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[A.F.R.]

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 3000016 of 1998

State of U.P.

.....Petitioner(s)

Versus

The Addl. Commissioner J Lucknow and others

.....Respondent(s)

Counsel for Petitioner(s)	: Umeshhwar Prasad, C.S.C.
Counsel for Respondent(s)	: C.S.C., N.a. Siddiqui, Rakesh Kumar Srivastava

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Shri Rajeev Srivastava, learned Additional Chief Standing Counsel for the petitioner and Shri Rakesh Kumar Srivastava, learned counsel for the respondents.

2. The present writ petition is directed against the impugned judgment and order dated 29.3.1997 passed by the Additional Commissioner (Judicial), Lucknow Division, Lucknow in Appeal No.23/1995-96 under Section 13 of the U.P. Imposition of Ceiling Land Holding Act, 1960 by which the Appellate Court has set aside the order dated 30.3.1996 passed by the Prescribed Authority which relates to the land recorded and possessed by the respondent no.3.

3. Factual Matrix of the case is that on enforcement of U.P. Act of 20 of 1976, a notice under Section 10(2) of the U.P. Imposition of Ceiling

on the basis of the pleadings the Prescribed Authority framed as many as 10 issues and after giving full opportunity of hearing as well as considering the sale deeds executed by the original tenure holder and further the Will dated 20.6.1980 executed by Smt. Kamla Devi in favour of Sanjay, the Prescribed Authority rejected the objections filed by respondent no.3 vide order dated 30.3.1996.

Being aggrieved by the order of the Prescribed Authority, respondent no.3 preferred an appeal before the Additional Commissioner (Judicial), Lucknow Division, Lucknow who vide order dated 29.3.1997 allowed the appeal mainly on the ground of principles of *res judicata*. Hence this writ petition.

4. Learned counsel for the petitioner submitted that the Appellate Court has committed a manifest error of law in holding that the order dated 18.04.1975 in earlier proceedings operates as "*res judicata*" as per the provisions of Section 38-B. He next submitted that the Appellate Authority has ignored the embodied principle therein, which itself provided that no finding or decision given before the commencement the section i.e. 10.10. 1975 in any proceeding or any issue (including any order, decree or judgment) by any court, Tribunal or Authority in respect of any matter governed by the Act, shall bar the trial of such proceeding or issue under this Act, in accordance with the provisions of the Act as amended from time to time, and admittedly the earlier order dated 18.4.1975 was passed before the commencement of section 38B, the same could not operate as *res-judicata*.

5. Learned counsel for the petitioner next submitted that the learned Appellate Court committed a manifest error of law in misinterpreting and holding that no change in the eye of law by amending Act 20 of 1976 was made affecting the tenure holder opposite party no. 3, inasmuch as by the said Act the provisions of section 5(1) explanation II and section 5(6) explanation I(a), were amended whereby the criteria for determining ostensible ownership and declaration of a person as a co-tenure holder respectively were changed, which affected the tenure holder, opposite party no. 3 also, as such it was incumbent upon the Prescribed Authority to initiate fresh proceedings in accordance with the

criteria for determining the ostensible ownership as well as a declaration of a person as a co-tenure holder was changed and applying the said criteria it was evident that on enforcement of U.P.Z. A. & L.R. Act the Opposite party no. 3 alone came to be recorded as heir and thus on or before 24.1.71 the said opposite party no. 3 held the land in question and remained in its cultivatory possession and the name of Smt. Kamala Devi, his mother was recorded subsequently by the order dated 16.8.1972 and the partition suit was filed on 18.1.1971 and was hit by amendment of section 5(1) Explanation I and II, and the opposite party no. 3 continued to be in its cultivatory possession, as in the consolidation proceedings also his name was recorded on the basis of possession over the said land and there was no evidence if the land in question was Sir-Khudkast of the deceased Ambika Baksh and also that there was no evidence to show possession of Smt. Kamala Devi, and as such the opposite party no. 2 was liable to be held an ostensible owner of the land in question, thereby his holding had increased beyond the ceiling area applicable to him.

7. Learned counsel for the petitioner next submitted that the Appellate Court has committed a manifest error of law in holding that the earlier order dated 18.4.75 operate as '*res judicata*' as so far it relates to determination of land of opposite party no. 3 as grove, ignoring the provisions of section 29 itself according to which the ceiling area is liable to be re-determined in case any grove land loses its character as grove, and since all the plots except plot nos. 531 and 609 of village Pandarva and plot nos. 31 & 238 of village Chithia Buzurg which were earlier held to be grove land have lost its character as grove land as per the findings of opposite party no. 2 the present proceedings are lawful and the earlier order dated 18.4.1975 does not operate as '*res judicata*'.

8. Learned counsel for the petitioner next submitted that the Appellate Court committed a gross error of law in relying upon the noting of the Revenue officers on the file to the effect that there was no change in the holding as such there was no need to initiate any proceedings without applying its own mind.

