
(1995) 01 AHC CK 0086

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 1531 of 1983

State of U.P. and Anr.

APPELLANT

Vs

District Judge, Gorakhpur & Ors.

RESPONDENT

Date of Decision : 03-01-1995

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2(1), 6(4)(a), 6(4)(a)(f)

Citation : (1995) 01 AHC CK 0086

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

Final Decision : Dismissed

Judgement

S.P.Srivastava, J.—Feeling aggrieved by an order passed by the appellate authority allowing the appeal of respondents No. 2, 3 and 4 against the orders passed by the competent authority in the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 holding the land in dispute to be surplus and setting aside the said order declaring that there was no excess/ surplus land in respect of the aforesaid three appellants, the State of U. P. and Competent Authority Urban Land Ceiling, Gorakhpur have approached this Court seeking redress and praying for quashing of the appellate order.

2. I have heard learned counsel for the parties and perused the record.

3. The facts shorn of details and necessary for the disposal of this case lie in a narrow compass. Shaukat Ali, Izazat Ali and Nisar Ahmad, the respondent Nos. 2, 3 and 4 had filed a joint statement under Section 6 of the Act bearing serial No. 99/786 showing that they were cotenure holders of the land in dispute it is not disputed that the land in dispute was their Bhumidhari holding envisaged under the provisions of U. P. Zamindari Abolition and Land Reforms Act and these persons had separate, distinct specified shares therein held by them in their rights recognised under the provisions of the said Act which regulated succession in accordance with the provision contained in Section 171 of the said Act. The competent authority proceeded to determine the extent of the surplus land treating all the aforesaid persons as a "body of individuals" referred to in Section

2(i) of Urban Land (Ceiling and Regulation) Act, 1976. The competent authority obviously did not treat the aforesaid three respondents as separate individuals merely because they had filed the statement jointly claiming to be the cotenure holders and were recorded in the record of right as such without any specification of share.

4. The appellate authority however, held that in the facts and circumstances of the case, specially when it had not been disputed that the land in dispute constituted a Bhumdhari holding governed by the provisions of U. P. Zamindari Abolition and Land Reforms Act and further that the aforesaid three persons had succeeded separate, distinct and specified shares in the said land to the extent of 1/9th they could not be denied the status of an "individual" as contemplated under the Act and there could be no justification for treating them as a "body of individuals" for the purposes of the determination the extent of surplus land. In the aforesaid view of the matter, the appellate authority proceeded to determine the extent of surplus land treating all the three persons as separate individuals and finding that each of them were entitled to 16025055 square metres of land which was clearly within the prescribed ceiling limit allowed the appeal and set aside the order of the competent authority.

5. The learned standing counsel has urged that there can be no justification for not treating the three contesting respondents as "body of individuals" specially when they had been shown in the revenue records as cotenure holders of the land in dispute. It was further urged that considering the definition of the "Urban land" as provided under Section 2(i) of the Urban Land (Ceiling and Regulation) Act, 1976 the land in dispute could not be deemed to be agricultural land for the purposes of the Act and therefore, the provisions of U.P. Zamindari Abolition and Land Reforms Act could not be taken notice of for the purposes of determining the status of the respondents.

6. I have given my anxious consideration to the aforesaid submissions.

7. The provisions contained in Section 2(i) of the Urban Land (Ceiling and Regulation) Act, 1976 is to the following effect:

"2(i) "person" includes an individual, a family, a firm, a company, or an association of individuals, whether incorporated or not."

8. The term "individual" and "body of individuals" as occurring in the aforesaid provisions have not been defined in the Act.

9. Considering the provisions of Section 6(4)(a) of the Urban Land (Ceiling and Regulation) Act, 1976 which provides that the statement contemplated therein shall be filed in the case of an individual, by the individual" himself, there can be HO manner of doubt that the word "individual as used in the section in question includes only natural persons. Moreover, artificial persons e.g. idol, deity etc, are governed by Section 6(4)(f) of the said Act. However, if there exists an association or body of individuals then such an association pr body ol individuals

have to be treated as a unit for the purposes of determining the surplus land as contemplated under the provisions of the Act.

