

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Neutral Citation No. - 2024:AHC-LKO:45308

RESERVED

Judgment Reserved On: 27.04.2024
Judgment Pronounced On: 03.07.2024
A.F.R.

Court No. - 31

Case :- WRIT - C No. - 3000070 of 2002

Petitioner :- State Of U.P. Thru Collector Kheri

Respondent :- Addl. Commissioner Admn. Lucknow And 5 Others

Counsel for Petitioner :- Standing Counsel

Counsel for Respondent :- C.S.C., Vijay Kumar Pandey

Hon'ble Subhash Vidyarthi J.

1. By means of the instant Writ Petition filed under Article 226 of the Constitution of India, the petitioner – State of U.P. has sought quashing of an order dated 23.05.1998 passed by the Additional Commissioner (Administration), Lucknow Division, Lucknow allowing Appeal No. 287/291/92-93 under Section 13 (1) of the U.P. Imposition of Ceiling on Land Holdings Act, 1961.

2. Briefly stated, facts of the case are that a notice dated 19.11.1974 under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1961 (which will hereinafter be referred to as 'the Ceiling Act') was issued to Sri. Murlidhar Hakim, the recorded tenure holder of the land in question. He did not submit any reply to the notice and on 16.01.1975, the Prescribed Authority Ceiling (Second) Nighasan passed an order declaring land bearing Gata No. 197 Ga having an area of 7.78 acres, Gata No. 200 Kh having an area of 8.72 acres, Gata No. 202 M having an area of 7.812 acres, Gata No. 203 having an area of 1.00 acres and Gata No. 207 Sa having an area of 3.62 acres, total 28.93 acres, situated in village Mahangapur, Pargana Palia, Tahsil Nighasan, District Kheri to be the surplus land of Sri. Murlidhar Hakim.

3. On 28.06.1978, Anokh Singh, Pyara Singh and Hazara Singh, the predecessors in interest of the private respondents, filed an

application for their impleadment and for redetermination of the ceiling and surplus area of Murlidhar Hakim, stating that the applicant no. 1 Anokh Singh was the Seerdar/Bhumidhar of land bearing Gata No. 207 Kh/3.62 acres, Pyara Singh was the Seerdar/Bhumidhar of land bearing Gata No. 197 Ga/7.78 and 200 Kh/8.75 acres and Hazara Singh was the Seerdar/Bhumidhar of land bearing Gata No. 202/25.85 acres and that they had acquired the Seeradari rights by adverse possession much before the enforcement of the amended Ceiling Act. They had filed suits under Section 229-B of the U. P. Zamindari Abolition and Land Reforms Act, 1950 (which will hereinafter be referred to as 'the U.P.Z.A.L.R.Act') and their rights were acknowledged vide orders dated 01.08.1975, 20.12.1973 and 12.01.1977 passed by the Divisional Commissioner, Lucknow Division, Lucknow. The land in their possession had wrongly been declared as surplus land of Murlidhar Hakim. It was stated in the application that the applicants came to know about the order dated 16.01.1975 passed by the Prescribed Authority on 17.04.1978, when they obtained a copy of the extract of Khatauni.

4. The applicants were impleaded and they were given an opportunity to present their case. They filed copies of the relevant extract of Khatauni for the year 1380 to 1382 Fasli, copies of plaint filed in the three suits no. 187, 383/355 and 37 filed under Section 229-B of the U.P.Z.A.L.R. Act and copies of the orders passed by the Additional Commissioner, Lucknow in appeals and they got their statements recorded.

5. The State filed objections against the application and got the statement of Lekhpal recorded.

6. The Prescribed Authority had rejected the claim of the predecessors of the private respondents by means of an order dated 30.04.1988. Appeals were filed against the aforesaid order, which were allowed by a composite order dated 31.01.1992 passed by the Additional Commissioner (Judicial) and the matter was remanded to the Prescribed Authority for being decided afresh.