9. Learned counsel for the petitioner next submitted that the

10. Learned counsel for the petitioner next submitted that the transfer of land through various sale deeds mentioned in the order dated 30.3.96, passed by the Prescribed Authority, were hit by the amended provisions of section 5 sub section (1) Explanation I and sub section (6) explanation 1(a) and as such the same were liable to be re-determined and the Appellate Court committed a manifest error of law in ignoring the same while passing the impugned order dated 29.3.97 in which no mention thereof has been made. Therefore, the order dated 29.03.1997 is illegal and void ad as such is liable to be quashed.

11. In support of his submissions, learned counsel for the petitioner has placed reliance upon the judgment in the case of **Himanshu Dhar Singh vs State of UP (WRIT C NO. - 3000084 OF 1993)**.

12. Per contra, learned counsel for the respondents submitted that the impugned order does not suffer from any illegality and is just and valid in eyes of law. Hence the present writ petition is devoid of merit and is liable to be dismissed.

13. Learned counsel for the respondents next submitted that the surplus land proceedings against the tenure holder were conclusively decided when the Appellate Court (IIrd Additional District Judge, Hardoi), vide order dated 18.04.1975, allowed the appeal, set aside the order dated 30.12.1974, and discharged the ceiling notice. The said order attained finality and operates as *res judicata* between the parties.

14. Learned counsel for the respondents next submitted that the issuance of the second notice dated 02.02.1995 under Section 10(2) of the Act, after more than 20 years, is wholly arbitrary, illegal, and without jurisdiction. The Prescribed Authority lacked the power to reopen concluded proceedings after such an inordinate delay.

15. Learned counsel for the respondents next submitted that as per the Transitory Provisions, re-determination of surplus land is to be done where earlier determination was made before 10.10.1975 and could only be undertaken within two years from the said date. The statutory window thus expired around 1977. In the present case, no action was taken within the prescribed period. The surplus land proceedings initiated in 1995

17. Learned counsel for the respondents next submitted that the second notice dated 02.02.1995 does not disclose any special or cogent reasons for reopening the case. Such non-application of mind vitiates the entire proceedings. Moreover, it is a settled principle that concluded proceedings cannot be reopened after decades, as it defeats the very purpose of law.

18. Learned counsel for the respondents next submitted that In view of the aforesaid submissions, Counsel for the Respondent respectfully prayed that this Hon'ble Court may be pleased to dismiss the writ petition with costs, and uphold the order dated 29.03.1997 passed by the Appellate Authority.

19. Having heard the rival submissions of learned counsel for the parties, I have perused the material on record.

20. To resolve the controversy involved in the present writ petition, operative portion of the judgment rendered in the case of **Himanshu Dhar Singh (supra)** is extracted here-in-below:

"64. In the aforesaid backdrop of the submissions, the undisputed facts and the decisions relied upon by the respective parties, this Court finds that in the instant petition actually there is no challenge to the validity or vires of Sections or provisions of the Act of 1960. Hence, the submission of the learned Senior Counsel that the provisions of the Act should be construed harmoniously and be given prospective application is misconceived.

65. It will not be out of place to mention that the provisions of the Act of 1960 amended by the Amending Act of 1976 has been made applicable retrospectively i.e. w.e.f. 10th October, 1975 and the said provisions have been insulated from judicial review by placing them under Chapter IX of the Constitution of India. For this additional reason as well, there cannot be any challenge to the provisions of the Act as suggested by the learned Senior Counsel. Needless to say that this aspect of the matter was considered by this Court way back in Rajendra Prasad Singh (supra) and this Court has not found that the provisions of the Act of 1960 as amended by the Amending Act of 1976 are ultra vires of the Constitution.

1960 was transitional in nature and was a step forward taken after the abolition of the Zamindari in the State of U.P. Huge land holdings which were concentrated in the hands of few privileged sections, were to be distributed amongst the actual tilling class, landless labourers and to achieve an optimum and widespread use of the State resources to subserve the common good and this would not be achieved.

67. Another anomaly which will set in and that would be that the ceiling limit contained in the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 will get violated. The two Acts of 1950 and Act of 1960 are complimentary and are not supposed to derogate each other. If the ceiling of 40 acres as initially available in the unamended Act of 1960 is retained then it will cause more harm than good and it would result in violating the language and provisions of the Act of 1960, as amended by several amendments which are not under challenge here.

68. Learned Senior Counsel laid heavy emphasis on the transitory Section 19 of the Amending Act no. 18 of 1973 and Section 31 of the Amending Act of 1976. In case if the said Sections are closely examined, it would be clear that the said transitory provision is confined to proceedings which were referable to Section 14 and Chapter III and IV of the Principal Act. Section 14 apparently is a procedural aspect relating to process as to how the possession of the surplus land as declared is to be taken and how it is to be dealt with. This is the stage, after the surplus land has already been declared and the orders have attained finality. Similarly, Chapter III is titled 'determination and payment of amount' and comprises of Sections 17 to 23 and Chapter IV is titled 'disposal and settlement of surplus land' and comprises of Section 24 (which was deleted by the Amending Act No.18 of 1973) till Section 31. These are provisions which relate to payment of compensation and as noticed above relating to disposal of land declared surplus and it has got nothing to do with the determination of rights and declaration of surplus land.

to accept the reasoning of Sri Pandey, learned Standing Counsel on the aforesaid aspects.

