

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Neutral Citation No. - 2024:AHC-LKO:36820

RESERVED

A.F.R.

Judgment reserved on 04.04.2024
Judgment delivered on 14.05.2024

Court No. - 19

Case :- WRIT - C No. - 3000007 of 2015

Petitioner :- Anand Kishor Devacharaya And Ors.

Respondent :- State Of U.P.Throu.Prin.Secy.Revenue Civil
Sectt.Lko.And Ors.

Counsel for Petitioner :- Karunakar Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Subhash Vidyarthi J.

1. Heard Shri Karunakar Srivastava, Advocate, the learned counsel for the petitioner and Shri Sarvesh Kumar Mishra, the learned Standing Counsel.
2. By means of the instant Writ Petition filed under Article 226 of the Constitution of India, the petitioners have sought quashing of an order dated 29.07.1999 passed by the Additional District Magistrate/Prescribed Authority under the Ceiling Act, Balrampur, in Case No.7/8 under Section 10 (2) of U. P. Imposition of Land Holdings Act, 1960 (hereinafter referred as Ceiling Act). The petitioners have also sought quashing of an order dated 15.04.2015 passed by Additional Commissioner (Judicial), Devi Patan Division, Gonda dismissing Appeal No.5/43 under Section 13 of the Ceiling Act, which was filed against the aforesaid order dated 29.07.1999 passed by the Prescribed Authority.

3. It has been stated in the writ petition that proceedings under the Ceiling Act had been initiated against Maharani Rajlaxmi Kumari and Maharaja Dharmendra Pratap Singh and some of their lands had been declared surplus by means of an order dated 26.04.1990 While declaring surplus lands of Maharani Rajlaxmi Kumari and Maharaja Dharmendra Pratap Singh, land bearing Gata No.1788/1.86 acre (New Gata No.774/1.671 acre) was also included in their surplus lands whereas this land had already been recorded in the name of ancestors of the petitioners by means of an order dated 27.01.1968 passed by the Consolidation Officer.
4. The petitioners' ancestors filed objections against the order declaring their land as surplus land of Maharani Rajlaxmi Kumari and Maharaja Dharmendra Pratap Singh but Prescribed Authority rejected the same by means of an order dated 26.07.1997. Appeal No.197 was filed under Section 13 of the Ceiling Act against the order dated 26.07.1997, which was allowed by means of a judgment and order dated 28.11.1998 passed by the Additional Commissioner (Administration), Faizabad Division, Faizabad.
5. The Appellate Court held that the name of Devadi Dev was ordered to be mutated in place of Kuwar Dharmendra Pratap Singh by means of an order dated 27.1.1968 passed by Consolidation Officer in Case No.1944 under Section 9(2) of the Consolidation of Holdings Act and this order was passed much earlier than the reference date i.e. 24.01.1971. The name of Devadi Dev was recorded in CH Form No.23 and 45 also in respect of disputed Gata No.774. In the relevant extracts of Khatuni relating to year 1399 to 1404 Fasli, the disputed land was entered in the name of Shanti Devi, widow of Devadi Dev and by means of an order dated 03.03.1994 passed by Tehsildar, Balrampur in Case No.374, the names of Tihuti Dev Acharya S/o Ganesh Dutt Acharya, Anand Dev Acharya, Nand Kishor Acharya and Anand Kishor Dev Acharya all sons of Bindhar Dev Achary were mutated in place of Shanti Devi W/o Devadi Dev.