7. The objectors had relied upon a decision of this Court in the case of **Ziley Singh versus State**: 1978 All.L.J. 772,

8. The Prescribed Authority rejected the objections by means of an order dated 24.02.1993 holding that in **Ziley Singh** (Supra), the land in question was recorded in the name of the claimant on the reference date whereas in the present case, the claimants' name was not recorded as the tenure holders of the land in question on the date of reference or on the date of declaration. The suits filed by them under Section 229-B of the U.P.Z.A.L.R. Act were dismissed by means of orders dated 20.04.1972, 31.12.1973 and 05.07.1974. The Prescribed Authority accepted the submission of the State that before filing of appeals against the orders dismissing the suits under Section 229-B, the claimant's had got knowledge of the provisions of the Ceiling Act and in these circumstances, it was natural that the claimants had colluded with the tenure holders and for this reason, the tenure holder Murlidhar Hakim did not contest the appeals and the appellate Court allowed the appeals and declared the objectors to be the Seerdars of the land in question. The order passed by the Additional Commissioner was not an order on the merits of the case and it was not binding on the Ceiling Authorities. The claimants had not filed any documentary evidence in the shape of Khatauni etc. to prove their claim and they had based their claims merely on the ex-parte orders passed by the Additional Commissioner.

9. The claimants filed appeal no. 287/291/92-93 against the aforesaid order passed by the Prescribed Authority, which was disposed off by an order dated 23.05.1996. However, the order dated 23.05.1996 was recalled by means of an order dated 05.03.1997 upon an application dated 17.06.1996 filed by the claimants and thereafter the appeal was allowed by the impugned order dated 23.05.1998 passed by the Additional Commissioner (Administration), Lucknow Division, Lucknow holding that the appeals preferred by the claimants had been decided after hearing the State and the Prescribed Authority

erred in holding that appellate orders had not been passed on merits of the case.

10. It has inter alia been stated in the Writ Petition that the land in dispute stood vested in the State upon its declaration as surplus land by means of the order dated 06.06.1975 passed by the Prescribed Authority and the State Government had taken possession of the land on the same date.

11. An interim order was passed in this Writ Petition on 09.10.2002 directing the parties to maintain status quo.

12. Notices were issued to the private respondents, who put in appearance through Sri. V. K. Pandey Advocate. The following order was passed in this case on 05.03.2022: -

“1. Private opposite parties have claimed to be sirdar of the land in question on the basis of the ex-parte judgement and decree/order passed by the appellate authority after their claim was rejected by the Sub-Divisional Magistrate under Section 229-B of the U.P.Z.A. & L.R. Act. However, the orders passed by the Sub-Divisional Magistrate and the appellate authority have not been placed on record.

2. Sri V.K. Pandey, learned counsel for the private opposite parties is directed to place on record the two orders passed by the Sub-Divisional Magistrate rejecting the claim of the opposite parties to be sirdar of the land in question on the basis of their adverse possession and the ex-parte judgment and decree/order passed by the appellate authority within two weeks.

3. List this petition in the first week of April, 2022 peremptorily.”

13. Thereafter the case was adjourned on plural occasions, but the private opposite parties did not file any counter affidavit and they have not brought on record the orders passed by the Sub-Divisional Magistrate rejecting the claim of the opposite parties to be Sirdar of the land in question and the ex-parte judgment and decree/order passed by the appellate authority. Thus there is no material available on record to substantiate the pleas taken by the private respondents and the pleas taken by the State in the Writ Petition remain uncontroverted.

14. While assailing the validity of the impugned appellate order, Sri S. K. Khare, the learned Standing Counsel for the petitioner – State of U. P., has submitted that after dismissal of the suits filed under Section 229-B of the the U.P.Z.A.L.R.Act filed by the claimants, the appeals filed by them were allowed without any contest by the tenure holder, which indicates that the tenure holder had colluded with the claimants. He has further submitted that the Appellate Authority had no jurisdiction to recall / review the earlier order dated 23.05.1998.

15. Per contra, Sri V.K. Pandey, the learned counsel for the respondents, has submitted that the State and the Gaon Sabha are necessary parties to a Suit under Section 229-B of the U.P.Z.A.L.R. Act and as the State had contested the appeal, the appellate order was not an ex-parte order.

16. Before proceeding to decide the controversy, it will be appropriate to have a look at the provision contained in Section 5(6) of the U. P. Imposition of Ceiling on Land Holdings Act, which is being reproduced below: -

“(6) In determining the ceiling area applicable to a tenure-holder, any transfer of land made after the twenty-fourth day of Jan., 1971, which but for the transfer would have been declared surplus land under this Act, shall be ignored and not taken into account;

Provided that nothing in this sub-section shall apply to—

(a) a transfer in favour of any person (including Government) referred to in sub-sec. (2).