70. Taking a complete holistic view of the Act of 1960 along with Amendments introduced in the year 1973 and 1976, it would reveal that a composite scheme has been brought into play by the Legislature. The submissions made by the learned Senior Counsel for the petitioner appears to be based on disjointed and selective reading of the provisions and is based on tearing observations out of context, from a decision or from the provisions of the Act of 1960. The interpretation suggested does not impress this Court, and it cannot be accepted as it would violate the provisions of the Act of 1960 and it would run contrary to the legislative scheme.

71. Thus, this Court finds that the orders passed by the two Ceiling Authorities cannot be said to be bad for want of jurisdiction or having been passed in contradiction or against the dictum of the Apex Court in Devendra Nath (Supra) and Arvind Kumar (Supra). Thus, the first question is answered accordingly.

79. As the admitted facts would indicate that Appeal No.3/1982 was allowed by the Appellate Authority on 16.09.1983 and again the only issue was regarding the choice and certain plots to be treated as unirrigated and admittedly this judgment dated 16.09.1983 was never challenged. In the fourth round, the Prescribed Authority excluded Plots bearing No.353, 432, 433, 498 and 503 as unirrigated. At this stage, the only issue remained was regarding choice. The decision rendered by the Prescribed Authority dated 27.06.1986 cannot be examined for any other purpose except as to relating to the issue of choice whether it has been properly considered by the Prescribed Authority.

80. As noticed above, 7.3 hectares was permitted to be retained by the petitioner and rest was declared surplus and this finding apparently could not be demonstrated to be erroneous, hence, it does not suffer from any manifest error which may persuade this Court to enter into the factual dispute under Articles 226/227 of

force and substance, they have been raised only to perpetuate the litigation before this Court and it does not find favour with this Court. Thus, the second question is answered accordingly."

21. Perusal of the above-extracted judgment reveals that fresh proceedings are permissible and required post amendment and earlier findings do not attain finality so as to bar of re-determination.

22. Perusal of the record reveals that Shri Shiv Shankar was found in actual cultivatory possession over the disputed plots of land and as in the consolidation proceeding also his name was recorded on the basis of his possession over the said land and there was no evidence, if the land in question was Sir-Khudkhast of Ambika Bux, and also that there was no evidence to show possession of Smt. Kamla Devi and in these circumstances if any settlement have taken place after 24.01.1971, the same is liable to be ignored and Appellate Court has erred in law while passing the impugned judgment and order dated 29.03.1997 and further ignoring the provisions of Section 29 as well as Section 38-B of the amended provisions of the Act.

23. The Prescribed Authority recorded detailed findings on nature of land (irrigated/unirrigated/grove); validity of transfers; possession and ownership; and status of family members. These findings were based on evidence and proper appreciation of material on record. The Appellate Authority, however, set aside the order without adequately discussing or dislodging these findings, which amounts to improper exercise of appellate jurisdiction.

24. Perusal of the impugned order also reveals that the Appellate Authority has recorded a bald conclusion that no change in holding was established, without considering the evidence on record and the statutory provisions. Such an order is clearly non-speaking and reflects non-application of mind, rendering it legally unsustainable.

25. As far as the effect of Amendments (Act No. 20 of 1976) is concerned, it is noted that the amendments introduced in 1976 brought significant changes, particularly in determination of ostensible ownership; treatment of transfers after 24.01.1971 and in the concept of co-tenure holders. The law is well settled that the 1976 amendment has

Appellate Authority that earlier proceedings operate as *res judicata* is contrary to the statutory mandate and is legally unsustainable.

27. The Appellate Authority has also misapplied the doctrine of *res judicata*. It has also ignored the effect of statutory amendments and has failed to consider material evidence and findings of the Prescribed Authority. In this view of the matter, the impugned order is arbitrary and legally flawed.

28. In the case of Himanshu Dhar Singh (supra) relied upon by learned counsel for the petitioner, it has been clearly held that fresh proceedings are permissible and required post amendment and earlier findings do not attain finality so as to bar re-determination. In the above circumstances, the judgment relied upon by learned counsel for the petitioner is fully applicable to the facts and circumstances of the case.

29. Considering in totalities of facts and circumstances of the case, this Court finds that Section 38-B of the Act clearly provides that any decision rendered prior to 10.10.1975 shall not bar fresh adjudication under the Act as amended. The earlier Appellate Authority's order dated 18.04.1975 admittedly falls prior to the enforcement of Section 38-B, therefore order impugned is liable to be set aside.

30. Accordingly, this writ petition succeeds and is **allowed**. The impugned judgment and order dated 29.03.1997 passed by the Additional Commissioner (Judicial), Lucknow is hereby quashed.

(Irshad Ali,J.)

July 14, 2026
GK Sinha