

Court No. - 17

Case :- WRIT - C No. - 3006850 of 1989

Petitioner :- Ashok Kumar

Respondent :- State of U.P. and Others

Counsel for Petitioner :- P.L. Mishra, Amrendra Nath Tripathi, Ashish Raman Mishra, N.R. Tripathi, S.P. Dubey

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard Mr. Amrendra Nath Tripathi & Mr. Ashish Raman Mishra, learned counsel for petitioner assisted by Mr. Sant Singh Royekwar, Advocate and Mr. Gopal Krishna Pathak, learned Additional Chief Standing Counsel for opposite parties.

2. Petition has been filed challenging order dated 30.07.1987 passed by the Prescribed Authority in terms of U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Act of 1960) whereby objections filed by petitioner under Section 11(2) of Act of 1960 have been rejected. Also under challenge is order dated 25.04.1989 whereby Appeal Preferred by petitioner has been rejected.

3. It has been submitted that earlier notice under Section 10(2) of Act of 1960 was issued to petitioner's father, Mr. Govind Bihari whereafter separate objections were filed by Mr. Govind Bihari and his wife Mrs. Krishnawati. The said objections were rejected vide order dated 13.09.1976 and Appeal bearing no.483 of 1976 thereagainst was also dismissed vide order dated 07.12.1976. The said order was challenged in Writ Petition No.316 of 1977 (Ceiling) by both the persons which was also dismissed vide judgment and order dated 03.07.1979 whereafter option under Section 12-A of the Act of 1960 was submitted by Mr. Govind Bihari with regard to land recorded as Gata No.606 measuring 15.86 acres. In pursuance thereof,

symbolic possession was taken on 05.02.1983.

4. It has been submitted that aforesaid proceedings did not take into account the fact that a declaratory decree had been passed in favour of petitioner on 23.11.1971 on the basis of adverse possession from the recorded tenure-holder, Puttu Lal of the property in question bearing Gata No.606. It is submitted that although petitioner was the son of Mr. Govind Bihari but had attained majority and was major as on 08.06.1973 and was living separately from his parents. It is submitted that since no notice under Section 10(2) of the Act of 1960 was issued to petitioner, he filed objections under Section 11(2) of the Act of 1960 which were rejected vide order dated 18.06.1983 but Appeal thereagainst was allowed on 16.09.1983 remanding the dispute for decision afresh on the aspect that petitioner had not been afforded any opportunity of hearing nor even notices were issued to him despite the fact that he was a recorded tenure-holder over the property in question. The impugned orders have thereafter been passed again rejecting the objections filed by petitioner.

5. It has been submitted that the orders impugned are clearly against specific directions pertaining to remand vide order dated 16.09.1983 inasmuch as the authorities concerned were required to adjudicate upon the aspect of petitioner being a separate tenure-holder over the property in question and was therefore required to be heard not only in terms of Section 10 but also on the aspect of his majority. Learned counsel has placed reliance on Proviso to rule 8(3) of the Rules framed under the Act to submit that petitioner being a separately recorded tenure-holder over the property in question, a notice with regard to Gata No.606 was required to be issued to him in his independent capacity and such a course of action having not been followed, renders the entire proceedings vitiated.

6. It has also been submitted that the orders impugned have been passed primarily taking into account the aspect of res judicata since earlier objections filed by petitioner's parents to notice under Section 10(2) of the Act of 1960 were rejected specifically indicating petitioner being their minor son but the impugned orders have not taken into account the fact that since petitioner was not a party to the proceedings right up to this Court, the principles of res judicata would be inapplicable and therefore the authorities have erred in rejecting petitioner's objection on that ground.

7. Learned counsel for petitioner has also submitted that in all the proceedings whether initially under Section 10 or with regard to his objection under Section 11 of the Act of 1960, no opportunity of hearing or to lead evidence pertaining to his majority was afforded to him and therefore the previous as well as the present proceedings are against the specific conditions provided under Sections 10 and 11 of the Act of 1960 read with Proviso to rule 8(3) of the Rules framed under the Act. It is therefore submitted that since petitioner was major as on the date of issuance of notice under Section 10 and was independently recorded as a tenure-holder over the property in question, the provision of Section 3(17) of the Act of 1960 would be inapplicable and therefore the authorities have erred in clubbing Gata No.606 in the notice issued under Section 10 to petitioner's father. Learned counsel has placed reliance on the following judgments to buttress his submissions:-

(1) Thakur Das and others v. State of U.P. and others; reported in 1987 RD 17 - decision of a coordinate Bench of this Court;

(2) Shamsheer Singh (Deceased) through L.R. v. State through Collector, Nainital, reported in (2007) 103 RD 47 - a single-

Judge decision of High Court of Uttarakhand; and

(3) Hanuman Singh v. State of U.P. and others; reported in 1972 RD 263 - a decision of a Division Bench of this Court.

