
(2011) 03 AHC CK 0109

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 64811 of 2009

Tara Chand and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 27(4), 27(6)

Citation : (2011) 4 ADJ 640 : (2012) 4 AWC 5289 : (2011) 113 RD 383

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard Sri C.B. Yadav, learned Senior Counsel appearing on behalf of the Petitioners and learned Standing Counsel.

2. This writ petition has been filed by 18 tenure holders, who claim that the land had been allotted to them pursuant to the proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960. The date of allotment is 9th June, 1984. This allotment came to be objected by one Faggan Singh and others on the ground that the Petitioners are not entitled for any allotment.

3. The proceedings were, therefore, initiated for cancellation of the said leases executed in favour of the Petitioners under the Provisions of Sub-section (4) of Section 27 of the 1960 Act. For ready reference Sub-section (4) of Section 27 is gainfully reproduced hereinbelow:

The Commissioner may of his own motion and shall on the application of any aggrieved person enquire into such settlement and if he is satisfied that the settlement is irregular he may after notice to the person in whose favour such settlement is made to show-cause.

(i) Cancel the settlement and the lease, if any, and thereupon, notwithstanding anything contained in any other law or in any instrument, the rights, title and

interest of the person in whose favour such settlement was made or lease executed or any person claiming through him in such land shall cease, and such land shall revert to the State Government; and

(ii) direct that every person holding or retaining possession thereof may be evicted, and may for that purpose use or cause to be used such force as may be necessary.

4. The leases in favour of the Petitioners came to be cancelled vide order dated 27th December, 1988. The Petitioners approached the Commissioner contending that such proceedings were ex parte and, therefore, the order deserves to be set aside. The same was rejected on 18th March, 1989, against which the Petitioners filed a writ petition being Writ Petition No. 8851 of 1989. The contention was that the refusal by the Commissioner for not reviewing the order is erroneous as Section 37 of the Ceiling Act read with Section 151, CPC empowered the Commissioner for such review. The writ petition was allowed on 3rd May, 1990, directing the Commissioner to pass a fresh order on reconsideration of the material on record. Needless to mention that this remand was based on the strength of the judgment of this Court passed in the case of Banwari v. State of U.P. and Ors. 1975 RD 254. The Commissioner thereafter proceeded to recall the order dated 27.12.1988 vide order dated 14.3.1991 and restored the proceedings to its original number. The proceedings as noted above had been initiated on an application of Faggan Singh and others. It appears that the applicants on whose application, the proceedings had been initiated, did not pursue the matter and the same was dismissed in default on 30th January, 1992. A restoration application was filed, which was also dismissed on 24th May, 1993. Thus the aforesaid proceedings at the instance of Faggan Singh and others on an application for cancellation came to a close with the aforesaid dismissal of the proceedings in default.

5. The Respondent No. 7 Amir Singh S/o- Poosha Singh appears to have moved an application before the learned Commissioner, Moradabad Division, Moradabad on 10th December, 2008 making a request that the lease in favour of the Petitioners be cancelled as they are not the residents of the village and that the proceedings under which the lease was granted were all illegal. Accordingly, the prayer was to set aside the lease executed in favour of the Petitioners pursuant to the resolution dated 9.6.1984 as approved on 27.7.1984.

6. Notices were issued to the Petitioners who filed their response thereto and brought it to the notice of the learned Commissioner that the earlier proceedings had already been finalized way back on 24.5.1993 and this application which has been moved afresh, cannot be entertained. The learned Commissioner however, proceeded with the matter and held that the proceedings have been initiated suo motu, therefore, the parties may lead evidence. The Petitioner challenged the said proceedings in Writ Petition No. 53247 of 2009 which was disposed of on 13.10.2009 by the following order:

Heard learned Counsel for the Petitioners and learned Standing Counsel.

This petition has been filed with the prayer that suo motu proceedings initiated by the Additional Commissioner u/s 27(4) of the U.P. Imposition of Ceiling on Land Holdings Act (for short "the Act") may not be allowed to proceed on account of the fact that they have been initiated after expiry of limitation as contemplated u/s 27(6) of the Act. The Petitioners have also filed objection to this effect before the Commissioner and the Commissioner is seized of the matter.

