

(2012) 01 AHC CK 0344

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 15327 of 1988

Kali Charan

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision: Jan. 12, 2012

Acts Referred:

- Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Section 10(2), 12A, 5, 5(6), 9(2)
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 229B

Citation: (2012) 3 ADJ 435 : (2012) 2 ADJ 111 : (2012) 4 AWC 3382

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Hon. Arun Tandon, J.

These two connected writ petitions are being decided by means of this common judgment, treating Writ Petition No. 15327 of 1988 as the leading petition.

2. Petitioner before this Court is stated to have purchased half share possessed by Visheshwar Dayal in various holdings, including Plot No. 353, Village-Dangoli, Pargana and Tehsil-Math, District-Mathura.

3. Proceedings u/s 9(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as "Act, 1960") were initiated against Smt. Ram Kishori, who according to the petitioner is the daughter of Vesheshwar Dayal. Smt. Ram Kishori was issued a notice u/s 10 of the Act, 1960, which was duly served upon her on 27.05.1976. A total area of 33.35 acres was shown to be in possession of Smt. Ram Kishori along with her other family members. After granting the necessary benefit u/s 5 of the Act, 1960 a total area of 15.32 acres in terms of the irrigated land was shown as surplus.

4. Smt. Ram Kishori did not respond to the notice so issued. The Prescribed Authority proceeded to pass an order dated 10th June, 1976, wherein it was declared that Smt. Ram Kishori had 15.32 acres of irrigated land as surplus. Since Smt. Ram Kishori did not respond, the Prescribed Authority further proceeded to declare that the surplus land be deducted from Plot No. 353, Village-Dangolikhar, Tehsil and District-Mathura. This order, as per records made available before this Court, has become final. The State has taken possession of the said surplus land on 27.01.1977. Reference-counter affidavit filed by the State in Writ Petition No. 15327 of 1988 (Para-5).

5. So far as ceiling proceedings against Smt. Ram Kishori are concerned, the story ends here.

6. The petitioner, on the basis of the purchase of half share of Visheshwar Dayal, filed a suit for declaration u/s 229-B of the U.P.Z.A. & L.R. Act. This suit, according to the petitioner, has been finally decided in his favour up to High Court with the dismissal of Writ Petition No. 11510 of 1981, decided on 26.07.1982. The petitioner, therefore, claims that he became the tenure holder of the undivided half share of Visheshwar Dayal purchased by him in respect of the various plots including Plot No. 353, referred to above.

7. On that basis the petitioner made an application for recall of the order dated 10th June, 1976 only to the extent it directed that surplus land of Smt. Ram Kishori be not taken from Plot No. 353. This application of the petitioner was rejected by the Prescribed Authority vide order dated 25.09.1979 on the ground that petitioner's name was never mutated in the revenue records there has been publication in the official gazette in respect of the surplus land, possession whereof has been taken by the State Government, delay in making of the application after three years thereafter has not been satisfactorily explained.

8. Against the order of the Prescribed Authority, the petitioner filed an appeal before the Additional District Judge, Urai, being Misc. Appeal No. 41 of 1982. The appeal was allowed vide order dated 22.03.1983 and the matter was remanded to the Prescribed Authority to reconsider his application in light of the observations made in the appellate order.

9. On remand the Prescribed Authority again rejected the application vide order dated 04.12.1984. Not being satisfied the petitioner filed an appeal before the Commissioner which has also been dismissed on 30.04.1988. It is against these orders that the present writ petition has been filed.

10. From the prayer clause of the present petition it is apparent that the petitioner has challenged the orders dated 10.06.1976, 12.09.1978, 04.12.1984 and 30.04.1988.

11. So far as the order dated 10th June, 1976 is concerned, it has been stated by the counsel for the petitioner that he is aggrieved by only part of the order, namely the

part which directs that the surplus land determined qua Smt. Ram Kishori be taken from Plot No. 353.

12. So far as the order dated 12th September, 1978 is concerned, it is stated that the same is only in respect of registration of the recall application and therefore nothing turns upon the same.

13. So far as the order dated 04th December, 1984 and dated 30th April, 1988 are concerned, it has been contended that the surplus land from the holdings of Smt. Ram Kishori, which was declared surplus, should have been taken from her other holdings instead of Plot No. 353 as the petitioner had become the Bhoomidhar of the half part of the holdings in view of the sale deed which has been executed in his favour and the declaration issued u/s 229-B of the U.P.Z.A. & L.R. Act, referred to above, which has since been affirmed up to the High Court.

14. It is contended that his application for being heard the matter of choice of surplus land has wrongly been rejected by the Prescribed Authority as well as by the Appellate Authority it is submitted that the orders run contrary to the specific observation made by the appellate court in its earlier order of remand dated 22.12.1983.

