
(1979) 11 AHC CK 0018
In the Allahabad High Court
Case No : Civil Misc. Writ No. 10378 of 1975

U.P. State

APPELLANT

Vs

Baba Ram Bharti and Others

RESPONDENT

Date of Decision : 08-11-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10, 5(3)
Uttar Pradesh Tenancy Act, 1939 — Section 35

Citation : (1979) AWC 772

Hon'ble Judges : M.N. Shukla, J;K.P. Singh, J

Bench : Division Bench

Advocate : R.N. Upadhya, for the Appellant;

Final Decision : Allowed

Judgement

K.P. Singh, J.—This writ petition is directed against the judgment of the Civil Judge, Etawah, dated April 1, 1975 in Civil Misc. Appeal No. 98 of 1975-Baba Ram Bharti v. State of U.P.

2. In response to a notice u/s 10 of the U.P. Imposition of Ceiling on Land Holdings Act (herein-after referred to as the Act), the contesting opposite party No. 1 Baba Ram Bharti had filed an objection alleging that there were his three alive Chelas, hence he was entitled to six additional hectares of land under the provisions of Section 5(3) of the Act. He had raised various other pleas also which are not necessary for the decision of the present writ petition. The prescribed authority through its judgment dated 28-10-74 did not accept the plea raised on behalf of the aforesaid Baba Ram Bharti. Aggrieved by the decision of the Prescribed Authority the present contesting opposite party No. 1 Baba Ram Bharti had filed an appeal which was allowed by the Appellate Authority through its impugned judgment. The Appellate Authority accepted the three chelas as spiritual sons of the tenure holder Baba Ram Bharti, hence it granted benefit of the provisions of Section 5(3)(a) of the Act, Aggrieved by the

decision of the Appellate Authority dated 1-4-75 the U.P. State has come to this Court under Article 226 of the Constitution.

3. A learned single Judge of this Court through his order dated 8-2-78 referred the case for decision to a Division Bench, hence the case came up before us.

4. We have heard the Learned Counsel for the parties. The only point for our consideration in the present writ petition is as to whether the three Chelas of the contesting opposite party No. 1 Baba Ram Bharti can be termed as "adult sons" to attract the provisions of Section 5(3) of the Act.

5. The Learned Counsel for the Petitioner has contested before us that though a Chela may be the spiritual son of his Guru, he cannot be treated as an "adult son" within the meaning of the provisions of Section 5(3) of the Act. According to him a Chela, being a spiritual son, may inherit the property of his Guru but he cannot be treated at par with a natural son.

6. The Learned Counsel for the contesting opposite party has submitted in reply that a Chela being spiritual son of his Guru should have all the rights of a natural son just as an adopted son gets all the rights of a natural son. According to him a Chela is also adopted by his Guru and thus a Chela is as good as a natural son and he is covered under the provisions of Section 5(3) of the Act. He has also emphasised that according to the dictionary meaning of the word "family" natural family as well as spiritual family are included, hence a Chela should be treated as an adult son within the meaning of Section 5(3) of the Act.

7. In our opinion the term "adult son" would not include Chela of a Guru within the meaning of the provisions of the Act. Section 5(3) of the Act reads thus:

* * *

8. From the above quotation it appears that adult son will include even grand son of the tenure holder whose adult son was dead at the date of the commencement of the Act.

9. It is noteworthy that the succession from Guru to Chela only means devolution of the property from the last representative of the line to his Chela. If one Chela does not survive his Guru, then the property devolves upon other Chela which means the Chela of the Guru and he is called as Guru Bhai. If a Guru has three Chelas, only the virtuous Chela would be entitled to inherit the property of his Guru. In case the virtuous Chela has no disciple of his, the property of the Guru would not devolve upon the Chela of the virtuous Chela, rather, it would devolve upon his Guru Bhai or Guru Bhai's Chela whereas in the case of a natural family on the death of a tenure holder his all sons would inherit the property and even the grand son of the tenure holder would be entitled to additional hectares of land in the circumstances mentioned in Section 5(3) of the Act but in the case of spiritual family neither all the Chelas can inherit the property of a Guru nor the property of a Guru can devolve upon a Chela of a Chela. In this view of the matter we think that the analogy of a natural family cannot extend to the

spiritual family as contended by the Learned Counsel for the contesting opposite party.

10. No doubt the word "family" according to the dictionary meaning includes natural family as well as spiritual family but it is difficult to extend the analogy so far as to attract the meaning of "adult son" given in the provisions of Section 5(3) of the Act to include Chela of a spiritual family.

11. In *Sital Das Vs. Sant Ram and Others*, it has been observed by their Lordships as follows :

... The man who becomes an ascetic severs his connection with the members of his natural family and being adopted by his preceptor becomes, so to say, a spiritual son of the latter. The other disciples of his guru are regarded as his brothers, while the co-disciples of his Guru are looked upon as uncles and in this way a spiritual family is established on the analogy of a natural family.

