

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Neutral Citation No. - 2024:AHC-LKO:35676
A.F.R.

Court No. - 19

Case :- WRIT - C No. - 3000102 of 1994

Petitioner :- Bhanvi Saran Singh And Others

Respondent :- State of U.P.

Counsel for Petitioner :- B.K. Saxena

Counsel for Respondent :- P. Mahapatra, Waseeq Uddin Ahmad

Hon'ble Subhash Vidyarthi J.

Order on IA-08/24:

This is an application seeking amendment of the writ petition, whereby the petitioners have sought to amend the prayer clause. The learned Standing Counsel has also formally opposed the application without filing any written objection. As the amendment is formal in nature and it does not change the nature of the petition, the application for amendment is allowed. The learned counsel for the petitioners may incorporate necessary corrections in the memo of writ petition forthwith.

Order on Writ Petition:

1. Heard Sri Utkarsh Srivastava and Sri Rakshit Raj Singh Advocates, holding brief of Sri B.K. Saxena Advocate, the learned counsel for the petitioners and Sri S.K. Khare, the learned Standing Counsel for the State.
2. By means of the instant Writ Petition filed under Article 226 of the Constitution of India the petitioners have sought quashing of the entire ceiling proceedings initiated against Sri Hanuman

Singh, the predecessor in interest of the petitioners, who had died before initiation of the proceedings.

3. It has inter alia been submitted in the writ petition that a notice under the Proviso appended to Section 9 (2) of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Ceiling Act) was issued in the name of Hanuman Singh, whereas Hanuman Singh had died in May, 1975, prior to issuance of the notice. The petitioners submitted a reply to the notice stating that the notice had been issued in the name of a dead person. It was further stated in the objection that Hanuman Singh had already transferred 35 bigha of his land through a registered sale deed as far back as in the year 1963 and, therefore, he was not holding any surplus land.
4. The matter was decided ex-parte on 18.02.1976, whereby 35 bigha land of Hanuman Singh was declared surplus. An application for setting aside the ex-parte order dated 18.02.1976 was filed, which was rejected by means of an order dated 20.08.1976. An appeal no.244/80 was filed under Section 13 of the Ceiling Act, which was allowed by means of a judgment and order dated 18.07.1984, passed by the District Judge, Lucknow and the matter was remanded to the Prescribed Authority for being decided afresh.
5. After remand, the learned Prescribed Authority has decided the matter by means of an order dated 02.05.1985 stating that the petitioners had been directed to file a copy of the recall application but they did not file the same and had sought adjournment of the case on the ground that their counsel had gone out of station. The Prescribed Authority rejected the adjournment application and held that as the tenure holder has not brought on record the restoration/revision or objection

against the notice which had been filed within limitation, the earlier order dated 18.07.1976, by which 22 bigha 5 biswa 6 biswanshi and 17 kachhwanshi land of the petitioners mentioned in Forms 3 A, B and C was declared surplus, was confirmed.

6. The sole reason assigned for declaring the petitioners' land to be surplus was that the petitioners had not filed copy of the restoration application or reply to the notice filed within limitation. The prescribed authority did not advert to the plea of the petitioner that the proceedings under the Ceiling Act had been initiated against a dead person.
7. The petitioners filed Appeal No. 13/85-86 under Section 13 of the Ceiling Act against the aforesaid order dated 02.05.1985, which was dismissed by means of the impugned judgment dated 13.09.1994, passed by the learned Additional Commissioner (Judicial), Lucknow Division, Lucknow, on the ground that while remanding the matter by means of the order dated 14.08.1976, the District Judge had directed the prescribed authority to decide the matter on its merits but this application dated 14.08.1976 (which was an application for recall) was not available on record and the petitioner did not produce its copy before the Prescribed Authority and, therefore, there was no need for any interference in appeal.
8. The State has filed a counter affidavit in response to the writ petition and the averments made in paras 2 and 3 of the writ petition that the original tenure holder Hanuman Singh had died prior to issuance of notice under the proviso appended to Section 9 (2) of Ceiling Act have not been denied in the counter affidavit. Therefore, the aforesaid averments are deemed to be admitted by implication.

9. The learned Standing Counsel has submitted that even if the notice was issued after death of Hanuman Singh the original tenure holder, the notice published under Section 9 shall be deemed to apply to heirs of deceased tenure holder as per the provisions contained in Rule 19 (2) of Uttar Pradesh Imposition of Ceiling on Land Holdings Rules, 1961 (hereinafter referred to as the Rules of 1961).

