Narendra Kumar Vs IVth A.D.J. and Others

Court: Allahabad High Court

Date of Decision: Oct. 26, 2010

Acts Referred: Constitution of India, 1950 â€" Article 226
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 â€" Section 10(1), 10(2), 9(2A)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 â€" Section 3

Citation: (2011) 2 ADJ 451 : (2011) 112 RD 222

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Arun Tandon, J.
The controversy with regard to ceiling limits to the Petitioner travelled up to the Supreme Court in SLP No. 2880/1980.

The Hon''ble Supreme Court vide judgment and order dated 18.11.1980 remanded the matter to the Prescribed Authority for mathematical re-

calculation of the ceiling limits of the present Petitioner with a direction that the Prescribed Authority shall recalculate the surplus area treating 1.89

hectares as equivalent to 4.6875 acres. The order of the Hon''ble Supreme Court is being quoted herein below:

Heard counsel for the parties. The short point taken by Mr. G.N. Dikshit for the Appellant is that the High Court erred in calculating the extent of

the surplus area according to the formula mentioned in Oxford dictionary to the effect that one hectare is equivalent to 2.4861 acres. Mr. Dikshit

has pointed out that in Clause (8-A) of Section 3 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 the definition of the term

fragments"" adopts a different rule equating 1.89 hectares with 4.6875 acres and that all the definitions appearing in the said Act govern the

provisions of the U.P. Land Ceiling Act by virtue of Clause 21 of Section 3 of the latter. Mr. Rana concedes that this is the legal position. In this

view of the matter, we allow the appeal to this extent that the case is remitted to the Prescribed authority with a direction that it shall redetermine

the extent of the surplus area of the Appellant in accordance with the rule regarding conversion of area from hectares to acres appearing in Clause

(8-A) of Section 3 of the U.P. Zamindari abolition and Land Reforms Act.

We pass no order as to costs.

2. From the order of the Hon''ble Supreme Court, it is apparently that except for recalculation treating 1.89 hectares as equivalent to 4.6875

acres, neither any other issue was required to be examined nor could be agitated by the recorded tenure holder. The order was passed by the

Hon''ble Supreme Court in the year 1980. The Prescribed Authority in compliance of the order of the Hon''ble Supreme Court redetermine the

ceiling limits of the recorded tenure holder under order dated 1.10.1980 and it was declared that the Petitioner had 18 bighas, 15 biswas and 3

biswansis of land as surplus. This order of the Prescribed authority was subjected to challenge by way of appeal by recorded tenure holder being

Appeal No. 15/1981. The appeal has been dismissed by the Additional District Judge by order dated 25.9.1985. The order of the Prescribed

Authority dated 1.10.1981 as well as the order passed by the appellate authority dated 25.9.1985 has been challenged before this Court by

means of this present writ petition.

3. The only ground raised in the present writ petition is that the Prescribed Authority had not redetermined the ceiling limits after calculating the

same on the basis of the equivalence directed under the order of the Hon''ble Supreme Court dated 28.11.1980 namely 1.89 hectares being

equivalent to 4.6875 acres. Because of such pleading, the Petitioner was granted an interim order in 1985 and the Petitioner has continued in

possession of the surplus land for a period of 25 years. Today when the writ petition was taken up for hearing, this Court made a pointed out

query to the counsel for the Petitioner to demonstrate as to whether any such plea was raised before the Appellate Authority, questioning the

calculation done in the matter of determination of the surplus land holding possessed by the Petitioner in terms hectares, acres or biswas, as the

case may be. Counsel for Petitioner submitted that no such plea was raised before the Appellate Authority. It is in this background that the

Appellate Authority has not recorded any finding on the issue as to whether there has been any wrongful calculation of the surplus land area

possessed by the Petitioner or not.

4. I am of the considered opinion that the issue of calculation is purely a factual issue and it should have been agitated, if the Petitioner felt

aggrieved before the Appellate Authority so that conclusive finding could have been recorded.

5. Before this Court also the Petitioner could not demonstrate that there has been any wrongful calculation vis-a-vis the direction issued by the

Supreme Court. There is no substantive challenge to the calculation done by the authorities and only to confuse the Court, a plea has been taken

that the order of the Hon''ble Supreme Court which provided for 1.89 hectares to be treated equivalent to 4.6875 acres has not been complied

with.

6. I am of the considered opinion that such petition not only deserve to be dismissed, the Petitioner must be saddled with exemplary compensation

for retaining possession the surplus land for 23 years on the strength of such frivolous litigation. Today the Court has been informed that Petitioner

surrender a part of the surplus land and still six bighas of susrplus land is in his possession.

