

(2011) 12 UK CK 0114

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1135 of 2002 (Old No. 23185 of 1990)

Sri Gyan Singh (deceased) through L.Rs.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-12-2011

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 131

Citation : (2013) 1 UC 374

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : B.C. Pande and Mr. Manav Sharma, for the Appellant; Sudhir Kumar, Brief Holder, Learned Counsel for the Respondent Nos. 1 to 3, Mr. Sarvesh Agarwal, Learned Counsel for the legal heirs of deceased Respondent No. 4- Daleep Singh, for the Respondent

Judgement

Brahma Singh Verma, J.—By means of this writ petition, the petitioners have sought the following relief:-

- (a) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 15.9.88 (Annexure-1) and dated 12.6.90 (Annexure-2) to the writ petition.
- (b) Issue a writ, order or direction in the nature of mandamus restraining the opposite Party No. 1 to 3 from interfering the petitioners' possession over land in dispute.
- (c) Issue any other writ order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.
- (d) To award the cost of the writ petition to the petitioner.

This writ petition was initially filed by tenure holder Gyan Singh son of Sri Jagwant Singh, who had died during the pendency of the writ petition. He has been substituted by his legal representatives Smt. Harvinder Kaur and two

others.

2. Brief facts giving rise to the present writ petition, according to the petitioners are that initially proceedings under the provisions of U.P. Imposition of Ceiling on Land Holdings Act, 1960 (for short the Act) were initiated and Ceiling Case No. 51/15 of 86-87, State Vs. Daleep Singh was registered before the Prescribed Authority/Additional District Magistrate (Finance & Revenue) Nainital. A notice u/s 10(2) of the Act was issued against the tenure holder-respondent No. 4, Daleep Singh as to why land measuring 126 Bigha 16 Biswa (unirrigated) be not declared surplus from his holdings. The land-holder Daleep Singh had died. His three sons, who have been substituted in place of deceased respondent No. 4 Daleep Singh herein filed reply and asserted that all the three sons of the deceased are cultivating their land separately and they are living separately and that they have no surplus land. In the proceedings, Sri Ranjeet Singh, Balweer Singh, Kashmir Singh and Jageer Singh moved application for their impleadment and they were made a party. They filed their objection contending that they are Adhivasi and Bhumidhar of plot Nos. 40, 63, 76 and 38A and their land cannot be clubbed with the land of the tenure holder Daleep Singh. Similarly, the petitioner Gyan Singh, Darshan Singh, Palvender Singh. Gurcharan Singh and Balvender Singh, sons of late Diwan Singh moved an application and they were also impleaded as party to the proceedings. The deceased petitioner Gyan Singh filed his objection asserting that he had been in occupation of the plot Nos. 42-C 43M, 46 and 76 B, total area 50 Bigha 1 Biswa for the last 33 years and his possession is adverse to the true land owner and that the land in his occupation cannot be declared surplus. Similar objections were taken other persons who were impleaded as party to the proceedings. The opposite parties including Gyan Singh (deceased petitioner herein) in support of their case examined themselves on oath and Gyan Singh in his statement on oath stated that he has been in occupation of land of plot Nos. 42C, 43C, 46-B and 76 B, total area 50 Bigha, 1 Biswa for the last 33 years and his occupation is unlawful against the true owner and a suit u/s 229B is pending in the court of Commissioner. The occupants filed documentary evidence including extracts of Khatauni, Khasra etc. before the Prescribed Authority.

3. On behalf of the State, as many as three Patwaris were examined in the case. The learned Prescribed Authority after considering the evidence led by the parties did not find favour with the objection raised by the deceased petitioner Gyan Singh and ultimately passed the impugned order dated 15-9-1988 and declared 58 Bigha-12 Biswa unirrigated land of the tenure holder as surplus land.