Learned Counsel for the Petitioners has submitted that in the earlier round of litigation the Petitioners approached this Court and the matter was remanded to the Commissioner and thereafter application u/s 27(4) of the Act was dismissed. Recall application moved by the contesting Respondents was also dismissed and the entire proceedings attained finality on 24.5.1993. Thereafter, in the year 2008 an application under the same Section has been moved for cancellation of the patta. He further submits that the repeated innings cannot be allowed by the Court to misuse the process of the Court time and again. Once the proceedings have attained finality, the parties would be bound by the same. Although in the present case, the application has been moved by the person, who was not party in the earlier proceedings but the question of limitation comes in the way is the contention of the Petitioners" counsel.

The objection is pending before the Commissioner. The question as to whether the proceedings can go on or not, is a question to be decided by the Commissioner after adjudicating the controversy in the matter.

In this view of the matter, Commissioner concerned is directed to dispose of the objection of the Petitioners in regard to limitation first and thereafter if the proceedings survive, then only he shall proceed in accordance with law.

With the above direction, the writ petition is finally disposed of.

7. A perusal of the said judgment clearly demonstrates that the Commissioner was called upon to consider the question of limitation as prescribed under Sub-Section 6 of Section 27 of 1960 Act. The provisions of Sub-Section 6 of Section 27 are gainfully reproduced here under:

6. The Commissioner acting of his own motion under Sub-section (4) may issue notice, and an application under that Sub-section may be made,-

6(a) In the case of any settlement made or lease granted before November, 10, 1980, before the expiry of a period of seven years from the date; and

6(b) In the case of any settlement made or lease granted on or after the said date, before the expiry of a period of five years from the date of such settlement or lease or up to November, 10, 1987, whichever be later.

8. Sri C.B. Yadav, learned Senior Counsel submits that the impugned order dated 6th November, 2009 erroneously concludes that the question of limitation has become irrelevant inasmuch as the Commissioner ought to have proceeded to

comply with the direction of this Court dated 13.10.2009 and having not done so, the impugned order is vitiated. During the pendency of the writ petition, an amendment application was filed assailing the subsequent order dated 27.11.2009 whereby the leases of the Petitioners were cancelled under Sub-Section 4 of Section 27 on various grounds and merits as well. While passing the said order it was observed that the issue relating to limitation has already been decided on 16.11.2009 hence the objections of the Petitioners were rejected.

9. Sri C.B. Yadav further contends that the limitation as prescribed under Sub-Section 6 of Section 27 has to be observed and the limitation as prescribed arrests the rights of any individual to move an application. In the instant case, the learned Commissioner has adopted a two fold stand firstly that the proceedings are suo motu and the proceedings in 1993 had been dismissed in default. Secondly the application moved in the year 2008 is being clubbed with the same proceeding in order to proceed to decide the matter. Sri Yadav, therefore submits that this procedure was impermissible, inasmuch as, the application moved by the Respondent No. 7 was clearly barred by limitation prescribed and even otherwise suo motu proceedings may not have been initiated after a lapse of more than 25 years. He therefore, contends that the impugned order is patently without jurisdiction. He further submits that all the Petitioners are very much residents of same village and they continue to be in cultivator/ possession and these aspects have not been dealt with in the impugned order.

10. Learned Standing Counsel on the strength of the supplementary counter-affidavit contends that the Commissioner has power to proceed suo motu under the provisions of Ceiling Act and if there is any fraud or misrepresentation the power to proceed does not get arrested on limitation. He therefore, contends that the proceedings that have been initiated now disclose that the Petitioners were not entitled for any allotment under the provisions of the Act and hence the allotment deserves to be cancelled. Learned Standing Counsel further contends that the impugned order has been passed after putting the Petitioner to notice and as such the earlier proceedings of 1993 which had been dismissed in default does not in any way create a bar of res judi cata or estoppel of any kind. He therefore, contends that no interference is called for with the impugned order.

