
(2002) 08 AHC CK 0110
In the Allahabad High Court
Case No : Writ Petition No. 47 (M/S) of 2002

Vageesha Nand alias Vachaspati

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-08-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 37, 38

Citation : (2002) 4 AWC 3056

Hon'ble Judges : I.M. Quddusi, J

Bench : Single Bench

Advocate : Rajiv Dubey, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—Heard Shri Rajiv Dubey, learned counsel for the petitioner and the learned standing counsel for the State.

2. The brief facts of the case are that the notice u/s 10 (2) of the U. P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Act) was issued against the tenure-holder, namely, Narayan Swami Ji Maharaj, President, Parashar Nath Rishikul Brahmacharya Ashram and Sanskrit Maha Vldyalaya and Goshala, Naya Goan, Madhiya Ghat, Pargana-Aurangabad, Tehsil-Mohammadi, District Lakhimpur-Kheri calling upon him to show cause as to why the statement showing surplus land may not be taken as correct. Against that notice, the objections were filed by the then tenure-holder. Thereafter Narayan Swami Ji Maharaj died on 8.8.1998 and after his death, no counsel on his behalf had put in appearance before the prescribed authority. Thereafter the prescribed authority decided the matter vide its impugned order dated 7.7.2000 declaring some land as surplus holding that after 21.8.1998, neither the tenure-holder nor any counsel on his behalf appeared. The witness produced on behalf of the State Government was also not cross-examined and as such, it appears that the.

tenure-holder has accepted notice and on this basis, land shown as surplus in the notice has been declared surplus. Thereafter an application was moved on behalf of the petitioner stating the above facts for recalling of the order and restoring the case. The application was rejected on 15.9.2000 by the prescribed authority holding that he has found no force in the arguments put forward by the learned counsel for the applicant, against which the petitioner had filed appeal bearing No. 137/99-2000 before the Commissioner (Admn.) Lucknow Division, Lucknow which was heard by the Additional Commissioner (Admn.), Lucknow Division. Lucknow and dismissed the same vide its order dated 9th July, 2002 holding that he had come to the conclusion that the tenure-holder had appeared and filed his objection and thereafter the land was declared surplus only after hearing both sides.

3. From a perusal of the order dated 9.7.2002 passed in the above mentioned appeal by the Additional Commissioner. It appears that the Additional Commissioner has not seen the impugned order dated 7.7.2000 passed by the prescribed authority in case No. 40/31. In that order, it has been clearly mentioned that after 21.8.1998, no one appeared for the tenure-holder and cross-examination of witness produced on behalf of the State Government has also not been done. When the tenure-holder, namely Narayan Swami Ji Maharaj was no more alive on 21.8.1998, there was no question to represent him by the counsel or anybody.

4. The provisions of Civil Procedure of Code are applicable in the proceedings held under the Act. Section 37 of the U. P. Imposition of Ceiling on Land Holdings Act provides that "any officer or authority holding an enquiry or hearing an objection under this Act, shall in so far as it may be applicable, have all the powers and the privileges of a civil court, and follow the procedure laid down in the Code of Civil Procedure. 1908 for the trial and disposal of suits relating to immovable property".

The appellate court has also to follow the procedure laid down in the Code of Civil Procedure".

5. Section 38 of the said Act is quoted as under :

"38. Powers of appellate court and the procedure to be followed by it.--(1) In hearing and deciding an appeal under this Act, the appellate court shall have all the powers and the privileges of a civil court and follow the procedure for the hearing and disposal of appeals laid down in the Code of Civil Procedure, 1908.

(2) Where, under the provisions of this Act, an appeal has to be heard by the (Commissioner), he may either hear the appeal himself or transfer it for hearing to any (Additional Commissioner) subordinate to him."

6. Order XXII, Rule 4 (1) (3) of the CPC is reproduced as under :

"Order XXII, Rule 4 Procedure in case of death of one of several defendants or of sole defendant.-

(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(3) Where within the time limited by law no application is made under Sub-rule (1), the suit shall abate as against the deceased defendant".

7. In view of what has been discussed above, the State Government should have made an application to bring the legal heirs of the deceased on records substituting them in his place and if the application was to be made after expiry of time limit prescribed under the law, the application for condonation of delay along with setting aside abatement should have been moved along with substitution application, instead of moving aforesaid application. The State Government defended the case on wrong footings against the provisions of law.

8. Therefore, the prescribed authority as well as the appellate authority have committed manifest error of law in deciding the case and rejecting the application moved by the petitioner. The prescribed authority had set aside the case against the dead person. The case was decided on 7.7.2000 while the deceased tenure-holder had already died on 8.8.1998.

9. In the facts and circumstances mentioned above, the writ petition is allowed. The impugned orders dated 7.7.2000 and 9.7.2002 passed in case No. 40/31 and appeal No. 137/99-2000 by the prescribed authority, Kheri and Additional Commissioner (Admn.) Lucknow Division, Lucknow respectively are quashed. The case pending before the prescribed authority stands abated. This order will not debar the State Government to move an application for substitution, setting aside abatement and condonation of delay and If such applications are moved, the prescribed authority would be free to consider and decide the same independently after providing opportunity of hearing to the parties concerned.

10. Learned counsel for the petitioner at this stage has submitted that the opposite parties are going to allot the pattas of the land in dispute. Since this Court has already quashed the impugned orders dated 7.7.2000 and 9.7.2002 passed by the prescribed authority and Additional Commissioner (Admn.), Lucknow Division, Lucknow respectively, by which the land of the then tenure-holder has been declared surplus with a liberty to the State Government to move the application for substitution etc. as mentioned above, there is no question for allotment of pattas of the land in dispute.