
(2012) 07 AHC CK 0222

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 11616 of 1995

Ram Surat and others

APPELLANT

Vs

State of U.P. and
others

RESPONDENT

Date of Decision: July 26, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Section 5(6), 5(6)(b)

Citation: (2012) 10 ADJ 318

Hon'ble Judges: A.P. Sahi, J

Bench: Single Bench

Advocate: Sankatha Rai, M.B. Misra and Dr. Vinod Rai, for the Appellant; V.K. Singh, D.D. Chauhan, K.B. Garg and S.C., for the Respondent

Final Decision: Allowed

Judgement

Hon"ble A.P. Sahi, J.

Heard Dr. Vinod Rai for the petitioner and the learned Standing Counsel for the respondent.

The petitioner claims himself to be a bona fide purchaser of the holding in dispute from one Asha Kumari. Asha Kumari in turn claimed herself to be the Bhumidhar of the land in dispute after having obtained Bhumidhari rights in terms of Section 134 to 136 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act. It is also the case of the petitioner that Asha Kumari was earlier declared as Sirdar in terms of the order passed by the consolidation officer in objections filed u/s 9 of Uttar Pradesh Consolidation of Holdings Act, 1963 vide order dated 3rd November, 1971. The aforesaid fact has not been disputed in the counter-affidavit. The name of Asha Kumari came to be recorded whereafter the petitioners purchased it from her through a registered sale-deed dated 31st December, 1975.

Proceedings were undertaken against Smt. Jogeshwari Devi, the respondent No. 5 under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 for declaring the disputed land in excess of the ceiling limit as surplus. The disputed holding also became part of the said adjudication and was declared as surplus in the hands of Jogeshwari Devi on 27th July, 1976. The petitioner had absolutely no knowledge about the said proceedings, and according to the sale-deed executed in favour of the petitioners their names were mutated and continued to be recorded as tenure holders. The petitioners have also brought on record the Khatauni (record of rights) to contend their names were continuing as such as late as the year 1991 (1396 Fasli). A copy of the said Khatauni is on record as Annexure-7 to the writ petition.

2. The petitioners contend that the order of the Prescribed Authority declaring the land as surplus in the hands of Smt. Jogeshwari Devi came to be implemented in the revenue record for the first time between the year 1989 and 1991 whereafter the petitioners filed an application for recall of the said order of the prescribed authority dated 27.7.1976. The ground taken by the petitioners was clearly that they were bona fide purchasers and the land was never part of the holding of Smt. Jogeshwari Devi. The prescribed authority proceeded to examine the said claim and also issued a notice to Smt. Jogeshwari Devi the respondent herein. The matter was contested and the application filed by the petitioner for recall of the said order was rejected on 20.8.1994. Aggrieved, the petitioners filed an appeal which was dismissed on 28.11.1994 and the review application was also rejected on 27.1.1995.

3. The petitioners have preferred the present writ petition contending that the order of the consolidation officer in favour of Asha Kumari that had been implemented, might have been passed after the appointed date, yet it gave a declaration of her rights which was preexisting prior to 24th January, 1971. The contention is that the order could not have been ignored and the Prescribed Authority ought to have examined the same in the light of Section 5(6)(b) of the 1960 Act. The submission is that it was a bona fide transaction and it was a legal adjudication under the Uttar Pradesh Consolidation of Holdings Act 1953 where the rights of Asha Kumari were adjudicated after contest where the State was also a party during the consolidation proceedings. Learned counsel, therefore, submits that the same being a bona fide transaction and not a transaction to avoid the ceiling proceedings, the same could not have been ignored under the provisions aforesaid. He further contends that according to the second explanation appended to the aforesaid provision the burden was discharged by the petitioner by proving that the proceedings before the Consolidation Officer had been bona fide undertaken and the order became final whereby the petitioner's predecessor in interest came to be declared as Sirdar. The prescribed authority treating the said transaction to be not a bona fide transaction has ignored it only on the ground that the order of the consolidation officer had intervened after the appointed date. An appeal was filed and the same finding was returned and affirmed by the appellate authority as well.

4. Dr. Vinod Rai learned counsel for the petitioner submits that evidence was led to the effect that when the survey of the consolidation operations was carried out by the consolidation authorities prior to the appointed date, then the name of Asha Kumari was entered in CH Form 2A. He, therefore, submits that the possession and claim of Asha Kumari was already established during the consolidation operations and the entry of the name of Asha Kumari in CH Form 2A was a genuine entry which has neither been disbelieved nor discarded by the authority. Merely because the order of the consolidation officer has been passed after 24th February, 1971 the entire adjudicatory process leading to the declaration of title of Asha Kumari cannot be said to be a collusive or Benami transaction. He, therefore, submits that the conclusion drawn by the Prescribed Authority is erroneous and without any basis and for the same reasons the appellate order deserves to be set aside.

