

AFR

Court No. - 17

Case :- WRIT - C No. - 3000066 of 1998

Petitioner :- Rakesh Kumar

Respondent :- Addl. Commissioner Admn. Faizabad And Others

Counsel for Petitioner :- H.S.Sahai,S.K. Gupta,U.S.Sahai

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

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

2. By means of present writ petition the petitioner has challenged the order dated 24.01.1998, passed by the Additional Commissioner, Faizabad Division, Faizabad whereby he has dismissed the appeal preferred by the petitioner against the order of Prescribed Authority dated 30.03.1995, which was passed under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (*hereinafter referred to as the Act, 1960*).

3. Notice under Section 10(2) of the Act, 1960 was issued to one Sant Ram and as he was found to be having land less than the ceiling limit, proceedings against him were dropped. In the said proceedings it was found that Sant Ram had two brothers namely Ramdhan and Govardhan and after death of Sant Ram his land devolved upon Ramdhan and Govardhan and after accretion of the said land their land was more than the ceiling limit and accordingly notices under Section 10(2) of the Act, 1960 were issued to Ramdhan and Govardhan. The proceedings were finalized by the Prescribed Authority by means of order dated 30.12.1977 and portion of their land were declared surplus.

4. Against the order dated 30.12.1977, appeals were filed before the Appellate Authority which were allowed by means of order dated 17.05.1978 and the matter was remanded to the Prescribed Authority for decision afresh. In the remand proceedings the Prescribed Authority again passed the order declaring the land of tenure holders to be surplus by means of order dated 28.10.1978. Again appeals were preferred by the petitioner as well as recorded tenure holders namely Ramdhan and Govardhan, which appeals were allowed on 16.07.1979 and

the matter was again remanded to the Prescribed Authority. The Prescribed Authority on the second occasion again reiterated his previous order by means of order dated 02.06.1980, rejecting the objections filed by the petitioner and other tenure holders. Against the order dated 02.06.1980, the appeals preferred by the petitioner and other recorded tenure holders were also dismissed by the Appellate Authority by means of order dated 18.08.1980, upholding the order of Prescribed Authority dated 02.06.1980, on the ground that the petitioner as well as recorded tenure holders had surplus land.

5. Against the order dated 02.06.1980, writ petition being Writ Petition No. 3387 of 1980 was filed. This Court by means of order dated 15.11.1988, allowed the writ petition considering the fact that the District Judge did not considered the provisions of The Hindu Adoptions and Maintenance Act, 1956 particularly Section 11 and for the limited purposes had remitted the matter to the Appellate Authority. The Appellate Authority by means of order dated 29.10.1992, allowed the appeals and further remanded the matter to the Prescribed Authority.

6. It is in the remand proceedings that the Prescribed Authority has passed the impugned order dated 30.03.1995, holding that the petitioner is not adopted son of Ramdhan and consequently rejected the objections by means of order dated 30.03.1995 and the said order has been upheld by the Appellate Authority – Additional Commissioner (Administration), Faizabad Division, Faizabad by means of order dated 24.01.1998 and the petitioner in the present writ petition has assailed the validity of both the orders dated 30.03.1995 and 24.01.1998 in the present writ petition.

7. The sole question to be considered in the present writ petition is as to whether the petitioner is the adopted son of Ramdhan and accordingly land of Sant Ram devolved upon the petitioner in case it is held that petitioner is adopted son of Sant Ram and land of Sant Ram would devolve upon the petitioner and if not then land of Sant Ram will devolve to Ramdhan and Govardhan and their land subsequently would be considered under the provisions of Act, 1960.

9. The petitioner has submitted that he was adopted by Sant Ram when he was around 6-7 years old and since then he was living with Sant Ram. He has further submitted that after his adoption his education was looked after by Sant Ram till his death. During the proceedings before the Prescribed Authority mother of the petitioner Shanti Devi was examined and statements of Govardhan, Udairaj (Gram Pradhan) and Sewak Ram (Priest) who conducted ceremonies of adoption were

adduced and various other persons of village had also testified in favour of petitioner that he was duly adopted by Sant Ram and after his adoption he lived as son of Sant Ram. All the testimonies are similar in nature which are to the effect that Sant Ram did not have any children and because of this fact the petitioner was given in adoption by Sant Ram's brother Ramdhan.

10. It is stated that ceremony for adoption was performed wherein formally the petitioner was handed over in the custody of Sant Ram. Mother of the petitioner Shanti Devi has also deposed before the Prescribed Authority verifying the fact that the petitioner was her son and was given in adoption to Sant Ram. Village Pradhan Udairaj has also reiterated the same facts. He has further stated that when the ceremony was performed invitation were issued to all the villagers and relatives and it is in the said ceremony that the petitioner was given in adoption to Sant Ram.

11. It was stated that at the time of adoption the petitioner was minor and that Sant Ram died in 1973. It has been further stated that after death of Sant Ram all the properties of Sant Ram devolved upon the petitioner and his name was also mutated in the revenue records and he was in possession of the properties held by Sant Ram.

