

(2010) 11 AHC CK 0271
In the Allahabad High Court
Case No : Writ C. No. 468 of 1985

Sri Pal Singh

APPELLANT

Vs

D.J. Banda and Others

RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 13
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176

Citation : (2011) 1 ADJ 798

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Judgement

Arun Tandon, J.—Proceedings u/s 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as "Act, 1960") were initiated against the present Petitioner culminating in an order of the Prescribed Authority dated 30th April, 1982.

2. The objections raised were considered by the Prescribed Authority and by means of the judgment, referred to above, it was held that the Petitioner had 23 Bigha 13 Bishwa 10 Biswansi of land as surplus. This order was not subjected to any further challenge by the Petitioner. The State was, however, not satisfied with the order so passed and therefore the State filed an appeal u/s 13 of the Act, 1960, which was numbered as Appeal No. 62 of 1982 (State of U.P. v. Shripal Singh. Before the Appellate Court the State canvassed only one point, namely that the son of the Petitioner namely Ram Sipahi was minor on the relevant date and therefore the entire land holding in his name was to be treated as part and parcel of the holding of his father namely the present Petitioner for ceiling purpose.

3. The Appellate Court considered the plea so raised on behalf of the State and after considering the evidence on record came to a conclusion that Ram Sipahi was minor on the relevant date, therefore, the entire holding in his name was to

be treated as part and parcel of the holding of the father for determination of the ceiling limits. The Appellate Court also considered the impact of the compromise decree filed in partition suit No. 209 u/s 176 of U.P.Z.A. & L.R. Act, settled between the parties on a compromise filed and verified on 31.08.1970. The Appellate Court held that the suit itself was filed for the purposes of defeating the provisions of U.P. Act No. 1 of 1961 and even otherwise it was held that notwithstanding the partition for calculating the ceiling limits, the land recorded in the name of the minor son was to be clubbed with that of his father.

4. Accordingly, the appeal was allowed and it was held that the land recorded in the name of the minor son was wrongly excluded from the holding of the recorded tenure holder. The land recorded in the name of Ram Sipahi had to be included as part and parcel of the holding of the recorded tenure holder and his ceiling limits have to be determined accordingly. The Appellate Court held that 66 Bigha and 19 Biswa recorded in the name of Ram Sipahi was liable to be included in the tenure holding of the father. It is against this order that the present writ petition has been filed.

5. Initially an attempt was made on behalf of the Petitioner to challenge the findings recorded qua Ram Sipahi being minor on the relevant date. However, no substantive ground could be raised for disputing the correctness of the findings recorded.

6. This Court may notice that the Appellate Court has considered the evidence brought on record and after appreciating the the same has come to a conclusion that the Ram Sipahi was minor on the relevant date. Such finding of the Appellate Authority, being based on appreciation of evidence, cannot be re-opened by this Court on re-appreciation of the evidence on record nor the Court can substitute its own finding. Such a course is not permissible under Article 226 of the Constitution of India. Therefore, the finding of the Appellate Court, to the extent it holds that Ram Sipahi was a minor on the relevant date, has to be affirmed.

7. After the Court has arrived on the aforesaid conclusion, the compromise decree obtained in partition suit No. 209 u/s 176 of U.P.Z.A. & L.R. Act loses all significance, inasmuch as the land recorded in the name of a minor has to be clubbed with that of his father for the purposes of determination of ceiling limits of recorded tenure holder. The counsel could not dispute the said legal position.

8. In view of the aforesaid, this Court finds no good ground to interfere with the order passed by the Appellate Authority.

9. In order to keep the record straight it may be stated that an application was made by the Petitioner before this Court today for challenging the orders, whereby the review application filed before the Prescribed Authority, was dismissed for want of prosecution on 16.07.1982 and thereafter the application for restoration of the same was also dismissed in default on 13.08.1982.

10. The Court has recorded reasons for rejecting the application separately. The order so passed on the application shall be treated to be part of this order also. Counsel for the Petitioner has placed reliance upon the judgment of Hon''ble Supreme Court in the case of Sailendra Narayan Bhanja Deo v. The State of Orissa, reported in 1956 S.C. 346 (Paragraph 8), relevant portion whereof reads as follows:

On this authority it becomes absolutely clear that the consent order is as effective as an order passed on contest, not only with reference to the conclusions arrived at in the previous suit but also with regard to every step in the process of reasoning on which the said conclusion is founded. When we say "every step in the reasoning" we mean the findings on the essential facts on which the judgment or the ultimate conclusion was founded. In other words the finding which it was necessary to arrive at for the purpose of sustaining the judgment in the particular case will operate as estoppel by judgment.

11. As already recorded above, suit filed by the Petitioner was for partition u/s 176 of U.P.Z.A. & L.R. Act, which was settled by way of compromise without adjudicating any of the issues. Therefore, in the facts of the case the ruling relied upon by the Petitioner has no application.

12. At this stage counsel for the Petitioner submitted that certain area of the tenure holding of the Petitioner has been reduced due to consolidation operation. Therefore, benefit of such reduction in area be provided to the Petitioner and for the proposition he has placed reliance upon the judgment of the Division Bench of this Court in the case of Satya Pal Singh Vs. The State of Uttar Pradesh and Others .

13. I am of the considered opinion that if there has been any such reduction in the area qua the land holding of the Petitioner, and that possession of the surplus land has yet not been taken, the Petitioner may be provided benefit of such reduction in area only to the extent whereof the land has been so reduced because of (a) better quality of land being provided to the Petitioner, (b) the land drawn for the public purpose and (c) for improving the cultivatory facilities only. For the purpose the Petitioner is at liberty to make an application before the Prescribed Authority. No other issue shall be considered by the Prescribed Authority. All consequential action shall be taken preferably within two months thereafter.

14. Writ petition is disposed of.