sole ground that the said plots came to be recorded in the name of Ram Kishan Pal Singh and Jagdish Singh minor sons of Bhawani Singh by the consolidation authorities on 7.1.1981 i.e., much after the appointed date. It appears that after execution of gift deed by the petitioner the said plots were allotted by the Bhudan Samiti to the aforesaid persons and their names came to be mutated

during consolidation proceedings vide order dated 2.1.1981. Admittedly, the said plots were transferred, by the petitioner by registered gift deed much before the appointed date. Mere fact that name of the transferee of Bhudan Samiti came to be mutated . after the appointed date would not attract the provision of Section 5 (6) of the Act. Even otherwise, Priviso (a) to the Section 5 (6) excludes the applicability of the section to a transfer of land made in favour of any person referred to in Section 5 (2). Bhoodan Yagna Committee constituted under the U. P. Bhoodan Yagna Act, 1952 is one such person mentioned in Clause (e) of Section 5 (2). Thus by virtue of proviso (a) of Section 5 (6) any transfer made in favour of Bhoodan Samiti will be outside the purview of Section 5 (6) of the Act. Thus, the area of plots which were gifted by the petitioner to Bhudan Samiti is not liable to be included in his holdings while computing the ceiling area. The finding of the prescribed authority on this point is unsustainable and is liable to be quashed.

16. Now, coming to the 4th and the last point whether the petitioner is entitled to the benefit of the area reduced from his holding during consolidation proceedings. The courts below has refused to grant benefit to the petitioner on the ground that said benefit can be extended only when the area is reduced on account of some land being reserved for public purpose during consolidation. The view taken by the courts below is illegal. A Division Bench of this Court, in the case of Satya Pal v. State 1979 ALJ 1259, has held that where pending proceedings under the Ceiling Act, reduction in area of holdings of a tenure holder is brought about in any proceedings under U. P. Consolidation of Holdings Act, such reduction must be taken into account while, calculating the ceiling limit. In view of the law laid down in the case of Satya Pal (supra) the petitioner is entitled to the benefit of area which was reduced during consolidation proceedings.

17. In view of the aforesaid discussions, the finding of the courts below on the point No. 1 holding the land to be irrigated are confirmed. However, the finding on the rest of the point Nos. 2, 3 and 4 suffer from manifest error of law and are hereby quashed. The writ petition stands allowed in part. The matter is remanded back to the prescribed authority to re-calculate the ceiling area and the surplus land in hands of the petitioner in accordance with law and in the light of the finding on the point Nos. 2, 3 and 4 in this judgment.

18. However, in the facts and circumstances, there shall be no order as to costs.