6. From the aforesaid facts, the Appellate Court found that the land in dispute was recorded in the name of Devadi Dev and after him, it was recorded in the name of his widow. The finding of the Prescribed Authority that the petitioners were not recorded as tenure holders of the land in dispute and, therefore, there was no need to issue a notice under Section 8 to them, was against the facts evident from the record. The Appellate Court further held that the trial Court has wrongly stated in the impugned order that the petitioners had not adduced any evidence, whereas copies of relevant extracts of Khataunies and CH Forms No.23 and 45 were available on the record of the Prescribed Authority. Accordingly, the Additional Commissioner (Administration) allowed the Appeal, set aside the order dated 26.07.1997 and remanded the matter to the Prescribed Authority for being decided afresh.
7. After remand, the Prescribed Authority again passed a non-speaking and cryptic order dated 29.07.1999 and the ancestors of the petitioners again filed an Appeal bearing No.43 before the Commissioner, Devi Patan Division, Gonda but the Appeal was dismissed as time barred by means of an order dated 30.05.2001. The petitioners challenged the order dated 30.05.2001 by filing Writ Petition No.64 (Ceiling) of 2001, which was disposed of by means of an order dated 08.03.2010 whereby the order dated 30.05.2001 passed by the Additional Commissioner dismissing the petitioners' Appeal as time barred, was quashed and the matter was remitted for decision afresh on merits.
8. The petitioner filed a copy of the aforesaid order dated 08.3.2010 passed by this Court in Writ Petition No.64 (Ceiling) of 2001 before the Commissioner, Devi Patan Division, Gonda and thereafter, the Commissioner, Devi Patan Division, Gonda dismissed the Appeal by means of the impugned order dated 15.04.2015.
9. It is stated in the appellate order that the Appeal against an order dated 29.07.1999 had been filed on 23.05.2001, which is time barred but the appellant has submitted an application under Section 5 of the Limitation Act and the cause shown in the affidavit filed in support of

the application appears to be sufficient and, therefore, the application under Section 5 of the Limitation Act was allowed.

10. It is strange that the Appellate Authority did not make any reference of the order dated 08.03.2010 passed by this Court in Writ Petition No.64 (Ceiling) of 2001 whereby the order dismissing the appeal as time barred had been quashed and this Court has remanded the matter to the Appellate Authority for deciding it afresh on merits.
11. The Appellate Authority held that the proceedings against Maharaja Pateshwari Prasad have been initiated under the old Ceiling Act and after his death, the name of Maharaja Dharmendra Pratap Singh was substituted and a notice had been issued to him under the old Ceiling Act. Therefore, the proceedings shall be deemed to be continuing against Maharani Rajlaxmi Kumari Devi and Maharaja Dharmendra Pratap Singh, under the old Ceiling Act.
12. The Appellate judgment states that the following provision is contained in the old Ceiling Act: -

“In accordance with Article 39 of Constitution, the State Legislature enacted the U.P. Imposition of Land Holding Act, 1960, which came into force on January 3, 1961”
13. The Appellate court held that the old Ceiling Act came into force with effect from 03.01.1961 with reference year 1958. As proceedings against Maharaja Pateshwari Prasad Singh and his heir Maharaja Dharmendra Pratap Singh had been instituted under the old Ceiling Act, they will be governed by the old Ceiling Act.
14. The order dated 27.01.1968 for recording the name of the appellant's husband, had been passed by the Consolidation Officer on the basis of a compromise and this order had been passed 10 years after the reference date. Therefore, the order dated 27.01.1968 passed by the Consolidation Officer is liable to be neglected and no relief can be granted to the appellant on the basis of the aforesaid order.
15. On 22.07.2021, this Court had passed the following order in this case:

“Counsel for the petitioners has argued that the appellate order has been passed on an entirely different ground that was not

there before the Prescribed Authority. The Appellate Court has referred to Old Ceiling Act and cut off as mentioned therein whereas the admitted position between the parties is that the proceedings that were initiated against the Maharaja Dharmendra Pratap Singh and his mother Maharani Raj Laxmi Kumari Devi was under the New Ceiling Act on 26.04.1990 and therefore the compromise of 1968 which was entered into between the parties before the cut off date of 1971, should be respected and the petitioners predecessor in interest should be declared as an independent tenure holder and his land could not have been declared as the land of Majaraja Dharmendra Pratap Singh.

Shri V.P. Nag, prays for and is granted a week's time to find out the current position of the land in question as it has come in the papers filed alongwith the writ petition that Collectorate building was to be constructed on such land and also to bring case laws with regard whether the proceedings under Old Ceiling Act would continue even after New Ceiling Act came into being."

