
(2003) 08 AHC CK 0031
In the Allahabad High Court
Case No : C.M.W.P. No. 525 of 1997

Smt. Pavitra and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2),
11(2), 3(7)
Uttar Pradesh Imposition of Ceiling on Land Holdings Rules, 1961 — Rule 19(4), 8

Citation : (2003) 6 AWC 4670

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

Bench : Single Bench

Advocate : R.N. Singh, A.K. Rai, A.P. Sahi and P.K. Singh, for the Appellant; A.K. Banerjee, R.M. Pande and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.K. Singh, J.—By means of this writ petition Petitioners have challenged the judgment of the appellate authority and of the prescribed authority dated 19.12.1996 and 16.9.1996 (Annexures-8 and 6 respectively) by which Petitioner's application u/s 11 (2) of the U.P. Imposition of Ceiling on Land Holdings Act, (hereinafter referred to as the Act) has been rejected.

2. There appears to be no dispute about the fact that proceedings u/s 10 (2) of the Act was started against one Data Ram. Petitioners who are although married daughters of Data Ram, referred above but they claim to be having their independent rights on the basis of registered sale deed in their favour dated 22.9.1971 on the basis of which their names were also mutated on 14.1.1972. In the proceedings u/s 10 (2) of the Act land covered by the sale deed in favour of the Petitioners was claimed for being excluded, but Data Ram could not succeed and the prescribed authority by its judgment dated 2.1.1975 declared certain area as surplus. Having remained unsuccessful upto this Court Data Ram took up the matter to the Apex Court. During pendency of the appeal before the Apex

Court Data Ram died. It is claimed that although he left behind him Dayawati his widow as heir but by moving substitution application Petitioners were also brought on record. Finally the Apex Court also dismissed the appeal by its judgment dated 14.11.1995 by accepting the findings of the authorities that the agreement was manufactured. After dismissal of the appeal by the Apex Court it is on the premises that when Ceiling authorities intended to take possession from the Petitioners then they came to know about the fact that their land is to be taken by virtue of declaration of land as surplus in the proceedings against Data Ram, they filed objection on 13.12.1995 u/s 11 (2) of the Act which came to be rejected by the Respondents 2 and 3 by judgments referred above against which Petitioners have come up to this Court.

3. Sri R. N. Singh, learned senior Advocate assisted by Sri A. K. Rai, learned Advocate submits that as on 8.6.1973 Petitioners were recorded tenure holder and therefore, if the statement in C.L.H. form 3 includes the land ostensibly held in the name of any other person it was obligatory on the part of the State authority to serve notice on the Petitioners as well as C.L.H. form 4 together with the copy of the statement in C.L.H. 3 calling upon him to show cause. It is argued that as this was not done which is mandatory on the part of the State Authority the entire proceedings by which land held by the Petitioner has been declared as surplus is nullity and is void. It is submitted that premises on which the authorities have rejected Petitioner's application that Petitioners had knowledge of the proceedings by virtue of the fact that they were brought on record in the pending appeal before the Apex Court is totally misconceived for the simple reason that bringing on record of the Petitioners can be said to be only for the purpose of prosecution of the case and they cannot be expected to have any other say except to plead for the claim/rights of the parties/tenure holder for whom they have been substituted. Otherwise also they were substituted as heirs of the deceased but in the event if the Petitioners have their independent rights in the land they can very well lay their claim as and when occasion arises. It is argued that as even the unrecorded tenure holder laying his claim to the land has been permitted by this Court to file an objection u/s 11 (2) of the Act, so far the Petitioners are concerned they were recorded much before 8.6.1973 and therefore, they have every right to file their objection for consideration of their claim on the merits whatever it has worth either to be accepted or to be rejected, but the authorities cannot be permitted to refuse to entertain their claim and consider it on the merits.

