
(2010) 09 AHC CK 0039
In the Allahabad High Court
Case No : C.M.W.P. No. 12699 of 1989

State of U.P.	Vs	APPELLANT
Addl. Commissioner, Kanpur Division and Another		RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 13, 5(3)

Citation : (2011) 2 AWC 1428

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Arun Tandon, J.—As per office report dated 21.9.2010, service upon Respondent No. 2 is deemed sufficient.

2. Nobody is present on behalf of the said Respondent nor any counter-affidavit has been filed.

3. Proceedings u/s 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act were initiated against one Ram Shanker. The Prescribed Authority vide order dated 24.3.1976 declared that Ram Shanker had 20 bigha and one biswa land as surplus. The order was subjected to challenge by Ram Shanker by Ceiling Appeal No. 191/1976. Two grounds were pressed firstly that the land recorded in the name of his wife Smt. Durga Devi should not be clubbed with his holding, as they were judicially separated and were not residing together. Secondly that the land offered by the Appellant as choice should be considered for being declared as surplus.

4. The appeal was dismissed by the Additional District judge-III by means of judgment and order dated 27.10.1976 and it was held that Ram Shanker could not establish that his wife Smt. Durga Devi had judicially separated and, therefore, the land recorded in the name of his wife had to be clubbed with the

holding of the tenure holder in view of Section 5(3)(A) of U.P. Imposition of Ceiling on Land Holdings Act.

5. This order of the appellate authority was subjected to challenge by Smt. Durga Devi by means of Writ Petition No. 2467/1977. The writ petition was dismissed by the High Court vide order dated 3.8.1979.

6. Not being satisfied, Smt. Durga Devi filed an appeal before the Hon"ble Supreme Court being SLP No. 19459/1979. The SLP was dismissed by the Hon"ble Supreme Court on 10.1.1980.

7. What logically follows from the aforesaid is that the finding of the Ceiling Authorities that Smt. Durga Devi was not judicially separated from her husband on relevant date stood affirmed upto the Hon"ble Supreme Court. The said finding could not be reopened in any subsequent proceedings.

8. It appears that the Prescribed Authority vide order dated 28.2.1983 demarcated the plots which were taken as surplus in pursuance to the order referred to above passed against Ram Shanker. One Ram Naresh claiming himself to be the grand son of Ram Shanker and Smt. Durga Devi filed an appeal against the said order alleging therein that he was minor on the relevant date and that his father Vijay had expired in 1974 and further that he land covered by Plot No. 149 and Plot No. 23 were being taken as surplus, although the said plots were not included in the notice issued u/s 10(2) to Ram Shanker. It was contended that any plot of land which did not form part of the notice u/s 10(2) could not be taken as surplus.

9. The appeal of Ram Naresh was allowed by the District Judge vide order dated 31.5.1994 and it was held that the Prescribed Authority cannot travel beyond the plots disclosed In the notice u/s 10(2). Accordingly, it was directed that the Prescribed Authority may prepare a fresh statement and issue notice to opposite party No. 2 and to proceed with the case accordingly.

10. The Prescribed Authority on remand issued a fresh statement qua the surplus land. He surprisingly entered into the issues pertaining to the land recorded in the name of Smt. Durga Devi being included in the holding of Ram Shanker and thereafter proceeded to redetermine the ceiling limits of Ram Shanker and reduce the same to 18-11-1 of irrigated land as surplus.

11. Not being satisfied with the said order, Ram Shanker filed an appeal u/s 13 of the said Act which was allowed with a direction that the land recorded in the name of Smt. Durga Devi be excluded. Further the land holding situate at a distance less than 16 kilometres from Yamuna river be provided, benefit as per the Ceiling Act while determining ceiling limits afresh, a further direction was issued that the issue qua the sale effected by tenure holder being in good faith may also be examined.

12. Against this order, the State of Uttar Pradesh filed a review application. The review application has also been rejected. Hence this writ petition by the State.

13. On behalf of the Petitioner, it is contended that the appellate authority has not considered that the ceiling limits of Ram Shanker stood finally determined under the order dated 27.10.1976 declaring 20 bighas and one biswa as surplus land. The finding of the ceiling authorities to the effect that Smt. Durga Devi had not judicially separated from her husband also stood affirmed by the High Court with the dismissal of the Writ Petition No. 2467/1977 which order was upheld by the Supreme Court while dismissing the SLP on 10.1.1980. Against the order of the Prescribed Authority dated 24.3.1976 Ram Shanker filed appeal No. 19 of 1976. The said appeal was dismissed by order dated 27.10.1976. Against the said order dated 27.10.1976 Ram Shanker filed writ petition before the High Court which was also dismissed.

14. Accordingly following issues stood settled finally (a) That Ram Shanker had 20 bigha and one biswa of land as surplus. (b) Smt. Durga Devi had not judicially separated from her husband on relevant date and, therefore, the land holdings in her name was also to be clubbed with the holdings of her husband.

15. Subsequent proceedings initiated by the grandson were only in the matter of exercise of choice qua surplus land as is apparent from the order of the appellate authority dated 31.5.1984. The Prescribed Authority while passing the order dated 19.7.1988 which has since been affirmed by the appellate authority vide order dated 21.11.1988 passed in Appeal No. 1/1988 have reopened the issue of total surplus land possessed by Ram Shanker on the relevant date as well as the issue as to whether Smt. Durga Devi was judicially separated from her husband or not.

16. The appellate authority has completely ignored the finality attached to the order passed on 24.3.1976 and dated, 27.10.1976 while passing the order dated 21.11.1988. In the opinion of the Court, the appellate authority was duty-bound to examine the impact of the orders passed by the ceiling authorities, Hon''ble High Court and the Hon''ble Supreme Court as detailed above. The proceedings initiated by the grandson where in respect of choice to be exercised. On such an appeal, the issues of total surplus land possessed by Ram Shanker and the land of Smt. Durga Devi being included in the holding of her husband could not be reopened.

17. Accordingly, the order of the appellate authority is hereby set aside. Both the appeal is restored to its original number. The same be decided afresh after affording opportunity to the parties by reasons of speaking order in the light of the observation made above preferably within four months from the date a certified copy of this order is filed before the appellate authority.

Writ petition is allowed.