
(1978) 12 AHC CK 0010
In the Allahabad High Court
Case No : Civil Misc. Writ No. 2578 of 1977

Smt. Girja Devi	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 01-12-1978

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2),
12A, 5(1), 5(6), 5(7)

Citation : (1979) AWC 141 : (1979) RD 14

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

Bench : Single Bench

Advocate : S.D. Pathak, for the Appellant; R.R.K. Trivedi and S.C., 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, 1960.

The brief facts are these: The Petitioner's husband was issued notice u/s 10(2) and he filed objections. The objections were decided by the Prescribed Authority. Subsequently, an appeal was filed by the Petitioner as the widow of the deceased tenure-holder and the appeal was decided by the District Judge, Banda. The appeal was partly allowed. Now, the Petitioner has come up in the instant petition and in support thereof I have heard Shri S.D. Pathak, learned Counsel for the Petitioner. In opposition, on behalf of the Respondents Nos. 4 to 13, Shri R.K. Trivedi, has made his submissions. The Petitioner's learned Counsel contended before me that the family settlement has been wrongly disbelieved by the Prescribed Authority and by the appellate court. He says that the family settlement can, in law, be proved by oral evidence and as such, the Petitioner had led the oral evidence and even though there was no documentary evidence, there was nothing, in law, to prevent the authorities from accepting the oral evidence and in relying on the oral evidence and accepting the family settlement.

I have looked into the order of the Prescribed Authority and the judgment of the appellate court and it seems to me that both of them were justified in not accepting the family settlement merely on the ground of oral evidence. They have emphasised that even though the family settlement is said to have been arrived at some time in 1947 the suit on the basis of the same was decreed as late as on 29th July, 1974. It is obvious that it was open to the authorities below in such circumstances either to have accepted the family settlement or not to have accepted the family settlement and in the writ jurisdiction I cannot interfere with the finding recorded by them.

2. The next contention of Shri Pathak is that the appellate court was not justified in giving the following direction in its operative portion of the judgment:

In particular, he will consider the application of choice of plots given by the Appellant and so far as possible exclude from the list of surplus plots, the plots allotted to Respondents 2 to 11.

It seems to me that this contention is correct. Once the family settlement was not accepted and it was held that the tenure-holder was rightly proceeded against in respect of the entire holding, then he was free to give his choice and the same, as far as possible, was entitled to be accepted u/s 12A, The only question will be whether Clause (d) of Section 12A will be applicable to the instant case. Shri Trivedi contended before me that in view of the fact that the decree was passed on 29th July, 1974, therefore, it should be held that it was ignored by virtue of Section 5(7) of the Act and, therefore, he contended that his clients were entitled to claim that Clause (d) of Section 12A was applicable and in this view of the matter, the surplus land to be determined in the hands of the Petitioner should, as far as possible, be land, other than land which is the subject of the said partition decree. I have anxiously considered this contention but, in my view, in view of the law laid down by a learned Judge of this Court in Smt. Kunwar Rani Sushila Devi v. State 1978 ALJ 1099 it has to be held that the partition which is spoken of in Section 5(7) has to be one between 24th January, 1971, and 8th June, 1973. The aforesaid pronouncement was made with reference to Section 5(6) but the reasoning would be equally applicable to Section 5(7). The learned Judge in the said case emphasised that u/s 5(1) the determination of the surplus land was to be done with reference to 8th June, 1973, and it is obvious that when Section 7 says that "in determining the ceiling area applicable to a tenure-holder, any partition of land made after the 24th day of January, 1971, which but for the partition would have been declared surplus land under this Act shall be ignored and not taken into account," it cannot refer to a partition made after 8th June, 1973, because it could not be said that any partition had to be ignored on 8th June, 1973, when there was no such partition. Something can be ignored only when something is in existence and when something is not in existence on the material date there is no question of the same being ignored. Therefore, on 8th June, 1973, the partition decree which, in the instant case, was passed on 29th July, 1974, was nowhere there to be

ignored. In this view of the matter, the decree was disregarded not on the ground that it was ignored u/s 5(7), but on the ground that it was something which came into existence after the material date which was 8th June, 1973. In this view of the matter, Section 5(7) will not be applicable to the instant case and, therefore, the Respondents Nos. 2 to 11 could not avail of the benefit of Section 12-A(d) If the said Clause (d) did not apply, then it cannot be doubted that the Petitioner was entitled to claim that as far as possible the choice which she indicated should have been accepted.

3. Therefore, this petition is partly allowed. The judgment of the appellate court below shall remain intact but the aforesaid sentence in the operative portion of the order shall be quashed and deleted. The Prescribed Authority shall proceed to redetermine the surplus land taking into consideration the choice given by the Petitioner and, as far as possible, in accordance with the said choice as laid down in Section 12A and without applying Clause (d) of Section 12A to the acceptance of such choice.

4. I make it clear that my aforesaid interpretation of Section 12-A(d) read with Section 5(7) is confined only to the controversy in respect of the exercise of choice and to the liability of a partition made after 8th June, 1973 to be not taken into consideration by the ceiling authorities irrespective of the provisions of Section 5(7). My judgment shall, in no way, prejudice the rights of the Petitioner and the Respondents, if any, which they may otherwise have in law apart from the aforesaid narrow controversy. I should like to say that I say nothing as to whether they have or they do not have any other rights.