4. Aggrieved by the judgment and order dated 15-9-1988, petitioner Gyan Singh (since deceased) preferred an appeal bearing Ceiling Appeal No. 1/8 of 1988-89, Gyan Singh Vs. State and others before the Additional Commissioner (Administration), Kumaun Division, Nainital. The learned Additional Commissioner after hearing both the parties did not find favour with the appellant-petitioner Gyan Singh and dismissed the appeal, which gave rise to the

present writ petition.

5. Counter affidavit has been filed on behalf of the State and it has been stated in the counter affidavit that the land of the respondent No. 4 has been rightly declared surplus by the Prescribed Authority and that it is wrong to say that 18.15 Bigha of the land belonging to the petitioners was declared surplus. There is no question of declaring surplus land of the petitioner. The State has denied that the petitioner got Adhivasi rights over the land in question and that the petitioner has not been recorded as owner of the land in question.

6. On behalf of the deceased petitioner Gyan Singh, rejoinder affidavit has been filed by his son Trilochan Singh and in paragraph No. 4 thereof, the petitioner has stated that the provisions of the U.P.Z.A. and L.R. Act, 1950 were made applicable to the area on 1st July 1969 and the petitioner is in possession of the land in dispute since 1962 when the record operations were carried out in the area much prior to 8th June 1973 when the provisions of the Act were made applicable to the area. Along with the rejoinder affidavit, the petitioner has annexed copies of Khasra showing possession of the petitioner over the land in dispute as Annexure RA-1 and RA-2 to the rejoinder affidavit. Copies of those Khasra pertain to the years 1377 Fasli, 1378 Fasli and 1379 Fasli.

7. On behalf of the petitioners, another rejoinder affidavit has been filed. The petitioner has also filed supplementary affidavit and it has been stated in paragraph No. 2 as under:-

2. That in the ceiling proceedings initiated against Late Dalip Singh some of the land of the petitioners has been declared surplus. The plot numbers are 42C measuring 11 Bigha 16 Biswa, 43C measuring 2 Bigha, 46B measuring 6 Bigha 5 Biswa & 76B measuring 30 Bigha total measuring of 50 Bigha and 1 Biswa approximately.

8. Along with supplementary affidavit, the petitioners have annexed the order dated 1-2-1974 passed by the Sub Divisional Officer Kashipur, whereby the name of the petitioner Gyan Singh was ordered to be entered in respect of plot No. 76 area 69 Bigha, 12 Biswa and the settlement map was ordered to be corrected accordingly.

9. On behalf of the State, supplementary counter affidavit has been filed in reply to the supplementary affidavit filed on behalf of the petitioners. In paragraph No. 4, which is in reply to the contents of paragraph No. 2, it has been stated "that the contents of paragraph No. 2 of the supplementary affidavit are matters of record, hence, need no comments."

10. I have heard learned counsel for both the parties and perused the material placed before this Court.

11. In this case, it is the positive case of the deceased petitioner Gyan Singh that he had been a trespasser for the last 33 years continuously within the knowledge of the true owner and his possession is adverse, when late Gyan Singh filed his

objection before the Prescribed Authority. It is also the case of the petitioners that name of late Gyan Singh is recorded in the revenue records since the time of record operations in the year 1962 and that the occupation of the deceased petitioner Gyan Singh is established since 27-2-1962, when the Amin submitted his report to the Assistant Record Officer. On these grounds, the petitioners have claimed that the land in occupation of late Gyan Singh could not have been declared as surplus by the Prescribed Authority. It appears from a perusal of the record that no suit was ever filed against deceased petitioner Gyan Singh by the original tenure holder before or after the date of vesting for his eviction from the land in dispute.

12. The main controversy to be decided in this writ petition is whether the deceased petitioner Gyan Singh had perfected his title before the enforcement of the Ceiling Act, which came into force on 8-6-1973.

