

(2008) 09 AHC CK 0238**Allahabad High Court****Case No:** None

State of U.P.

APPELLANT

Vs

Additional Commissioner
(Judicial) Varanasi Division,
NPrescribed Authority and Surya
Kumar alias Lal Babu

RESPONDENT

Date of Decision: Sept. 15, 2008**Acts Referred:**

- Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Section 10(2)

Hon'ble Judges: Shishir Kumar, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Shishir Kumar, J.

By means of this writ petition the petitioner-State has approached this Court for quashing the orders dated 23.8.1995 passed by respondent No. 1, Annexure-4 to the writ petition and order dated 11.4.1994 passed by respondent No. 2, Anneuxre-3 to the writ petition.

2. The facts as stated by the petitioner in the present writ petition are that proceedings under the U.P. Imposition of Ceiling on Land Holdings Act (for short the Act) were initiated against respondent No. 3 and a notice u/s 10 (2) of the Act was given on 19.8.1991 proposing an area of 30.7.4 Bighas of land as surplus. An objection was filed by respondent No. 3 stating therein that Chak No. 29 belongs to Thakur Ji Laxmi Narain and the land of Khata No. 69 belongs to Khata of Mahavir Ji, therefore, clubbing the aforesaid land in the Khata of holding of respondent is illegal and that " cannot be done. Respondent No. 3 is only manager of the trust in the name of Thakur Laxmi Maharaj and Mahavir Ji. It was also stated in the objection filed by respondent No. 3 that in the year 1975, the respondent received a notice as manager of trust. A case was initiated which was numbered as Case No. 64 of 1975.

The matter was decided against respondent by the Prescribed Authority. Then an appeal was preferred which was allowed vide its order dated 30.3.1977 and the notice was discharged.

3. The Prescribed Authority on the basis of the objection decided the case vide order dated 11.4.1994 holding therein that as the second notice is not maintainable and the matter has already been finalised, therefore, the notice given subsequently is hereby discharged and the objection of respondent No. 3 was allowed. The said order was passed on 11.4.1994. The petitioner aggrieved by the aforesaid order filed an appeal before the Commiissioner, Varansi Division and the appeal has been dismissed. Hence the present writ petition.

4. The learned Standing Counsel submits that the points raised on behalf of the petitioner has not been considered by both the courts below and the appeal filed by the petitioner has been rejected on the ground that the subsequent notice is not maintainable. A finding to this effect has been recorded by the appellate authority that proceeding has become final is not correct.

5. On the other hand learned Counsel for respondent No. 3 has submitted that authorities below has considered each and every aspect of the matter and has recorded a finding that as the proceeding has already been finalised by order dated 30.3.1977, therefore, the second notice u/s 10 of the Act itself is barred by the principles of res-judicata and the Prescribed Authority as well as the appellate authority has recorded a finding to this effect after considering the various points and the decision Learned Counsel for the respondents has also placed reliance upon a judgment of this Court reported in Lady Parassan Kaur Charitable Educational Trust Society Vs. State of U.P. and others . Placing reliance upon the aforesaid judgment learned Counsel for the respondent submits that as in the earlier proceedings under the Ceiling Act it has been decided that the property is of Charitable Trust and has become final between the parties, therefore, giving a second notice operates as res-judicata and it has been held by this Court that the same is bad in law. Further reliance has been placed upon a judgment of this Court reported in 2002 (93), R.D. 702 Asghar Abbas v. State of U.P. and Anr.

6. In view of the aforesaid fact, learned Counsel for the respondent submits that there is no illegality committed by the authorities below and the writ petition is liable to be dismissed.

7. I have considered the submissions made on behalf of the parties and have perused the record. Admittedly from the record it clearly appears that the proceedings between the parties have become final by order dated 30.3.1977 in the appeal filed by the State. From the record it is also clear that the State petitioner has not filed any writ petition against that order. In the earlier proceedings it has been decided that the property which was clubbed in the holding of respondent No. 3 is a charitable Trust property in the name of Thakur Laxmia Narain Ji and Mahavir Ji.

Therefore, the Prescribed authority as well as the appellate authority has rightly held that second notice is not maintainable and is barred by res-judicata. This Court in judgements mentioned above has also taken the same view.

8. From the perusal of the Act it also appears that there is no provision for second notice u/s 10 (2) of the Act and for the redetermination of surplus land except Sections 13-A, 29, 30 and 31 of the Act. The scope of Section 13-A came to be considered before the Apex Court in Devendra Nath Singh and Ors. v. Civil Judge and Ors. 2000 (91)RD 28 (SC). In the aforesaid case the Apex Court has held as under:

Having examined the provisions of Section 13-A and Section 38-B of the Act, we are of the considered opinion that u/s 13-A the Prescribed Authority has the power to reopen the matter within two years from the date of the notification under Sub-section (4) of Section 14 to ratify any apparent mistake which was there on the face of the record. That power will certainly not include the power to entertain fresh evidence and re-examine the question as to whether the two sons, namely, Hamendra and Shailendra were major or not. The power u/s 38-B merely indicate that if any finding or decision was there by any ancillary forum prior to the commencement of the said sections in respect of a matter which is governed by the Ceiling Act, then such findings will not operate as res-judicata in a proceeding under The Act That would not cover the case where findings have already reached its finality in the very case under the Act. In this view of the matter we have no hesitation to come to the conclusion that the Prescribed Authority had no jurisdiction to reopen the question of majority of the two sons in purported exercise of the power u/s 13- A. If the authority had no jurisdiction question of waiver of jurisdiction does not arise, as contended by the learned Counsel for respondent.

In the aforesaid premises, the impugned order of the Prescribed Authority as well as that of the High Court are set aside and it is held that in the computation of the ceiling Hamendra and Shailendra will be treated as two major sons.

9. In Prakash Singh v. Prescribed Authority, Bilaspur and Anr. 1985 (11) ALR 772 (FB) this Court has observed as under:

It is only in those cases where the amendments require the Prescribed Authority to redetermine surplus land that the notice u/s 10 (2) be issued. It is, therefore, obvious that there may be cases where the earlier decision as a whole may not require modification at all, or there may be cases where only partial modification may become necessary. For example, if the question is as to whether a particular plot of land is irrigated or not has been determined and does not call for any fresh decision. Since there is no amendment to the relevant provisions in this regard by the 1976 Amendment there would be no necessity of the Prescribed Authority embarking on a fresh enquiry as to whether the said plots are irrigated or not. In such an event the previous order of the Prescribed Authority made before 10th

October, 1975 will neither stand annulled nor be non-est.

10. In view of the aforesaid fact, I find no merit in the writ petition and writ petition being devoid of merit is hereby dismissed."

11. Interim order, if any is hereby discharged.

12. No order as to costs.