

Court No. - 17

Case :- WRIT - C No. - 3000015 of 1995

Petitioner :- Udai Raj Objection Filed

Respondent :- Additional Commissioner Faizabad And Others

Counsel for Petitioner :- U S Sahai,Uma Shankar Sahai

Counsel for Respondent :- C S C

with

Case :- WRIT - C No. - 3000132 of 1994

Petitioner :- Smt.Shiv Kali

Respondent :- Additional Commissioner Faizabad And others

Counsel for Petitioner :- U S Sahai,Onkar Pandey

Counsel for Respondent :- C S C

Hon'ble Alok Mathur,J.

1. Heard Sri U. S. Sahai, learned counsel for the petitioners as well as learned Standing counsel for the respondents.

2. Since the issue in both the writ petitions arise out of the same rejection order dated 7.9.1994 passed by Commissioner, Faizabad Division, Faizabad, as such, they have been heard together and are being decided by this common order.

3. It has been submitted on behalf of the petitioners that a notice under Section 10 (2) of U.P. Imposition of Ceiling on Land Holdings Act, 1960 was issued to the petitioners. The petitioners filed objection and the Prescribed Authority had concluded the proceedings vide order dated 13.1.1975 declaring certain land of the petitioners' holdings to be surplus under the Act of 1960. It has been submitted that subsequently another notice was given under Section 13 (A) which was served upon the petitioners on 21.8.1976 whereby the land of his wife Smt. Shiv Kali, the petitioner of writ petition No.132 of 1994 was also clubbed with the holdings of the petitioner. The petitioner had filed his objections before the Prescribed Authority on 21.8.1976 on various grounds including the ground that he has divorced his wife Shiv Kali on 30.11.1969. Partition under Section 161 of U.P.Z.A. and L.R. Act was decided vide judgment and order dated 21.6.1968 passed by Revenue Officer and that partition has also been effected between him and his major son on 19.4.1971 and consequently the holdings of his

wife as well as his son are to be excluded.

4. The objections were rejected by the Prescribed Authority as well as appellate authority against which two writ petitions were filed before this Court; the one being writ petition No.3208 of 1980 and the other being writ petition No.470 of 1981. This Court by means of order dated 12.9.1984 allowed both the writ petitions and quashed the order of the appellate authority dated 15.9.1980 and excluded the land of Shiv Kali who was the owner and original tenure holder and remanded the matter to the Prescribed Authority to re-calculate the said land. It is in the remand proceedings that the Prescribed Authority has not believed the objections raised by the petitioner with regard to the divorce of his wife and to exclude the land of Smt. Shiv Kali from the holdings of the petitioner. The appeal preferred by the petitioner before the Commissioner, Faizabad Division, Faizabad was also rejected confirming the findings recorded by the Prescribed Authority.

5. Before this Court the order of the appellate authority dated 7.9.1994 has been challenged stating that Smt. Shiv Kali is the divorced wife of the petitioner. The divorce was granted by Nyay panchayat on 30.11.1969 (Shiv Kali Vs. Udairaj) and in the same order the holdings of Udairaj has been partitioned which was filed before the Prescribed Authority as well as appellate authority. It is on the basis of aforesaid order and decree of divorce and partition deed that the petitioner has stated that the land in the name of erstwhile wife Shiv Kali deserves to be excluded from his holdings.

6. Counsel for the State of U.P., on the other hand, has opposed the objections and stated that, in fact, no divorce had taken place between Udairaj and Mrs. Shiv Kali. He has stated that the order passed by the Nyay Panchayat was wholly without jurisdiction in as much as divorce could have been granted only under the provisions of Section 13 of Hindu Marriage Act, 1955 and Nyay Panchayat was bereft of any power to grant divorce. It was further stated that even in the application for partition which was filed after the divorce the Smt. Shiv Kali was described as wife of Udairaj. He has stated that in case Shiv Kali had been divorced from Udairaj there was no occasion for her to describe herself as wife of Udairaj. It was further stated that even after the divorce no other document was produced by the petitioner like family register, voter list etc. which could demonstrate that the divorce had, in fact, taken place and the same was duly recognized and endorsed in various documents as narrated above. It was in the aforesaid facts that the State counsel vehemently pleaded that divorce was a mere subterfuge and camouflaged to evade from the clutches of the provisions

of the Act of 1960 and in fact, no such divorce had taken place and Shiv Kali and Udairaj are still living together as husband and wife. The appellate authority after considering aforesaid facts has declined to interfere with the order of the Prescribed Authority and accordingly rejected the appeal. The petitioner has reiterated the arguments raised before the appellate court.

7. Learned Standing counsel, on the other hand, has opposed the writ petition and submitted that there was sufficient material to indicate that divorce was camouflaged, sham and subterfuge and no such divorce had, in fact, taken place. He has stated that it is evident that Nyay Panchayat has got no duty to grant decree of divorce in as much as Hindu Marriage Act, 1955 was enacted and was in force at the time when the decree was obtained by the petitioner from Nyay Panchayat. It is in aforesaid circumstances it was stated that the decree is not a valid decree as the same has not been passed by competent court.

8. I have heard learned counsel for the parties and perused the records.

9. This Court does not find any infirmity in the order of the Prescribed Authority or the appellate court in as much as they have rightly disbelieved the decree of divorce obtained by the petitioner from the Nyay Panchayat and it could have been obtained only under Section 13 of Hindu Marriage Act, 1955 which was in operation on the date when the said decree was obtained. No provision was shown from which it can be deciphered that Nyay Panchayat can also grant decree of divorce and in absence of any jurisdiction, power or authority this Court is of the considered opinion that the decree of divorce obtained from the Nyay Panchayat was invalid and *non est* and consequently no benefit of the same could have been granted to the petitioner.

10. It has been further submitted that in 1992 decree of divorce was granted by the court of Civil Judge Faizabad and a copy of the same has been annexed along with the writ petition from which it is evident that the divorce was granted on mutual consent. The said decree of divorce was also not in existence during the proceedings and it is a fresh piece of evidence which has been filed for the first time before this Court. No action of the said decree can be taken at this stage in as much as in exercise of the powers under Article 226 this Court can only look into the validity of the orders passed by courts / tribunals below. Jurisdiction under Article 226 is limited jurisdiction under which findings of fact recorded by the courts below cannot be overturned unless there is overwhelming evidence to

the contrary available on record is made available. Normally they have to decide a case on the basis of the material available before them from which they have rightly concluded that there is no valid divorce between the petitioner and Ms. Shiv Kali.

11. Lastly, it has been submitted by learned counsel for the petitioner that he had given his option as provided under Section 12 (A) (d) while in the appellate order it has been recorded that the petitioner has not given any option and consequently they have disapproved the option given to him. It is stated that he had given option against the order of Prescribed Authority as per law and consequently the same cannot be denied to the petitioner.

12. In view of the above, only for a limited aspect of consideration of the option under Section 12 (A) (d) of the Act of 1960 it is open for the petitioner to move appropriate application before the Prescribed Authority who shall consider the said application and pass necessary orders in accordance with law, expeditiously, say within a period of six weeks from the date the same is presented before him.

13. Subject to aforesaid observations both the petitions stand **disposed off.**

(Alok Mathur, J.)

Order Date :- 3.11.2023
RKM.