
(1978) 11 AHC CK 0059
In the Allahabad High Court
Case No : Civil Misc. Writ No. 1100 of 1977

Smt. Bhagwan Dei

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 15-11-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 29, 30(2), 5

Citation : (1979) AWC 86 : (1979) RD 3

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

Bench : Single Bench

Advocate : S.P. Kumar, for the Appellant;

Final Decision : Allowed

Judgement

K.P. Singh, J.—This writ petition is directed against the judgment of Vth Additional District Judge, Bareilly dated 17-1-1977 in Ceiling Appeal No. 464 of 1976-Bhagwan Dei v. State of U.P.

2. Notice u/s 29 read with Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, (hereinafter referred to as the Act) was served upon the Petitioner and she filed objection on 29-7-1976. According to the Petitioner-objector, Smt. Ganeshi Kunwar had already transferred her many plots in favour of different persons. Hence the sold plots had not devolved upon her and she could not be asked for giving explanation about the land which had not devolved upon her.

3. The Prescribed Authority through its judgment dated 29-11-1976 has declared 7.30 hectares irrigated area as surplus area of the Petitioner. In appeal the same judgment stands confirmed through the impugned judgment dated 17-1-1977. The Petitioner has come to this Court under Article 226 of the Constitution. The learned Counsel for the Petitioner has contended before me that when succession opened to the Petitioner on the death of Smt. Ganeshi Kunwar, the latter held only 3 bighas, 1 biswa, 6 biswansis land and only that area devolved upon the

Petitioner. Hence, the ceiling authorities have patently erred in declaring 7.30 hectares land as surplus area of the Petitioner.

4. Secondly, he has contended that on the day when the Petitioner inherited land from Smt. Ganeshi Kunwar she herself had lesser area with her than determined by the ceiling authorities in the earlier proceedings. The land held by her on that day together with the land inherited from Smt. Ganeshi Kunwar was not in excess of ceiling limits; hence the ceiling authorities should have discharged the notice and they have patently erred in declaring 7.30 hectares land of the Petitioner as surplus area.

5. The learned Counsel for the State has tried to refute the contentions raised on behalf of the Petitioner. According to him 7.30 hectares land belonged to Smt. Ganeshi Kunwar and on her death the aforesaid area for the purposes of ceiling limit devolved upon the Petitioner and the ceiling authorities were fully justified in declaring surplus area of the Petitioner to the tune of 7.30 hectares. The learned Counsel for the State has emphasised that the sale deeds executed by the Petitioner as well as by Smt. Ganeshi Kunwar were rightly ignored by the ceiling authorities in earlier proceedings; hence the Petitioner cannot press the claim that the sale deeds, which were once ignored, must be accepted while determining the ceiling limit of the Petitioner in pursuance of the notice u/s 29 read with Section 10(2) of the Act.

6. I have examined the contentions raised on behalf of the parties. Section 29 of the Act reads thus;

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 tenure holder 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 area applicable to him; or

(b) any unirrigated land becomes irrigated land as a result of irrigation from a State irrigation work or any grove land loses its character as grove land 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 any land held by him in excess of ceiling or so redetermined shall be liable to be treated as surplus land.

7. In the aforesaid provision it is not worthy that any land which has come to be held by a tenure holder is to be considered by the ceiling authorities when they issue notice u/s 29 read with Section 10(2) of the Act. The learned Counsel for the State has relied upon the provisions of Section 30(2)(c) which reads thus:

The provision 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.

8. According to the learned Counsel for the State since the transfer deeds could be ignored under the provisions of the Act and were rightly ignored in the earlier proceedings the present Petitioner cannot be permitted to say that the sold land did not devolve upon her. I do not agree with the contention raised by the learned Counsel for the State. There is no provision in the Act whereby while determining the ceiling limits of the successor the sale deed executed by the predecessor-in-interest would be ignored. It is true that while determining the ceiling limit of the predecessor-in-interest, the sale deed executed by the predecessor-in-interest could be ignored under the provisions of Section 5 of the Act. According to the aforesaid provisions of Section 5 it cannot be held that while determining the ceiling limits of the successor under the provisions of Section 29 read with Section 10(2) of the Act the transfer deed executed by the predecessor would be ignored and the ceiling limit would be fixed including the land held by the transferee of her predecessor. Added to this Section 29 of the Act states that any land which has come to be held by a tenure holder would be taken into account and according to me the land really held by the transferee of the predecessor would not be deemed to have devolved upon the successor. A perusal of the impugned judgment gives me an idea that the ceiling authorities have patently erred in holding that 7.30 hectares land which was determined to have been held by Smt. Ganeshi Kunwar devolved upon the Petitioner and the aforesaid area was wrongly declared as surplus of the Petitioner. According to the provisions of the Ceiling Act a tenure holder would be deemed to have held land including the land of his transferee while his ceiling limit was determined qua the date, namely 8-6-73 but on the death of such a tenure holder only that land would devolve upon the successor which was really held by him on the date of his death. To my mind the ceiling authorities have patently erred in declaring 7.30 hectares of the land of the Petitioner as surplus.

9. According to the learned Counsel for the Petitioner on the date of the death of her predecessor-in-interest, namely, Smt. Ganeshi Kunwar, the Petitioner was possessed of lesser area than the area determined in the earlier proceedings; hence the land held by her along with the land she got in succession to Smt. Ganeshi Kunwar did not exceed the ceiling limit. Thus the determination of surplus area by the ceiling authorities was patently erroneous. I am not inclined to accept the contention of the learned Counsel for the Petitioner to this extent. The Petitioner had sold land and her sale deed was ignored by the ceiling authorities under the provisions of Section 5 of the aforesaid Act and she was held to have 7.30 hectares land in the earlier proceeding. She is not able to indicate that she had parted any land thereafter. If the contention of the learned Counsel for the Petitioner is accepted to this extent that on the date of death of Smt. Ganeshi Kunwar she had only lesser area than the area determined in the earlier proceedings and she should be entitled to have the land inherited clubbed with the area in her possession only and thereby there will be no surplus area with her would mean what she could not get directly she should get indirectly. In law so far as the Petitioner is concerned, after considering the effect of her sale

deeds it was decided that she could hold only 7.30 hectares land including the land held and occupied by her transferee. In this view of the matter if she inherited land in addition to 7.30 hectares land determined by the ceiling authorities in the earlier proceedings she will be required to indicate as to how she was entitled to retain that land. In the circumstances of the present case, I am not inclined to give benefit to the Petitioner to this extent that even the land held by her transferee would be excluded from consideration while determining the ceiling limit of the Petitioner in pursuance of the notice u/s 29 read with Section 10(2) of the Act. Moreover, if the provisions of Section 5 are read with Section 30(2)(c) the Petitioner cannot successfully contend that the sale deed executed by her would be taken into account while determining her ceiling limit in pursuance of the notice u/s 29 of the Act.

10. For the reasons given above, the writ petition succeeds in part and the impugned judgment of the appellate authority is hereby quashed and the appellate authority is directed to decide the Petitioner's claim afresh in the light of the observations made above. No order as to cost.