16. Thereafter, the State has filed a supplementary counter affidavit wherein it has inter alia been stated that as per the report of the Tehsildar Balrampur dated 28.07.2021, Plot No. 774 area 0.676 Hectares and Plot No. 775 area 0.061 Hectares are recorded for construction of District Office and on the spot 25 Mango, 01 Jamun and 01 Tamrind tree was found. Plot No. 774 and 775 are grove lands and are vacant. It is further stated in the supplementary affidavit that the notice to Maharaja Dharmendra Pratap Singh have been sent under the old Ceiling Act and the basis of this averment made in the supplementary counter affidavit is the impugned order dated 15.04.2015 passed by the Additional Commissioner (Judicial), Devi Patan Division, Gonda.
17. Section 5 of the Ceiling Act, as it was originally enacted, provided as follows: -

5. Imposition of ceiling on existing land holdings.—(1) As and from the date of enforcement of this Act, no tenure-holder shall, except as otherwise provided by this Act, be entitled to hold an area in excess of the ceiling area applicable to him, anything contained in any other law, custom, or usage for the time being in force, or agreement, to the contrary notwithstanding.

(2) In determining the ceiling area applicable to a tenure-holder at the commencement of this Act, any transfer or

partition of land made after the twentieth day of August, 1959, which, but for the transfer or partition would have been declared surplus land under the provisions of this Act, shall be ignored and not taken into account.

(3) The provisions of sub-section (2) shall have no application to

—

(a) a transfer in favour of the State Government;

(b) a partition under the U.P. Consolidation of Holdings Act, 1953, or

(c) a partition of the holding of a joint Hindu family made by a suit or proceeding pending on twentieth day of August, 1959.

18. U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 (U.P. Act 18 of 1973) made large-scale amendments in the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1961 with effect from 08.06.1973. Section 19 of the Amendment Act, 1972 provides as follows: -

“19. Transitory provisions.—(1) All proceedings for the determination of surplus land under Section 9, Section 10, Section 11, Section 12, Section 13 or Section 30 of the principal Act, pending before any court or authority at the time of the commencement of this Act, shall abate and the prescribed authority shall start the proceedings for determination of the ceiling area under that Act afresh by issue of a notice under sub-section (2) of Section 9 of that Act as inserted by this Act:

Provided that the ceiling area in such cases shall be determined in the following manner—

(a) firstly, the ceiling area shall be determined in accordance with the principal Act, as it stood before its amendment by this Act;

(b) thereafter, the ceiling area shall be redetermined in accordance with the provisions of the principal Act as amended by this Act.

(2) Notwithstanding, anything in sub-section (1), any proceeding under Section 14 or under Chapter III or Chapter IV of the principal Act, in respect of any tenure-holder in relation to whom the surplus land has been determined finally before the commencement of this Act, may be continued and concluded in accordance with the provisions of the principal Act, without prejudice to the applicability of the provisions of sub-section (2) of Section 9 and Section 13-A of that Act, as inserted by this Act, in respect of such land.”

19. In view of the provisions contained in Section 19(1) of the Amendment Act, 1972, all the proceedings initiated under the unamended Act stood abated on 08.06.1973. The Prescribed Authority could have initiated fresh proceedings by issuing a notice under Section 9 (2) of the Act.
20. Therefore, the proceedings instituted on the basis of notice issued to Maharaja Dharmendra Pratap Singh, stood abated in view of the provisions contained in Section 19 of the amendment Act. Fresh proceedings could only be initiated by issuing a fresh notice under Section 9 (2) of the Ceiling Act, which was not done in the present case.
21. The order passed by the Appellate Authority stating that the proceedings against Maharaja Pateshwari Prasad Singh and his heir Maharaja Dharmendra Pratap Singh had been issued under the old Ceiling Act (which is a misnomer, as there was no old Ceiling Act and it was merely the unamended Ceiling Act, as it was originally enacted) and that the same proceedings shall be deemed to be continuing, has been passed in ignorance of the provisions of Section 19 of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 (U.P. Act 18 of 1973) and the same is unsustainable in law.
22. Accordingly, the writ petition is **allowed**. The order dated 15.04.2015 passed by Additional Commissioner (Judicial), Devi Patan Division, Gonda dismissing Appeal No.5/43 under Section 13 of the Ceiling Act is quashed. The matter is remanded to Additional Commissioner (Judicial), Devi Patan Division, Gonda for being decided afresh in accordance with the law, keeping in view the observations made in this judgment.

(Subhash Vidyarthi J)

Order Date : 14.05.2024
Ram/Amit K-