5. Replying to the aforesaid contentions learned Standing Counsel has invited the attention of the Court to various paragraphs of the counter-affidavit to contend that apart from the fact that the order of the Consolidation Officer was passed after 24th January, 1971, the sale-deed in favour of the petitioner is of the year 1975, therefore, it could have been ignored. Learned Standing Counsel further submits that so far as the proceedings against Jogeshwari Devi are concerned they have been finalized and the land had been declared surplus of which possession has been taken by the State Government. He, therefore, contends that the impugned order of the Prescribed Authority or the affirmation thereof by the appellate authority does not suffer from any infirmity much less a legal infirmity which may needs a legal interference of this Court under Article 226 of the Constitution of India.

6. Having heard learned counsel for the parties and having perused the affidavits and the material on record it is evident that the disputed land was entered in the name of Smt. Jogeshwari Devi and objections was filed by Asha Kumari u/s 9 of Uttar Pradesh Consolidation of Holdings Act which is a proceeding permissible under the 1953 Act for a declaration of rights. The proceedings therein are proceedings of final settlement of revenue records. Asha Kumari therefore, had staked her claim and the same was adjudicated under the order dated 3rd November, 1971 where Jogeshwari Devi had admitted and accepted the claim of Asha Kumari.

7. This by itself will not amount to be a collusive or Benami transaction inasmuch as there is no finding that the said admission of possession was collusive or for any deferred interest of the recorded tenure holder. The claim of possession of Asha Kumari as accepted by Jogeshwari Devi would by itself not amount to proof of collusion unless any evidence is led to prove such an intention. The State did not challenge the order of the consolidation officer as being collusive before any forum. The assumption of collusion, therefore, is erroneous without any further proof or evidence led by the State to establish collusion. After the declaration of the Sirdari rights Asha Kumari also moved an application for declaration of her Bhumidhari status and a Bhumidhari Sand was granted to her under Sections 134 to 136 of the Uttar Pradesh Zamindari Abolition and Land

Reforms Act, 1950. The nature of the tenancy, therefore, stood transformed from Sirdari to Bhumidhari which proceedings were also concluded after putting the State to notice. The State does not appear to have contested the said proceedings either before the Consolidation Officer or for declaration of the status of the land as Bhumidhari as urged by the petitioner. In the absence of any such contest by the State, the title of Asha Kumari, therefore, was perfected on the basis of the claim of possession by virtue whereof she had acquired Sirdari rights over the land in dispute. This, in the opinion of the Court, was a preexisting right accrued prior to 24th January, 1971 and, therefore, the declaration made by the Consolidation Court was only an acknowledgment of such a right as accrued in her favour under the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 before the appointed date itself. Accordingly, there were sufficient reasons, grounds and evidence to substantiate that the transaction was not a collusive transaction and it deserved an exemption under the provisions of Section 5(6) of the 1960 Act.

The prescribed authority without adverting to this fact of the matter erroneously proceeded to treat the land to be a part of the holding of Smt. Jogeshwari Devi.

Apart from this the bona fides of Smt. Jogeshwari are further established by the fact that her witness Umesh Prasad Narain Singh when called upon by the Prescribed Authority clearly stated that there was other land available with the said tenure holder in the same village which could be subjected to the ceiling proceedings as it was already entered in her name. This aspect has been rightly rejected on the ground that this will amount to offering a choice of plots after 20 years which could not be permitted in favour of Smt. Jogeshwari Devi.

8. In the opinion of the Court here also the Prescribed Authority erred by not accepting the said contention inasmuch as it is not the case of the State that the said land was not available for taking as surplus. If the State was really interested in taking away surplus land then it could have very easily taken possession of the land that was held by Smt. Jogeshwari Devi as also indicated in the interim order of this Court dated 2.5.1995. It was not a question of choice being given by her but it was a question of adjusting the extent of the land which already stood transferred in favour of the petitioner under a bona fide transaction. The prescribed authority, therefore, committed an error on this count also.

9. There is yet another aspect which has not been adverted to by the Prescribed Authority. The sale-deed in favour of the petitioners was executed by Asha Kumari and not by Jogeshwari Devi. There is no allegation or finding that the said sale-deed was for the deferred benefit or a collusive transaction between the petitioners and Jogeshwari Devi. It is also nowhere established that Asha Kumari or the petitioners were holding the land ostensibly on behalf of Jogeshwari Devi. The impugned orders are therefore vitiated on this score as well. The contention of the learned Standing Counsel that the possession had been taken by the State does not appear to be correct as per the record inasmuch as the Khatauni as relied upon by the petitioner which could not be denied by the respondents, in their counter-affidavit, clearly indicates that the land stood recorded in the

name of, and in the possession of the petitioners, as late as in 1991 corresponding to 1396 Fasli.

For the said reasons the appellate authority has also manifestly erred in rejecting the objections of the petitioner. Accordingly for the reasons stated hereinabove the writ petition succeeds and is hereby allowed. The impugned orders passed by the appellate authority and the prescribed authority dated 27.1.1995, 28th November, 1994 and 20th August, 1994 are hereby quashed.

No order as to costs.