

(2007) 04 AHC CK 0274
In the Allahabad High Court

Smt. Ram Basi and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 26-04-2007

Acts Referred:

Citation : (2007) 4 AWC 3345

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. Sheo Murat Singh was the original tenure holder. He was having agricultural land in ten villages including villages Amva Buzurg and Titariya. Proceedings, under U.P. Imposition of Ceiling on Land Holdings Act, 1960, were initiated against him. The prescribed authority declared certain area of land held by original tenure holder as surplus. Against the said order, appeal was filed, which was partly allowed by A.D.J, on 7.5.1976. The appellate court held that tenure-holder possessed 32.87 acres of land as surplus in terms of irrigated land. The appellate court remanded the matter to the prescribed authority for the reason that the original tenure holder had contended therein that he was entitled to hold 18 acres land, hence his land in villages Amva Buzurg and Titariya, area of which was 18.04 acres, should be permitted to be retained by him and the declared surplus land shall be taken from his land held by him in other villages. Thereafter the needful was done by the prescribed authority through order dated 11.11.1976 in Case No. 53. In the said case one Kamla had filed impleadment application, which was rejected and against that rejection order, appeal was also dismissed. However, It appears that earlier prescribed authority had directed that the land of original tenure-holder situate in the aforesaid two villages shall be taken as surplus land. Accordingly, a fresh order to correct the error had been passed by prescribed authority on 15.3.1978, copy of which is Annexure-1 to the second writ petition. Original tenure holder had died in 1977 leaving behind no

issue. He was survived by his two widows Ram Basi-petitioner No. 1 in both the writ petitions and Ram Rati. These two widows had been substituted before the prescribed authority in Case No. 63/61, which was decided on 15.3.1978, through Annexure-1 to the second writ petition. The said order was passed by Prescribed Authority/S.D.O., Padrauna, district Deoria. However, for a very long time, possession of the surplus land could not be taken by the State. It is stated in the order passed subsequently that due to technical reasons, State could not take possession.

3. It appears that one Phool Kunwar filed objections before the prescribed authority claiming therein that 8.6 acres of land situate in village Manna Jumania, which was treated to belong to Shiv Murat Singh in ceiling proceedings against him in fact belonged to her (the said land was included in the land which was surrendered by Shiv Murat Singh for being taken as surplus land). Objections were rejected on 26.6.1980; however, appeal filed against the said order was allowed on 14.8.1981. These orders are not on record of this writ petition, however, they are mentioned in the impugned judgment Annexure-14 to the writ petition. Thereafter Naib Tehsildar ceiling filed application before the prescribed authority on 8.11.1985, for redetermination of ceiling area of Shiv Murat Singh in view of order of appellate court dated 14.8.1981 (in favour of Phool Kunwar). It was also requested in the said application by the Naib Tehsildar that notice might be issued to Ram Basi. Said application of Naib Tehsildar was rejected by the prescribed authority on 29.1.1986 after recording that no proceedings were pending before it. Against order dated 29.1.1986, Naib Tehsildar filed no appeal, however, Brij Narain Singh father of Surendra Singh respondent No. 3 in the first writ petition filed appeal against order dated 29.1.1986. In the said appeal, Phool Kunwar was not party. Nagendra Singh petitioner No. 2 in both the writ petitions was also not party in the said appeal, however, he appeared on his own. (Nagendra Singh claims to be the legatee of Ram Rati, second widow of original tenure holder Shiv Murat Singh. Ram Rati died in 1985). The said appeal was numbered as Appeal No. 161/7/17/D of 1986 Surendra Singh v. State, and was decided on 8.1.1988 by Additional Commissioner (Administration), Gorakhpur Division, Gorakhpur. The said order is contained in Annexure-14 to the writ petition and has been challenged through first writ petition.