11. Sri C.B. Yadav in rejoinder contends that the contention of the learned Standing Counsel cannot be sustained in law as Sub-Section 6 of Section 27 prescribes a limitation and therefore, the Commissioner could have initiated proceedings within the time limit as prescribed. He relied on paragraph 7 of the judgment of this Court passed in the case of Vishwanath Prasad v. State of U.P. and Ors. 2008 (2) ADJ 100 and further on the decision in the case of Gulab Dhar Dube and Ors. v. Rajendra Prasad and Anr. 2007 (8) ADJ 691 and an opinion expressed by the Board of Revenue in the case of Lalmani v. Gaon Sabha 2004 (97) RD 69. The submission in essence is that if there is a procedure prescribed in law then the Commissioner cannot over reach the same and proceed to take

any action under the garb of possessing such a power which is otherwise not available under the provisions of the Act.

12. Having heard learned Counsel for the parties and submissions raised, the learned Commissioner proceeded to treat the issue of limitation as irrelevant. In the opinion of the Court, the Commissioner fell into an error by proceeding on these terms inasmuch as there was a clear direction of this Court to consider the issue of limitation in view of the provisions of Sub-Section 6 of Section 27 in the judgment dated 13.10.2009 and it was therefore, sine qua non for him to decide the matter of limitation. So long as the power was not available as prescribed under the limitation, the Commissioner could not have assumed jurisdiction by recording a remark that the issue has become irrelevant. Needless to mention that the proceedings of the year 1993, which had culminated with the dismissal of the proceedings in default, were no longer pending and the same could not be clubbed for the purpose of taking suo motu action afresh. Apart from this, the application was moved by the Respondent No. 7, after a lapse of the period prescribed in Sub-Section 6 of Section 27. In such a situation, the learned Commissioner could not mix up all the applications together which had been foreclosed way back in the year 1993 without recording any finding otherwise. The order impugned dated 16.11.2009 does not delineate any valid reason on the issue of the bar of limitation that was directed to be decided by this Court on 13.10.2009. The Commissioner, therefore, failed to exercise his jurisdiction in accordance with law and therefore, the order dated 16.11.2009 is vitiated.

13. There is however, an exception to the aforesaid rule of applying limitation namely in the case of the original tenure holder, who may have to fight out his cause in higher Courts against the declaration of surplus land. In such cases a situation might arise where the tenure holder, whose land has been declared surplus after a long drawn battle is able to retrieve his land. He will therefore have to be restituted which might involve the annulment of the leases if executed. This may take time more than what is prescribed in the provisions of Sub-Section 6 and therefore, an application to set aside allotment may have to be filed even after expiry of such a period. This period spent by a tenure holder in litigation to receive his land back will therefore, have to be treated as a period spent in bona fide pursuit, and accordingly condonable. This observation is being made as the very allotment of a lease is dependent upon the declaration of land as surplus. If it is ultimately found that the land is not surplus the allotment by itself will fall through on account of the operation of law and in such a situation the bar of such limitation for moving an application to cancel the allotment would not be an impediment. The bar, therefore, is subject to any judicial intervention or decision by the competent authority in case litigation is continuing and pending with regard to the same land in dispute.

14. It is also noteworthy to mention that there are certain procedural laws that result in the creation of substantive rights, for example the law of limitation. If the proceedings are not undertaken within the time prescribed, then rights

accrue which cannot be divested on account of the prescription of limitation. This therefore, results in creation of substantive rights the genesis whereof lies in a prescription in the law of procedure. For the reasons aforesaid the order dated 16.11.2009 is quashed.

15. In view of the fact that the issue of limitation did require a consideration apart from other facts as urged by the learned Standing Counsel, the consequential order which has been assailed through an amendment also falls through. Accordingly, the order dated 27.11.2009 is also quashed. The Commissioner may proceed to decide the matter afresh in the light of the observations made hereinabove after putting the parties to notice. The petition is allowed.