12. Their Lordships of the Supreme Court have also observed in para 12 of their judgment as below :

...it cannot also be disputed that the Mahantship is not hereditary in the sense that on the death of an existing Mahant his "Chela" succeeds to the office as a matter of course. He can acquire rights only by appointment and the authority to appoint is vested in the "Bhek" and the "Sewaks."

13. In our opinion the position of a Chela in a spiritual family cannot be at par with the position of a son in a natural family. A Chela succeeds to the property of his Guru only when he is virtuous and nominated by the Guru or appointed by the Bhek and the Sewaks of the religious order whereas the sons inherit the property of their father in a natural family as a matter of right and only that son is not entitled to inherit the property of his father whom the father excludes him from inheriting the property. It is also noteworthy that all the Chelas are only eligible to inherit the property of their Guru but actually only one of them inherits the property of the Guru, whereas ordinarily all the sons inherit the property of their father equally. Hence, we think that the Chelas in spiritual family do not enjoy the same position as sons in a natural family.

14. In *The State of U.P. and Another Vs. Dhan Singh and Others*, , a Division Bench of this Court while considering the question as to whether a child in embryo was a child in existence on the date of the enforcement of the U.P. Imposition of Ceiling on Land Holdings Act, has observed as below in paragraph 4 of the judgment :

...In *Ram Dayal v. Bhim Sen* 1965 ALJ 1142, this doctrine was applied to succession u/s 35 of the U.P. Tenancy Act. It was held that a daughter's son who was in womb at the death of his maternal grand-father or his widow would be deemed to have been in existence at the time of their death and would inherit the latter's tenancy. The Bench which decided this case observed that according to all civilised systems of jurisprudence a child in embryo at the death of the

holder of a proprietary interest, if born alive after his death, is deemed to be living at his death. There are decisions, to which it is unnecessary to make a reference, holding that a Hindu son born subsequently is competent to contest alienations made by the father when the son was in his mother's womb. But the doctrine is not of general or universal application....

15. In *Guramma Bhratar Chanbasappa Deshmukh and Another Vs. Malappa*, the Supreme Court held that the doctrine could not be applied to adoption. It was held that the existence of a son in embryo of a co-widow does not invalidate the adoption made by a widow and that the son in embryo even though born alive, subsequently could not be deemed to have been in existence at the time of the adoption.

16. In *T.S. Srinivasan Vs. Commissioner of Income Tax, Madras*, the Supreme Court held : "that the doctrine could not be applied to tax matters. It was held that the doctrine that the Hindu undivided family comes into existence from the date a son is conceived is not of universal application and it is applied mainly for the purpose of determining rights to property and safe guarding such rights of the son. This doctrine has been applied in cases where such son would acquire some rights or property if he were deemed to have been in existence on some date prior to the date of his actual birth."

17. Relying upon the above observation we think that the principle under the Hindu Law that a Chela is a spiritual son of his Guru is not of universal application. We have already indicated above some points of difference between a son in a natural family and a Chela in spiritual family. To our mind the term "adult son" does not include a Chela of his Guru within the meaning of the provisions of Section 5(3) of the Act. The appellate authority has patently erred in treating the three Chelas (spiritual sons) of the contesting opposite party Baba Ram Bharti as his natural adult sons and has thus manifestly erred in holding that the contesting opposite party Baba Ram Bharti was entitled to six additional hectares of land.

18. At this stage it would not be out of place to mention that if a father has ancestral property in his hands, all his sons get right in the ancestral property by virtue of their birth in the family but it is not the case with all the Chelas of Guru who can claim right in the property of their Guru. Hence, we are not inclined to agree with the contention raised on behalf of the contesting opposite party that a Chela being a spiritual son of his Guru is at par with the sons to their father in a natural family. Explanation to Section 5 Sub-clause (3) of the Act also gives us an idea that the expression "adult son" in the aforesaid provision contemplates a natural son. The aforesaid Explanation has already been quoted above.

19. In the exercise of our jurisdiction under Article 226 of the Constitution we can only quash the impugned judgment. The appellate authority has not dealt with the cross objection filed by the present Petitioner in view of the circumstance that the appellate authority gave benefit of six additional hectares

land to the contesting opposite party Baba Ram Bharti but in our opinion the contesting opposite party Baba Ram Bharti is not entitled to the additional hectares of land on the ground that he had three Chelas. It is desirable that the appellate authority may be asked to consider the cross-objection filed by the Petitioner before it.

20. According to us even the Chelas who have entered into a religious order are adult sons within the meaning of the provisions of Section 5(3) of the Act but the appellate authority had acted illegally in treating the Chelas of the contesting opposite party Baba Ram Bharti as spiritual sons without dealing with the evidence as to whether it had been established that the Chelas of the contesting opposite party Baba Ram Bharti had entered into religious order in accordance with necessary ceremonies contemplated by law specially when the Prescribed Authority had observed that the objector had failed to prove that the Chelas were his spiritual sons.

21. In the result we think that the writ petition should succeed and the findings recorded by the appellate authority should be quashed and the appellate authority should be asked to decide the appeal afresh in the light of the observations made above and we order accordingly. The parties shall bear their own costs.