(b) a transfer proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a benami transaction or for the immediate or deferred benefit of the tenure holders or other members of his family.

Explanation I— For the purposes of this sub-section the expression ‘transfer of land made after the twenty-fourth day of Jan. 1971’ includes—

(a) a declaration of a person as a cotenure holder made after the twenty-fourth day of Jan., 1971 in a suit or proceeding irrespective of whether such suit or proceeding was pending on or was instituted after the twenty-fourth day of January, 1971;

(b) any admission, acknowledgment, relinquishment or declaration in favour of a person to the like effect made in any other deed or instrument or in any other manner.

Explanation II— The burden of proving that a case falls within Cl. (b) of the proviso shall rest with the party claiming its benefit.”

17. The claimants had filed suits under Section 229-B of the U.P.Z.A.L.R. Act claiming to have acquired rights in respect of the land in question by adverse possession. The suits were dismissed by means of orders dated 20.04.1972, 31.12.1973 and 05.07.1974. The claimants filed appeal against the aforesaid orders dismissing their suits. The tenure holder did not contest the appeal and thus he impliedly admitted the contention of the claimants that they had perfected their title by adverse possession. Thus the appeal was allowed on the basis of the implied admission made by the tenure holder regarding the claimant's claim of being in adverse possession of the tenure-holder's land.

18. The declaration of the claimant's title by the appellate orders dated 01.08.1975, 20.12.1973 and 24.03.1975 on the basis of the impliedly admitted plea of adverse possession would certainly fall within the expression “transfer of land made after the twenty-fourth day of Jan. 1971” on the basis of an admission, acknowledgment, relinquishment or declaration in favour of a person to the like effect made in any other manner occurring in Explanation I appended to Section 5(6) of the Ceiling Act and, therefore, this will be a transfer of land made after the twenty-fourth day of Jan., 1971, which is liable to be ignored and not taken into account while determining the surplus land of the tenure holder.

19. It is also significant to note that the plea taken by the State in the writ Petition that the proceedings under Section 229-B of the U.P.Z.A.L.R. Act were collusive, remains uncontroverted.

20. In view of the aforesaid discussion, I am of the considered view that the Prescribed Authority had rightly held that the claimants had colluded with the tenure holders and for this reason, the tenure holder

Murlidhar Hakim did not contest the appeals and the appellate Court allowed the appeals and declared the Seerdars of the land in question. The order passed by the Additional Commissioner was not an order on the merits of the case and keeping in view the aforesaid facts and circumstances of the case, it did not bar the jurisdiction of the Ceiling Authorities to proceed under the Ceiling Act in accordance with the law.

21. The claimants had not filed any documentary evidence in the shape of Khatauni etc. before the Prescribed Authority to prove their claims and they had based their claims merely on the ex-parte orders passed by the Additional Commissioner.

22. In spite of a specific direction issued by this Court directing the private respondents to bring on record the orders passed by the Sub-Divisional Magistrate rejecting the claim of the opposite parties to be sirdar of the land in question on the basis of their adverse possession and the ex-parte judgment and decree/order passed by the appellate authority, they have not brought the same on record.

23. In these circumstances, there appears to be no illegality in the order dated 24.02.1993 passed by the Prescribed Authority rejecting the claim of the private respondents based on the plea of adverse possession.

24. The order dated 23.05.1998 passed by the Additional Commissioner (Administration), Lucknow Division, Lucknow allowing Appeal No. 287/291/92-93 and setting aside the order dated 24.02.1993 passed by the Prescribed Authority, is unsustainable in law and is liable to be quashed.

25. Accordingly, the Writ Petition stands **allowed**. The order dated 23.05.1998 passed by the Additional Commissioner (Administration), Lucknow Division, Lucknow allowing Appeal No. 287/291/92-93 is **quashed**. The order dated 24.02.1993 passed by the Prescribed Authority Ceiling / Additional Collector, Kheri in Case No.

266/92/11/39/14 under Section 10(2) of the Ceiling Act is restored and affirmed.

26. The parties will bear their own costs of litigation.

(Subhash Vidyarthi J.)

Order Date: 03.07.2024
-Amit K-/Ram.