
(2011) 05 AHC CK 0254
In the Allahabad High Court
Case No : Writ C. No. 40995 of 1996

Virendra Prasad and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 4A, 5(6), 5(8)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176, 229B

Citation : (2011) 7 ADJ 235 : (2011) 5 AWC 4828 : (2011) 113 RD 567

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the Petitioners, learned Counsel for the State Respondents and learned Counsel for allottees who filed impleadment application.

Even though the allottees are not necessary parties still there was no harm in hearing them on the merit of the writ petition. However their Counsel was not permitted to argue that as land had been allotted to them, hence the basic orders should not be set aside.

2. With the above restriction impleadment application dated 03.02.2010 filed on 15.02.2010 is allowed.

3. This writ petition arises out of proceedings for the determination of surplus agricultural land under U.P. Imposition of Ceiling on Land Holdings Act. Through this writ petition the following orders have been challenged.

1. Order dated 20.12.1985 passed by S.D.O./Prescribed Authority under Ceiling Act, Farenda District Maharajganj (Annexure-VIII to the writ petition)

2. Order dated 03.12.1996 passed by Additional Commissioner (Judicial),

Gorakhpur Division, Gorakhpur in Appeal No. 69/M-329A/78/175/2/6/G-86 (Annexure-IX to the writ petition).

4. The second order was passed in appeal which was directed against first order. The appeal was dismissed.

5. The following three points are involved in this writ petition:

(a) Whether decree of 1960 was rightly ignored by the authorities below?

(b) Whether certain plots were rightly held to be irrigated by the authorities below?

(c) Whether certain sale deeds executed by the Petitioner were rightly ignored by the authorities below?

The sale deeds were executed on 14.03.1973 and 27.03.1974. As far as sale deed of 27.03.1974 is concerned, by virtue of Section 5(8) of the Act, it is completely void. As far as sale deed dated 14.03.1973 is concerned it was executed after 24.01.1971 and Petitioner could not show that it was bona fide and for adequate consideration, as required by Section 5(6) of the Act. Moreover in the sale deeds it was shown that consideration had already been paid but it was not mentioned that when it was issued. Before the Sub-Registrar no consideration was paid. It is also mentioned in the impugned orders that even though the said deeds were executed during consolidation but no permission of S.O.C. was obtained (which was essential at that time).

6. Accordingly, I do not find any error in the findings of the Courts below in respect of ignoring the post 24.01.1971 sale deeds.

7. The question of certain plots being irrigated or un-irrigated was discussed by the Prescribed Authority under Issue No. 5. Khasras of 1378 F and 1980 F of Lokahi and Lahera have been annexed as Annexures-III and IV to the writ petition and of Visram Pur as Annexures V and VI to the writ petition. In the Khasras in respect of irrigation facility for Rabi crop under Column No. 15 there are some plots, parts of which are shown irrigated. Relevant part of Section 4-A of the Ceiling Act is quoted below:

4-A. Determination of irrigated land.- The prescribed authority shall examine the relevant Khasras for the years 1378 Fasli, 1379 Falsi and 1380 Fasli, the latest village map and such other records as it may consider necessary, and may also make local inspection where it considers necessary, and thereupon if the prescribed authority is of opinion:

Firstly, (a) that, irrigation facility was available for any land in respect of any crop in any one of the aforesaid years, by-

(i) any canal included in Schedule No. 1 of irrigation rates notified in Notification No. 1579-W/XXIII-62-W-1946, dated March 31, 1953, as amended from time to time; or

(ii) any lift irrigation canal; or

(iii) any State tube-well or a private irrigation work; and

(b) that at least two crops were grown in such land in any one of the aforesaid years; or

It has been stated in Para-16 of the writ petition that lekhpal gave some statement in their favour. Copy of the Statement is Annexure-11 to the writ petition. It was given on 23.08.1976. He stated that Tamesar did not have any boring or source of irrigation. The question of source of irrigation is mainly to be decided on the basis of khasras of 1378 F to 1380 F. If the irrigation is done from private irrigation work which may belong to someone else still it is covered by the aforesaid Section 4-A. Rabi crop cannot be irrigated unless there is a source of irrigation. In Khasras the rabi crops in some part of the land in dispute are shown to be irrigated, which could lead to only and only one conclusion, i.e. that there was source of irrigation. This point requires reconsideration by the Prescribed Authority.

8. However, in my opinion the Courts below committed an error of law in ignoring the decree dated 13.05.1960 which was passed in a suit u/s 229-B read with Section 176 of U.P.Z.A. and L.R. Act. The Courts below were very much impressed by the fact that the said decree was obtained on the basis of admission. It was passed in Suit No. 275 of 1960, Tameshwar v. Shyam Sunder. The Prescribed Authority in the impugned judgment has mentioned that it summoned the file of O.S. No. 275 of 1960 and found that the judgment was not correct. What the Prescribed Authority did was utterly unwarranted. It had no jurisdiction to sit in appeal over the judgment passed 25 years before by a regular Court.

9. Accordingly, points No. (c) decided by the Courts below is affirmed, however point No. (a) in respect of suit of 1960 is decided in favour of the Petitioners and the findings recorded by both the Courts below are set aside.

10 Matter is remanded to the Prescribed Authority to determine the ceiling area in the light of observations made above. Petitioners are directed to appear before the Prescribed Authority on 12.07.2011. The Prescribed Authority shall decide the matter within three months there from. Impugned orders are set aside to the above extent. Writ petition is allowed accordingly.