4. Learned Counsel for the Petitioner in support of submission that in view of the 1st proviso of Rule 8 of U.P. Imposition of Ceiling on Land Holdings Rules, 1961, hereinafter referred to as the Rules, issuance of the notice to the Petitioner was mandatory, has placed reliance on the decision given by Full Bench of this Court in case of Shantanu Kumar v. State of U.P., 1979 ALJ 1174. In support of the submission that there may not be a presumption about knowledge to the person to whom notices were not issued even if he may be the son and even doing pairvi on behalf of the tenure holder reliance has been placed on the decision

given by this Court in case of Mahfuzul Rahman v. State of U.P., 1987 RD 239 and Hari Ram v. Special Additional District Judge, Faizabad and others, 1989 RD 295. In view of the aforesaid, it is submitted that judgment of the Respondents 2 and 3 be quashed so that Petitioners may get opportunity to get their claim adjudicated on the merits.

5. In response to the aforesaid submissions Sri A. K. Banerjee, learned standing counsel submits that as genuineness of the sale deed on the basis of which Petitioners are laying their claim has already been adjudicated upto the Apex Court and it has not been found to be genuine transaction, Petitioners are not entitled to get opportunity in the matter specially in view of the fact that they were brought on record in the proceedings before the Apex Court and they had full knowledge of the proceedings but they have never pleaded about their claim. It is further submitted that the Respondents 2 and 3 has rightly taken the view that the contention of the Petitioners that they could come to know about their factum of taking of their land on account of declaration of the land as surplus on 30.11.1995 cannot be accepted as Petitioners were brought on record in the proceedings before the Apex Court itself. It is then submitted that in view of Rule 19 (4) of the Rules where tenureholder dies his heirs or other legal representatives are to file their objection within the time so provided which Petitioners failed to file and thus Petitioners cannot be permitted to get the same controversy re-opened by filing present objection u/s 11 (2) of the Act. It is argued that on the fact, rejection of the Petitioner's objection cannot be said to be erroneous in any manner.

6. In view of the aforesaid arguments, the facts as has come on the record has been examined.

7. There is no dispute about the fact that the proceedings u/s 10 (2) of the Act was started against Data Ram. Petitioners happened to be recorded tenure holder before 8.6.1973 on the basis of registered sale deed in their favour dated 22.9.1971 of which mutation was effected on 14.1.1972. Petitioners are the married daughters of the tenure holder Data Ram and thus they cannot be treated as members of the family of the tenure holder in view of the definition of the family as has been given in Section 3 (7) of the Act. Section 3 (7) of the Act defines family which states thus:

""Family" in relation to a tenure-holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters)."

8. In view of the aforesaid if the Ceiling authorities were of the view that Data Ram continued to be tenure holder of the entire land and his name included the land ostensibly held in the name of the Petitioners it was for them to have served notice in CLH form 4 together with copy of the statement in CLH form 3, calling upon the Petitioners to show cause that why the statement in CLH form 3 be not taken as correct.

9. The Ist proviso of Rule 8 will be useful to be quoted here:

"Provided that where the statement in CLH form 3 also includes land ostensibly held in the name of any other person, the prescribed authority shall cause to be served upon such other person a notice in CLH form 4 together with a copy of the statement in CLH form 3 calling upon him to show cause within a period of fifteen days from the date of service of the notice why the aforesaid statement be not taken as correct."

10. In view of the aforesaid, it is clear that the notice was required to be issued to the Petitioners which has been admittedly not issued. The aforesaid provision has been the subject matter of interpretation by this Court in the Full Bench case of Shantanu Kumar (supra), in which it has been held that the entire proceedings will be deemed to be vitiated. At this stage observations as made in paras 11 and 12 of the aforesaid judgment of Shantanu Kumar (supra), will be useful to be quoted here:

Para 11. It is obvious that service of such a notice is preliminary to the acquisition of jurisdiction to proceed in the matter and decide whether the land ostensibly held in the name of the Petitioner could be declared as surplus land in the hands of Bhupendra Singh. In the premises, the proceedings were without jurisdiction and void. Learned standing counsel submitted that the Petitioner had knowledge and he should have filed an objection u/s 11 (2) of the Act as has been held by a Division Bench of this Court in Dilbag Singh v. State of U.P., 1978 ALJ 717. The existence of another remedy under the Act cannot validate the proceedings which are void for lack of jurisdiction and which have resulted in the declaration as surplus land of an area which a person other than the tenure holder who has been heard, claims. The fact that the Petitioner could have filed an objection u/s 11 (2) will not breathe life into or validate these dead proceedings.