12. Statement of Sewak Ram (Priest) who was the Priest at the time of adoption ceremonies, has stated that he had conducted the ceremonies for adoption of petitioner and he was voluntarily given in adoption by Ramdhan and Shanti Devi who are parents of petitioner. The petitioner was 2-2and half years old and large ceremony was organised in which adoption had taken place.

13. It is in the aforesaid facts adduced before the Prescribed Authority he has disbelieved the averments of the petitioner and other witnesses that he was given in adoption to Sant Ram. While rejecting the objections filed by the petitioner it was stated that adoption is merely camouflage to escape from the clutches of the Act, 1960. He has stated that the mother of petitioner Shanti Devi has stated that she did not participated in the adoption ceremony and that said adoption had been done only to escape from the clutches of Ceiling provisions of Act, 1960 and hence the Prescribed on the basis of above facts disbelieved the aspect of adoption.

14. Learned counsel for the petitioner has submitted that perusal of statement of Shanti Devi would indicate that said statement as quoted by the Prescribed Authority in the impugned order is erroneous and perverse and infact Shanti Devi had affirmed the fact that petitioner was given in adoption to the Sant Ram, though she was not present when ceremony was performed. It is

submitted that merely because Shanti Devi was not present during the ceremony, her statement cannot be disbelieved that the petitioner was not given in adoption.

15. The Appellate Authority has affirmed the findings recorded by the Prescribed Authority and also held that from the evidence on record that petitioner was given in adoption to Sant Ram and dismissed the appeal.

16. Assailing both the orders, learned counsel for the petitioner has submitted that there is overwhelming evidence on record that petitioner was given in adoption to Sant Ram apart from above statements of relatives including his mother, uncle and other independent witnesses who included Chinta Ram, Nanmun, Udai Raj (Gram Pradhan) etc. All the persons who had deposed had unequivocally stated that the petitioner was given in adoption when he was minor. Grand ceremony was organized and invitations were sent to all the villagers and in their presence adoption ceremony was carried out. Priest - Sewak Ram in his statement has stated all the aforesaid facts. Apart from oral evidence in the revenue records name of petitioner was mutated in place of Sant Ram.

17. Considering the aforesaid this Court is of the considered view that there was sufficient evidence before the Prescribed Authority to conclude that the petitioner had infact been given in adoption to Sant Ram and once he had been given in adoption to Sant Ram, then he was legally entitled to inherit the property of Sant Ram and therefore the same property would not have been devolved upon Govardhan and Ramdhan. Accordingly this Court is of the considered view that sufficient evidence were adduced by the petitioner. The finding returned by the learned Authorities below is clearly arbitrary and perverse.

18. Once the lands of Govardhan and Ramdhan has been stated to be within the ceiling limit and the Prescribed Authority has proceeded against them on such an assumption. This Court is of the considered view that adoption was legally and validly done for the purposes of Act, 1960, then property of Sant Ram would have devolved upon the petitioner and not in favour of Govardhan and Ramdhan.

19. This Court has also taken into account the findings recorded by this Court in Writ Petition No. 3387 of 1980, where this Court has also analysed the aforesaid oral evidence adduced in favour of petitioner and this Court was also not satisfied that the Prescribed Authority had rejected the oral testimony on basis of hyper technical issues. This Court had directed the Prescribed Authority to consider the entire evidence and not merely evidence which had come from the individuals which may not

be in favour of petitioner. This Court had further directed the Prescribed Authority to consider case of the petitioner in the light of provisions of Section 11 of The Hindu Adoptions and Maintenance Act, 1956.

20. This Court has also examined the case of petitioner in the light of provisions of Section 11 of Hindu Adoption and Maintenance Act. Section 11 of the The Hindu Adoptions and Maintenance Act, 1956 provides that :-

"11. Other conditions for a valid adoption.- In every adoption, the following conditions must be complied with:-

(i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;

(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;

(v) the same child may not be adopted simultaneously by two or more persons;

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth [or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up] to the family of its adoption;

Provided that the performance of datta homam shall not be essential to be validity of an adoption."

21. In the light of sub section VI of Section 11 of Hindu Adoption and Maintenance Act there is ample evidence on record in the form of statement of one Sewak Ram (Priest) and other villagers including biological mother of petitioner that petitioner was given in adoption and formal ceremony was held where he was given in adoption. This Court is of the considered view that all the provisions provided for adoption of a son have been duly complied with in the present case.

22. In the light of above documentary and oral testimony available on record, this Court is of the considered opinion that the petitioner has to be considered to have been validly adopted by Sant Ram and hence after death of Sant Ram his property will devolve upon the petitioner and not upon brothers of Sant Ram.

23. Accordingly, impugned orders dated 30.03.1995 and 24.01.1998 are hereby set aside. The writ petition stands **allowed**.

Order Date :- 14.12.2023

A. Verma

(Alok Mathur, J.)