10. Considering the scheme underlying the Act, it is apparent that the words "association of persons" or "body of individuals" is used in Section 2(i) of the Act has to be understood in their plain and ordinary sense and unless it is established that certain individuals holding land jointly with unascertainable shares and are engaged in certain joint venture involving the land in dispute they cannot be treated either an "association of individuals" or "body of individuals" simply because they happen to be coowners of the land. I am of the considered opinion that if the shares of the coowners/cotenure holders are definite and ascertainable and there is nothing to indicate that the land in dispute held by them is being utilised for a joint venture there can be no justification for treating such persons as falling in within the category of "body of individuals" as contemplated under the Act.

11. It may further be observed that the expression "body of individuals" is not wide enough to include a combination of individuals who merely receive income jointly without anything further.

12. On the facts established on the record, there is nothing to indicate that the petitioners ever disputed the fact that the respondent Nos. 2,3 and 4 did not have distinct, separate and specified shares in the land in dispute which they had inherited under the provisions of U.P. Zamindari Abolition and Land Reforms Act. In fact all the three contesting respondents had been consistently claiming to be in possession over their respective shares. Even, if in the revenue records the shares of the tenure holders in question had not been specified both the respondents authorities have concurrently found the three respondents in question had 1/9th share each in the land in dispute. Even otherwise, the status of the three respondents qua the land in dispute was clearly that of tenants in common. The petitioners having brought nothing on the record to show to the contrary the beneficial interest in the land in dispute in equity can be presumed to be held in equal shares by the three recorded tenure holders. Moreover, as these three persons stand recorded as tenure holders of the land in dispute and their status even at the inception was not lesser than that tenants in common there could be no impediment in holding that these persons had equal shares in the land in dispute specially when the petitioners had led no evidence whatsoever to show that these respondents had unequal shares.

13. So far as the submission in regard to the nonapplicability of the provisions of the U. P. Zamindari Abolition and Land Reforms Act is concerned, suffice it to say that it is not disputed that no evidence whatsoever was led by the petitioners to indicate that the land in dispute which was admittedly Bhumidhari holding governed by the provisions of the U. P. Zamindari Abolition and Land Reforms Act had ceased to be so by virtue of the grant of a declaration contemplated under Section 144 of the U. P. Zamindari Abolition and Land Reforms Act. There is nothing on the record to indicate that any such declaration had been issued by

the authority contemplated under the aforesaid provisions. In the absence of such a declaration, the land in dispute continued to be governed by the provisions of the U. P. Zamindari Abolition and Land Reforms Act, for the purpose of determination of rights or interest of the tenure holder recognised under the provisions of the said Act. The provisions contained in Section 2(o) of the Urban Land (Ceiling and Regulation) Act, 1976 do not militate against the above. There may be a situation where a holding envisaged under the provisions of the U. P. Zamindari Abolition and Land Reforms Act may fall within the definition of "Urban Land" as envisaged under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 and taken into account for the purposes of determining the surplus area as contemplated under the aforesaid Act but in the absence of a declaration under Section 114 of the U. P. Zamindari Abolition and Land Reforms Act the title or interest of the tenure holder in respect of such holding will continue to be governed by the provisions of the U. P. Zamindari Abolition and Land Reforms Act so long as the holding does not cease to be land as envisaged under U. P. Zamindari Abolition and Land Reforms Act and cannot be ignored while determining the question in regard to the declaration of the surplus area as envisaged under the provisions of Urban Land (Ceiling and Regulation) Act, 1976.

14. In view of the conclusions indicated hereinabove, the impugned order passed by the appellate authority allowing the Appeal No. 4 of 1982 does not suffer from any error much less manifest error of law which may justify any interference therein while exercising the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India.

15. The writ petition is accordingly dismissed. There shall, however, be no orders as to costs.