
(1997) 09 AHC CK 0023
In the Allahabad High Court
Case No : C.M.W.P. No. 9471 of 1988

S.P. Singh

APPELLANT

Vs

Additional Commissioner and Another

RESPONDENT

Date of Decision : 03-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10

Citation : (1997) AWC 600 Supp

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : V.K. Goel, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—Heard the learned Counsel for the Petitioner as well as the learned Counsel representing the Respondent No. 3. Perused the record.

2. The Petitioner feels aggrieved by the order passed by the appellate authority whereunder the appeal filed by the Respondent No. 3 directed against the rejection of his objection claiming to be the exclusive tenure-holder of plot Nos. 610, 117 and 1405 in dispute had been rejected and treating the said plots to be the holdings of Chandra Bhan, the said holdings had been declared as surplus.

3. The appellate authority vide the impugned order allowed the appeal and holding that the aforesaid plots really constituted the original holdings of the Respondent No. 3 wherein she alone had the exclusive tenurial rights, remanded the matter for re-determination of the extent of the surplus area excluding the aforesaid three plots.

4. From the materials brought on record, it is apparent that the three plots had been settled by the Assistant Custodian in the proceedings under the Administration of Evacuee Property Act in favour of Zariful Hasan in case No. 1037/B/57, decided on 3.3.1958. However, the order of the Assistant Custodian

vesting the Bhumidhari rights in favour of Zariful Hasan so far as the three plots were concerned was set aside on the objection of Chandra Bhan Singh and the plots were allotted in his favour and an order was issued on 4.8.1958, directing that any Bhumidhari names entered in respect of the land in dispute be deleted and the names of Chandra Bhan Singh and Raghubir Singh be recorded in the revenue record relating to the aforesaid plots as the allottees of the custodian.

5. This order had been issued pursuant to the order passed by the Assistant Settlement Commissioner (R) cum Deputy Custodian Evacuee Property. U.P. dated 8.7.1958.

6. The order dated 8.7.1958 was, however, set aside in revision vide the order dated 4.1.1961. The result was that with the setting aside of the order dated 8.7.1958, the consequential order dated 4.8.1958 automatically got set aside.

7. A perusal of the order dated 4.1.1961 indicates that it was found that the entries in the Rojnamacha for the year 1362 and 1363 Fasali indicated that Chandra Bhan Singh had never been put in possession and the actual possession continued with Zariful Hasan. It was further observed that even the revenue authorities had found that Zariful Hasan was in actual possession in 1362 Fasali.

8. In the proceedings pursuant to the notice u/s 10 of the U.P. Imposition of Ceiling on Land Holdings Act which had been issued against Chandra Bhan, an objection had been filed by Aziz Fatima claiming that she was the exclusive tenure-holder of plot Nos. 610, 117 and 1405 and had throughout been in possession thereof right from the time of his father Bahadur Khan, the son of Zariful Hasan. It has also been asserted that an order had been issued by the Assistant Custodian in favour of Bahadur Khan permitting him to deposit the requisite amount so that he may get Bhumidhari Sanad.

9. Along with the counter-affidavit, a copy of the order passed by the Assistant Custodian in case No. 122/61 has been filed which indicates that the requisite amount for the issuance of the Bhumidhari Sanad had in fact been deposited and an order had been passed for the issue of the Bhumidhari Certificate.

10. Considering the facts and circumstances indicated hereinabove, the conclusion is inescapable that Chandra Bhan cannot be deemed to have any tenurial rights in the land in dispute which exclusively vested in Zariful Hasan who was succeeded by Bahadur Khan and thereafter by Aziz Fatima, the Respondent No. 3.

11. Learned Counsel for the Petitioner has strenuously urged that when the notice u/s 10 had been issued, the land in dispute stood recorded in the name of Chandra Bhan and even during the period 1958 onwards up to the issuance of the notice, the said entry in the revenue record continued to be in favour of Chandra Bhan. It is asserted that in the aforesaid view of the matter, the plots ought to have been taken to be vesting in Chandra Bhan Singh alone with which the contesting Respondent No. 3 could not have any concern whatsoever.

12. In the aforesaid connection, suffice it to say that the entry in the revenue record, which is sought to be relied upon is based upon the order dated 4.8.1958 which had been issued consequent upon the order passed on 8.7.1958 by the Assistant Settlement Commissioner. As has already been noticed hereinabove, the order dated 8.7.1958 was subsequently set aside. The result was that the revenue entries based on the order dated 8th July, 1958 were rendered incorrect. The repetition of the incorrect entries in the revenue record could not confer any tenurial rights in favour of Chandra Bhan. Moreover, the competent authority, while exercising the jurisdiction under the Administration of Evacuee Property Act, had found that Chandra Bhan was not entitled to any allotment of the land in dispute. It was also found that Zariful Hasan was entitled to the settlement of the land in dispute in his favour and the decision to issue Bhumidhari Sanad vesting him with Bhumidhari rights in the land in dispute had also been taken. The requisite amounts in this connection had also been deposited.

13. In the aforesaid view of the matter, the findings returned against the Petitioner by the appellate authority under the impugned order cannot be held to be vitiated in law.

14. No justifiable ground has been made out for any interference by this Court, while exercising the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India.

The writ petition is accordingly dismissed.