13. Learned counsel for the petitioners has relied upon the case of Avtar Singh and another Vs. Prescribed Authority and others [1981, All.L.J., 1008], wherein the Allahabad High Court has held that if the suit for eviction was not filed against the trespasser within three years from the date of vesting, such tenure holder becomes hereditary tenant u/s 180(2) of the Tenancy Act and that the trespasser would be deemed to have perfected his title to the land in his possession when no suit is filed within three years after the date of vesting. Learned counsel for the petitioners therefore submitted that since the petitioner Gyan Singh was not evicted u/s 180 of the Tenancy Act within the time prescribed, therefore, the deceased petitioner Gyan Singh was in adverse possession and he had become hereditary tenant u/s 180(2) of the U.P. Tenancy Act and on the date of enforcement of U.P.Z.A. and L.R. Act on 1-7-1969, i.e. 1377 Fasli, he became Sirdar u/s 131 and on the date when the provisions of the Act came into force, i.e. 8-6-1973, he became tenure holder of the land in dispute. That being so, the land of such tenure holder cannot be clubbed with the land of original tenure holder Daleep Singh. Learned counsel for the petitioners therefore argued that the findings to the contrary by the Prescribed Authority as well as the appellate Court are not tenable in the eye of law.

14. During the course of arguments, learned counsel for the petitioners has submitted that the controversy involved in the present writ petition is almost similar to the controversy involved in Writ Petition (M/S) No. 3975 of 2001, State of U.P. Vs. Hem Chandra Tyagi and Others, and the present writ petition is squarely covered by the judgment and order dated 29-9-2006 of this Court in that writ petition. I have perused the judgment passed earlier by this Court in Writ Petition (M/S) No. 3975 of 2001, whereby the writ petition filed by the State of U.P. was dismissed along with Writ Petition (M/S) No. 3974 of 2001 by a common order.

15. Learned counsel appearing on behalf of the State has fairly submitted that the stand of the petitioners in the present writ petition is similar to the case of the contesting respondents in WPMS No. 3975 of 2001.

16. Having heard the submissions of the learned counsel for both the parties and having perused the material placed before this Court, it is clear that the petitioners herein are in possession of the disputed land prior to 1374 Fasli, more particularly since the year 1962 when the record operations were carried in the area, as stated in paragraph No. 4 of the rejoinder affidavit, referred to above. The petitioners also continued in possession of the land in dispute till the date of vesting i.e. 1-7-1969, when the U.P. Zamindari Abolition and Land Reforms Act, 1950 came into force in district Nainital. In this view of the matter, the petitioners had perfected their title on the appointed day i.e. 1-7-1969 u/s 131 of the U.P.Z.A. and L.R. Act and became Sirdar in view of amendment made in the said Act and subsequently by operation of law they became Bhumidhar with transferable rights.

17. In view of the discussion and reasons aforesaid, I am of the opinion that so far as land measuring 11 bigha, 16 biswa of plot No. 42C, land measuring 2 bigha of plot No. 43C, land measuring 6 bigha, 5 biswa of plot No. 46B and land measuring 30 Bigha of plot No. 76B, total measuring 50 bigha, 1 biswa belonging to the petitioners is concerned, this land could not be clubbed with the holdings of the original tenure holder Daleep Singh. The Prescribed Authority has committed illegality in not accepting the objection of the deceased petitioner Gyan Singh and to that extent, the impugned judgment and order dated 15-9-1988 passed by the Prescribed Authority is liable to be modified. The order dated 12-6-1990 passed by the first appellate Court thereby dismissing the appeal preferred by the deceased Gyan Singh is perverse and is liable to be set aside. The writ petition deserves to be allowed accordingly. The writ petition is allowed. The order dated 15-9-1988 passed by the learned Prescribed Authority is modified so far as the 50 bigha 1 biswa land of the deceased petitioner Gyan Singh is concerned. The judgment and order dated 12-6-1990 passed by the Additional Commissioner (Administration), Kumaun Division, Nainital is set aside. Costs easy. However, the Prescribed Authority may proceed independently against the petitioners, under the provisions of the Act, if they hold the land in excess of the prescribed ceiling limit.