7. In Sabia Khan and Others Vs. State of U.P. and Others, the Hon''ble Apex Court held that filing totally misconceived petition amounts to abuse

of the process of the Court and such litigant is not required to be dealt with lightly.

8. It is also a settled legal proposition that no party can suffer by the action of the Court. When the High Court in exercise of its powers under

Article 226 of the Constitution of India grants interim relief; the interest of justice requires that any undeserved or unfair advantage gained by a

party invoking the jurisdiction of the Court must be neutralized. The institution of litigation by a party should not be permitted to confer an unfair

advantage on the party responsible for it. Vide Grindlays Bank Limited Vs. Income Tax Officer, Calcutta and Others, Ram Krishna Verma and

Others Vs. State of U.P. and Others, AIR 1997 993 (SC) and Smt. Rampati Jaiswal Vs. State of U.P. and others,

9. No litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim order always merges in the final order to be

passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take

any benefit of his own wrongs by getting interim order and thereafter blame the Court. The fact that the writ is found, ultimately, devoid of any

merit, shows that a frivolous writ petition had been filed. The maxim ""Actus Curiae neminem gravabit"", which means that the act of the Court shall

prejudice no-one, becomes applicable in such a case. In such a situation the Court is under an obligation to undo the wrong done to a party by the

act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised, as

institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court. Vide A.R. Sircar (Dr)

v. State of U.P., 1993 Supp.(2) SCC 734 Shiv Shankar and Others Vs. Board of Directors, U.P.S.R.T.C. and Another, Committee of

Management, Arya Nagar Inter College, Arya Nagar, Kanpur, through its Manager and another Vs. Sree Kumar Tiwary and another, and M/S.

GTC Industries Limited Vs. Union of India and Others,

10. The Hon''ble Supreme Court of K.D. Sharma Vs. Steel Authority of India Ltd. and Others, in a matter arising out of ceiling proceedings itself

has been held as follows:

11. This appeal, which is directed against the order dated 21-5-2001 passed by the Allahabad High Court is illustrative of how unscrupulous

litigants can mislead the authorities entrusted with the task of implementing the provisions of the U.R Imposition of Ceiling on Land Holdings Act,

1960 (for short ""the Act"") and the Courts for retaining possession of the surplus land. The tenure-holder, Praveen Singh did not file statement in

terms of Section 9(2-A) of the Act in respect of his holding as on 24-1-1971. After about four years, the prescribed authority issued notice dated

29-11-1975 u/s 10(2) of the Act and called upon Shri Praveen Singh to show cause as to why the statement prepared u/s 10(1) of the Act may

not be taken as correct and his land may not be declared surplus accordingly. A copy of the statement was sent to Shri Praveen Singh alongwith

the notice in CLH Form 4. For sake of convenient reference, the notice is reproduced below:

.....

24. From what we have mentioned above, it is clear that in this case efforts to mislead the authorities and the Courts have transmitted through three

generations and the conduct of the Appellant and his son to mislead the High Court and this Court cannot, but be treated as reprehensible. They

belong to the category of persons who not only attempt, but succeed in polluting the course of justice. Therefore, we do not find any justification to

interfere with the order under challenge or entertain the Appellant''s prayer for setting aside the orders passed by the prescribed authority and the

appellate authority.

25. In the result, the appeal is dismissed. We would have saddled the Appellant with exemplary costs but, keeping in view the fact that possession

of the surplus land was taken in 2002 and the same has been distributed among landless poor persons, we refrain from doing so.

11. Petitioner has availed the benefits of the interim order obtained on patent false allegations as have already been noticed above. He must,

therefore, compensate for the unfair advantage obtained. The compensation should be such that it may be an exemplar for other litigants to be

aware that such practice will not work before the Court.

12. Since the Petitioner has retained possession of 22 bighas of surplus land for a period of nearly 25 years and is still in possession of 6 bighas of

surplus land he must be asked to pay compensation to the State Government to the tune of Rs. 2,00,000/- (two lac) which is a fair amount

considering surplus area and the total time it was retained illegally. It is ordered accordingly.

13. Rs. 2,00,000/- (two lac) be paid by the Petitioner within six months from today to the State through District Magistrate, Meerut. In case of

default the District Magistrate is directed to recover the same as arrears of land revenue. The money shall be utilised for the benefit of the poor

farmers of the area concerned.

14. Writ petition is dismissed. Interim order is vacated.