8. Mr. Gopal Krishna Pathak, learned Additional Chief Standing Counsel appearing on behalf of opposite parties has refuted the submissions advanced by learned counsel for petitioner with submission that since the aspect of petitioner's majority or otherwise was already decided in previous proceedings in the notice issued under Section 10 to petitioner's father and a specific finding has been recorded that he was minor at the relevant time, with such finding having attained finality with judgment of this Court rendered earlier in Writ Petition No.316 of 1977 (Ceiling), such an aspect was not open for re-determination as has been rightly held by the orders impugned. It has also been submitted that Proviso to rule 8(3) of the Rules framed under the Act would be inapplicable in view of specific findings recorded in previous proceedings that petitioner was minor and therefore he would be excluded from the definition of a tenure-holder in terms of Section 3(17) of the Act of 1960. It has also been submitted that petitioner being minor son of Mr. Govind Bihari, he did not attain any independent right or title over the property in question. Learned counsel has further submitted that even otherwise, after the remand order dated 16.09.1983, petitioner has failed to adduce any evidence pertaining to his minority.

9. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, the question required to be adjudicated upon is whether the petitioner was required to be issued a separate notice under Section 10(2) of the Act of 1960 in terms of his submission that he was an independent tenure-holder over the property in

question?

10. With regard to aforesaid aspect, it is evident from the record that initially proceedings under Section 10(2) of the Act of 1960 were initiated against petitioner's father with no notice being issued to petitioner. In the said proceedings, the aspect of petitioner's minority has been specifically discussed and it was held that petitioner being a minor son of Mr. Govind Bihari, he would not fall within the term of tenure-holder and therefore his property was clubbed with that of Mr. Govind Bihari for purposes of adjudication upon ceiling. The said order was challenged in Appeal as well as in Writ Petition by petitioner's father, both of which were dismissed. A perusal of judgment and order dated 03.07.1979 passed in aforesaid writ petition also indicates the said fact. This Court has perused the record of Writ Petition No.316 of 1977 (Ceiling) in which the aspect of petitioner's minority has been specifically raised and rejected vide judgment and order dated 03.07.1979. It is also apparent from record that petitioner was not a party to the proceedings.

11. It is thus quite evident that petitioner's claim is based on the twin grounds that firstly, he was major as on the date of issuance of notice under Section 10(2) of the Act of 1960 which was in fact issued to his father but never to him; and secondly, that petitioner derived an independent and separate right as tenure-holder of the property for which a separate notice under Section 10(2) of the Act of 1960 was required to be issued to him.

12. So far as the first submission is concerned, it is evident from the record that earlier notice had been issued to petitioner's father in which this plea of petitioner being a major son had been taken. The said contention had been rejected with Appeal thereagainst also having been rejected. The said dispute

thereafter was raised in Writ Petition No.316 of 1977 (Ceiling) and was decided vide judgment and order dated 03.07.1979. A perusal of the said judgment indicates that the question of majority of present petitioner was taken in the said writ petition and a finding has been recorded that the aspect of majority of petitioner Ashok Kumar has been decided by the authorities on the basis of 'Kutumb' Register as well as oral evidence which was led. It was held that the authorities below were justified in holding that petitioner had failed to prove that Ashok Kumar was major. The petition was thereafter dismissed in the light of the said finding.

13. Although it is noticeable that petitioner was not arrayed as a party in the aforesaid writ proceedings but it is nonetheless evident that the said petition had been filed by the admitted father of petitioner, Mr. Govind Bihari with his wife Smt. Krishnawati also being arrayed as opposite party no.4 therein.

14. Section 3(7) of the Act of 1960 defines 'family' in the following terms:-

"family" in relation to a tenure-holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters);"

15. It is not the case of petitioner that Mr. Govind Bihari was not his father or was an unrelated person. In fact, it is admitted that Mr. Govind Bihari was father of the petitioner.

16. In the considered opinion of this Court, the aspect regarding majority or minority of petitioner could very well have been adjudicated upon at the instance and behest of his parents as well, even though, petitioner would have an independent right to contest the same. However it cannot be said that petitioner's parents could not have raised or pleaded the aforesaid ground.

In fact, the parents of a child would have more information with regard to date of birth of their child than the child himself. It is also evident from record that the aspect of petitioner's majority was in fact agitated by petitioner's father right up to this Court with such plea being rejected on the basis of evidence and material on record at that time.

17. It is also evident that aforesaid judgment had attained finality with no Appeal thereagainst being filed. In the considered opinion of this Court, in case petitioner as claimed, was major on the date of judgment, he could very well have challenged the said judgment either in Appeal or even by filing a review thereagainst but he omitted to exercise such right.