Para 12. It was urged that since the Petitioner knew of this proceedings he kept silence all this while, this Court need not interfere in exercise of its discretionary jurisdiction under Article 226 of the Constitution. It is well settled that an objection to land of jurisdiction can be taken at any stage of the proceedings and even in collateral proceedings (see Kiran Singh and Others Vs. Chaman Paswan and Others,). Consent or waiver cannot be a ground for refusing to entertain such an objection. We hence cannot deny relief to the Petitioner on the ground of alternative remedy. It is equally settled that existence of jurisdiction cannot be conferred by consent or waiver. This plea is only relevant to the exercise of jurisdiction. Here there was lack of jurisdiction by reason of non-compliance of the first proviso to Rule 8.

11. It has also been held by this Court in case of Mahfuzul Rahman and Hari Ram (supra), that if there is no notice to the claimant even if he has been doing pairvi in respect to the proceedings of the tenure holder who may be even his father the presumption about knowledge that his land is being declared as surplus

cannot be drawn. Otherwise also substitution of name of any person on the death of a party before any Court is to be treated for the purpose of prosecution and disposal of the case and as and when any occasion arise in respect to the dispute about the rights and title of that substituted person or any other party that is to be adjudicated in the competent court in the light of rival claim. Otherwise also take a case that if after the decision from 2-3 courts if the matter is pending in appeal/revision before higher court if on the death of a party a person is substituted as his heir and if he places his independent claim then that will certainly require fresh trial and then there may not be any option but to remand the matter to the trial court as higher court may not be in a position to take evidence and to give any finding either way in respect to the claim of the substituted person. Similarly if the Petitioners were brought on record before the Apex Court in the event they were required to plead their claim, which requires leading of evidence it might not have been permitted but this is not for this Court to give any finding on the score that what could have transpired before the Apex Court in the event Petitioners would have pleaded their claim at that stage.

12. On examination of the matter this Court is satisfied that the notice as required vide proviso of Rule 8 of the Rules was not issued to the Petitioners and by mere their substitution in the proceedings they can be expected to know about the proceedings against Data Ram but at the same time they having their independent claim for trial on the basis of registered sale deed they are entitled to be heard on filing their objection u/s 11 (2) of the Act. Submission of the learned standing counsel that in view of Rule 19 (4) of the Rules on the death of the tenure holder the objection should have been filed by the Petitioners deserves straightway rejection as aforesaid provision speaks of filing of objection by the legal representative after service of the notice in CLH form 4 disputing the correctness of the statement in CLH form 3. So far the case in hand is concerned no notice was ever served to the Petitioner's in CLH form 4 and they had no occasion to dispute the correctness of the statement in CLH form 3. This Court also dis-approve the submission as advanced by the learned standing counsel that examination of the Petitioners' claim on the merit will amount to going into same question again which has been earlier finalised for the simple reason that it will be the situation in each and every case where proceedings u/s 10 (2) of the Act is finalised and person files objection u/s 11 (2) of the Act laying his independent claim, which has been held to be permissible even at the instance unrecorded tenure holder. Accordingly this is clear that so far finding given in any earlier proceedings are concerned on any particular issue that is always there but at the same time if a person files objection u/s 11 (2) of the Act that is to be examined on the merits with whatever result on the merits, i.e., either by rejecting the claim of the objector or by accepting it.

13. In view of the aforesaid this Court is of the view that Petitioners are entitled to get their claim attended on merits by Prescribed Authority instead of refusal to entertain the same. So far the prayer as made by the Petitioners in their application dated 13.12.1995 for setting aside order passed by the prescribed

authority dated 2.1.1975 by which land was declared as surplus is concerned, that cannot be allowed/ accepted as it is for the prescribed authority to examine the claim of the Petitioners in respect to the bona fides in the transaction which has already travelled up to the Apex Court.

14. For the reasons recorded above, this writ petition succeeds and is allowed. The order passed by Respondents 2 and 3 dated 19.12.1996 and 16.9.1996 are hereby quashed. The matter is sent back to the prescribed authority for passing fresh orders on the objection of the Petitioners which has been filed u/s 11 (2) of the Act in accordance with law.