4. Brij Narain Singh claimed his right as successor of Shiv Murat Singh or of Ram Rati. Appellate court through the impugned order held that question of title in between Brij Narain Singh and petitioners was subject-matter of some litigation. Appellate court ultimately allowed the appeal in part and modified the order of prescribed authority dated 29.1.1986 and directed that after taking fresh option of the surplus land possession must be taken.

5. It appears that thereafter Brij Narain Singh and other contesting respondents of the first writ petition, i.e., Banke Behari, Raj Kishore and Krishna Pratap filed applications for change of choice of deceased Shiv Murat Singh and 18 acres of

land situate in the village Amawa Buzurg and Tetariya regarding which Shiv Murat Singh had exercised his option of retaining the same was requested to be taken as surplus land. (Meanwhile Consolidation had intervened and the names of the two widows had been mutated over the land of the above two villages which had been retained by Shiv Murat Singh). Thereafter, it appears that request for change of choice was accepted and the said land was allotted to different persons. For cancellation of said pattas, the petitioners filed application u/s 27(4) of the Ceiling Act before Commissioner, Gorakhpur which was registered as application No. 42/D of 1990. The main contention was that against order dated 8.1.1988, writ petition was pending (i.e., first writ petition) and stay was continuing. Commissioner decided the application on 4.6.2003, holding that allotment was valid. However, Commissioner further held that if stay order passed by the High Court in Writ Petition No. 956 of 1988 was continuing then the same should be given effect to. The said order has been challenged through the second writ petition.

6. In my opinion, order dated 8.1.1988, is utterly erroneous in law. Appeal filed by Brij Narain was not at all maintainable. Moreover, question of choice had become final with the death of Shiv Murat Singh. Question as to whether after the death of tenure-holder, his legal representatives can change the choice which had been given by the deceased tenure-holder, or not need not be decided in this judgment. However, there cannot be any doubt that if legally in such situation change of choice is permissible then it can be done only when there is absolutely no dispute of survivorship and all the legal representatives of deceased tenure holder jointly request for change of choice. However, if there is any dispute of succession or all the successors do not agree to particular change of choice then question of change of choice cannot be considered. This will simply delay the proceedings for taking possession of surplus land or complicate the proceedings if possession of surplus land has already been taken by the State. Proceedings for change of choice under Ceiling Act can never be converted into title dispute. By no stretch of imagination, in such proceedings title dispute can be agitated or decided. In the instant case, Shiv Murat Singh exercised his option and thereafter he died. Thereafter rival claimants to the land left behind by Shiv Murat Singh are trying to get the dispute of title decided through proceedings for change of choice before prescribed authority under Ceiling Act. This is not at all permissible. Title disputes are decided either by consolidation courts or revenue courts or civil courts. If someone got his name mutated after the death of Shiv Murat Singh over the land, which had been surrendered by him as surplus land under Ceiling Act then it was meaningless and State could not be prevented from taking possession over the said land. (it appears that contesting respondents during Consolidation proceedings got their names mutated over the land surrendered by Shiv Murat Singh, claiming to be his heirs).

7. Order dated 8.1.1988 is quashed.

8. It is clarified that under no circumstances the land which was held by Shiv

Murat Singh in villages Amawa Buzurg and Titariya shall be taken as surplus land and if possession of the said land has been taken and the same has been allotted to someone else then the said allotment is utterly without jurisdiction and stands cancelled. The possession of the land admeasuring 18.04 acres situate in villages Amawa Buzurg and Titariya shall at once be returned back to the petitioners otherwise State may be held liable to pay damages. If regarding the said land of 18.04 acres, any person has got any claim then he may agitate the same before proper forum subject to all possible objections, which may be raised by the petitioners. Celling authorities are not proper forum for such disputes.

9. Consequently all orders passed by the prescribed authority regarding change of choice after 15.3.1978, are set aside.

10. Both the impugned orders are set aside. Allotment of land of the above two villages u/s 27(3) of the Celling Act are quashed.

11. Both the writ petitions are allowed.