18. In view of aforesaid, the judgment rendered by a coordinate bench of this Court would be equally binding upon this Court and since the aspect of petitioner's majority has already been dealt with by this Court in aforesaid writ proceedings on merit, it would be against judicial propriety for this Bench to reopen the aforesaid aspect.

19. In view of aforesaid, it is held that this Court would be bound by the judgment and order dated 03.07.1979 to the effect that petitioner was in fact a minor at the time when notice under Section 10(2) of the Act of 1960 was issued to his father.

20. The second submission of learned counsel for petitioner hinges upon the aspect of an independent and separate right as a recorded tenure-holder over the property in question for issuance of notice under Section 10(2) of the Act of 1960. From the record, it is established that petitioner has based his claim on the decree dated 23.11.1971 whereby he was held to be tenure-holder of the property in question on the basis of adverse possession against Puttu Lal.

21. Since it has already been held herein above that petitioner

was to be treated as minor as on the date of issuance of notice under Section 10(2) of the Act of 1960, the aforesaid aspect is to be seen in the light of Section 3(17) of the Act of 1960 which defines tenure-holder as follows:-

“tenure-holder” means a person who is the holder of a holding but except in Chapter III does not include -

(a) a woman whose husband is a tenure-holder;

(b) a minor child whose father or mother is a tenure-holder”

22. The very nature and definition of tenure-holder excludes a minor child whose father or mother is a tenure-holder. Even in case of a decree in his favour on the basis of adverse possession, the petitioner came to be recorded over the property in question, in the considered opinion of this Court, his holding was required to be clubbed with that of his father since he clearly came within the definition, under Section 3(17)(b) of the Act of 1960.

23. The aspect of impugned orders not being in consonance with the remand order dated 16.09.1983 also indicates the fact that the impugned orders have been passed on the basis of findings recorded by authorities and upheld by this Court that petitioner was minor as on the date of issuance of notice under Section 10(2) of the Act of 1960 to his father. This Court cannot take any exception to the findings so recorded since subordinate authorities could not have sat in Appeal over findings recorded by this Court in Writ Petition No.316 of 1977 (Ceiling). Although, petitioner was not a party to earlier proceedings even in this Court and although principles of res judicata in its strict form may not be applicable but the proposition of precedent would definitely prevail.

24. In view of aforesaid discussion, it would be evident that petitioner having once held to be minor by a final judgment of a

coordinate Bench of this Court, would thus come within the exception of Section 3(17)(b) of the Act of 1960 and therefore his holding, in the considered opinion of this Court, was rightly clubbed with that of his father.

25. Learned counsel for petitioner has placed reliance on decisions as indicated herein above.

26. In **Thakur Das**(supra), it has been held that under Section 5(1) of the Act, all the land held by a tenure-holder in his own right whether in his name or ostensibly in the name of any other person has to be taken into account. It has also been held that admittedly petitioners therein being recorded over the properties were separate tenure-holder within meaning of Section 3(17). However, the aforesaid judgment also indicates an exception in paragraph 9 that such separate tenureship would be unless the case was covered either by clause (a) or clause (b). It is on that aspect that the petitioners therein were held to be separate tenure-holders since admittedly their parents were not recorded as tenure-holders of any land on the relevant date and therefore it was held that their case would not be covered by clause (b) of Section 3(17).

27. Clearly, the aforesaid judgment is inapplicable in the present facts and circumstances of the case where admittedly petitioner's father was a recorded tenure-holder.

28. In **Shamsher Singh**(supra), the issue before the Court was whether in case of dispossession of a recorded tenure-holder, he would have a right to file a suit or his remedy would lie under Section 11(2) of the Act and it was held that a suit would be barred in terms of provisions of Section 11. The aforesaid judgment also is inapplicable in the present facts.

29. In **Hanuman Singh**(supra), it has been held that a presumption of law is always rebuttable and in terms of Section

3(c) of the Act with regard to definition of family, it was held that the Court is liable to adjudicate whenever a tenure holder wishes to challenge the presumption.

30. There is no truck with the aforesaid proposition that a presumption of law is always rebuttable by evidence. However, in the present case, the presumption under law had been rebutted by petitioner's father by leading evidence in the earlier proceedings with such findings regarding petitioner's minority having been upheld before this Court. As has already been held herein above that the rights of petitioner would be co-terminus with that of his father being his family member and therefore no independent right would accrue to petitioner to claim minority once such a claim raised by his father was refuted after examination of evidence.

31. Considering aforesaid facts, none of the judgments relied upon by learned counsel for petitioner are applicable in the present facts and circumstances of the case.

32. In view of aforesaid, the petition being devoid of merit, is dismissed.

Order Date :- 15.4.2024

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