15. On behalf of the State respondents it is contended that the entire writ proceeds on a presumption that the land, which has been purchased by the petitioner from Visheshwar Dayal in fact has been taken as surplus under the orders impugned. Such presumption is totally unfounded, inasmuch as the petitioner has purchased undivided share of Visheshwar Dayal. Unless he files a suit for partition and his half share is carved out, it is not open to the petitioner to contend that deduction of 15.32 acres of land from Plot No. 353, the total area whereof is stated by the petitioner himself to be 52.44 acres, is illegal. He submits that it is still open to the petitioner to file a suit for partition and to claim possession of half share in Plot No. 353 (area 52.44 acres) as the purchased area is still available even after 15.32 acres of surplus area is taken out from the plot in terms of the order passed u/s 10(2) against Smt. Ram Kishori. He, therefore, submits that in the facts of the case it is an attempt on the part of the petitioner to somehow or other prolong the proceedings taken against Smt. Ram Kishori.

16. Standing Counsel has brought to the notice of this Court the provisions of Section 5(6) proviso as well as Section 12A(d) of the Act, 1960. According to the respondents the decree, which has been obtained by the petitioner subsequent to 24.01.1971 qua declaration of his half share in Plot No. 353, has to be considered with reference to the provision of Section 5(6) Explanation 1-A. Even otherwise he submits that in view of Section 12-A(d)), even if surplus land so deducted from the holdings recorded in the name of Smt. Ram Kishori, being Plot No. 353, includes part of the land which has been transferred in favour of the petitioner, he would be entitled to refund of the proportionate consideration including the advantages and

the transfer to that extent has to be treated as void by operation of law.

17. Connected Writ Petition No. 23956 of 1987 has been filed by the persons, in whose favour Patta had been granted after the possession of the surplus land had been taken, against the order of the Commissioner, which records that since there is a stay order in favour of Kali Charan in an appeal filed by him, the allotment of Patta is not legally sustainable and the authority should have awaited the outcome of the appeal filed by Kali Charan.

18. This Court may only record that the appeal filed by Kali Charan has since been dismissed against which Writ Petition No. 15327 of 1988 has been filed, referred to above. The order passed by the Commissioner has therefore lost all efficacy. The fate of the Patta granted in favour of the petitioners in connected writ petition would squarely depend upon the outcome of the Writ Petition No. 15327 of 1988.

19. I have heard learned counsel for the parties in both the writ petitions and have examined the records.

20. At the very outset this Court may record that it is an admitted case of the petitioner himself that he had purchased only half undivided share of Visheshwar Dayal in Plot No. 353 (besides other plots). It is further not in dispute that Smt. Ram Kishori was the recorded tenure holding over the said plot when proceedings u/s 9(2) and 10(2) were initiated against her.

21. It is established on record that up to the date of passing of the order u/s 10(2) the name of the Visheshwar Dayal was not recorded as co-tenure holder over the said plot. Neither Smt. Ram Kishori nor for that purpose any other person responded to the notice issued u/s 10(2) and absolutely no objections were filed. The Prescribed Authority, therefore, proceeded to determine the ceiling limits of Smt. Ram Kishori and found that she had 15.32 acres of surplus land,. This order has become final. It was not subjected to challenge by Smt. Ram Kishori recorded tenure holder. At least no material in that regard has been brought on record before this Court.

22. Under the order dated 10th June, 1976 only 15.32 acres from Plot No. 353 has been directed to be taken as surplus. The total area of Plot No. 353 is 52.44 acres. If Visheshwar Dayal is held to have half share in the property, which has been transferred in favour of the petitioner, the area transferred in favour of the petitioner would work out to 26.22 acres. Even after 15.32 acres of surplus land which deducted from said Plot No. 353 as surplus, it will still have an area of 37.12 acres, which is much more than the share which has been transferred to the petitioner by Visheshwar Dalaya.

23. In such circumstances, even if the petitioner has obtained a decree of declaration qua half share in Plot No. 353, it is always open to the petitioner to file a suit for partition and demarcation of his area and to take possession in terms of the

declaratory decree, as may be permissible under law. The rights of the petitioner are therefore not jeopardized in any manner because of 15.32 acres of land being deducted from Plot No. 353.

24. It is not the case of the petitioner that Smt. Ram Kishori did not have the share in Plot No. 353 or that the area 15.32 acres is in excess of the share holdings of Smt. Ram Kishori in the said plot.

25. In view of the aforesaid finding alone, it is not necessary for this Court to enter into any other issue raised on behalf of the petitioner Kali Charan. The petitioner is at liberty to file a suit for partition in respect of the remaining area of Plot No. 353 and to take possession of area purchased by him, by initiating such proceedings in accordance with law.

26. Writ Petition No. 15327 of 1988 is dismissed with the aforesaid observations.

27. For the reasons recorded above, the writ petition filed by the petitioners, who have been allotted Patta, being Writ Petition No. 23956 of 1987, is allowed. The order of Commissioner dated 20.11.1987 is quashed. No orders as to cost.