10. Sub Rule (2) and (3) of Rule 19 (2) of Rules of 1961 provide as follows:

“19.(2)Where a tenure-holder dies before the publication of the general notice under Section 9, such publication shall be deemed to apply to his executor, administrator, or other legal representatives and the Prescribed Authority may proceed to determine the ceiling area applicable to the deceased person as if such executor, administrator or other legal representatives were the tenure holder, for the purposes of service of such notice.

(3)Where a tenure-holder dies before he is served with a notice under sub-section (2) of Section 10, the Prescribed Authority may serve such notice on his executor, administrator or other legal representatives, and may proceed to determine the ceiling area applicable to the deceased person as if such executor, administrator or other legal representatives were the tenure-holder for the purposes of service of such notice.”

11. The learned Standing Counsel has relied upon a decision rendered by a coordinate bench of this court in the case of **Surendra Pratap Singh Vs. State of U.P. and others: 2024:AHC-LKO:3082**, wherein the following observations have been made:

“10. It is to be noticed that in case a person dies before service of notice under Section 10, the proceedings do not abate but only the persons who can contest the said case are the legal representative of the recorded tenure holder and it is only after service of notice as prescribed under Rule 19 (3) of the U.P. Imposition Of Ceiling On Land Holdings Rules, 1961 the proceedings may continue thereon.”

12. Per contra, the learned counsel for the petitioners has relied upon a decision of a Division Bench of this Court in the case

of **Horam Singh and others Vs. District Judge, Moradabad and others**: 1978 SCC OnLine All 682 = 1979 All LJ 85, wherein following questions were referred to the Division Bench: -

“1. When a tenure-holder dies after 8th June, 1973, and before the publication of notice under section 9 of the U.P. Imposition of Ceiling on Land Holdings Act what should be the date for determining the surplus area of a tenure-holder for the purposes of determining the surplus area in view of Rule 19 of the Act?

2. Whether Rule 19 read with its sub-clauses (2-4) are within the powers of rule making authority or they are against the provisions of sections 9 and 10 of the Act which speak about the tenure-holder i.e. the real and living tenure-holder on the date when the notice is to be issued?

3. Can determination of surplus area of a tenure-holder who is dead on the date of notification under section 9 of the U.P. Imposition of Ceiling on Land Holdings Act be made ignoring the right of the heirs of the deceased tenure-holder on that date?

4. If the notice under: section 9 has been issued when the tenure-holder was no more in this world can notice under section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act be issued without publishing general notice calling upon the heirs of the tenure-holder to submit the statement contemplated by law under section 9 of the Act?

5. If the recorded tenure-holder dies soon after the publication of general notice in the official gazette (e.g. before the expiry of 30 days), is it necessary for the Prescribed Authority to re-issue notices under section 9(1) and (2) of the Act to tenure-holder to comply with the provisions of the Act?”

13. The Division Bench answered the questions as follows:

*“1. Where a tenure-holder dies after 8th of June, 1973, and before the publication of notice under section 9 of the Act, the Act does not contemplate taking of any proceedings for determining the surplus land of such tenure-holder and as such no question of considering any one as tenure-holder in his place arises. **Sub-rule (2) of Rule 19 therefore is ultra vires and cannot be relied upon for any purpose.***

2. Sub-rules (3) and (4) of Rule 19 are within the powers of rule-making authority and they are not repugnant to the provisions under sections 9 and 10 of the Act.

3. As we are of the opinion that no proceedings for declaring the land of a tenure-holder who is dead on the date of notification under section 9 of the Act, can be taken, question no. 3 does not arise.

4. In view of our opinion that no proceedings under sections 9 and 10 can be taken in respect of holding of a tenure-holder who dies before the publication of general notice under section 9, question no. 4 does not arise.

5. In case, when a recorded tenure-holder dies soon after publication of general notice in the official Gazette, it is not necessary for the Prescribed Authority to reissue a notice under sections 9(1) and 9(2) of the Act. It will be sufficient, if the Presented Authority proceeds to serve the notice on an executor, administrator or other legal representative of the tenure-holder with the statement prepared by him under section 10(2) of the Act in accordance with Rules 19(3) and 19(4) of the Rules framed under the Act.”

14. When the Division Bench has already held sub Rule 19 (2) of Rules of 1961 to be *ultra vires* and has declared that this cannot be relied upon for any purpose, the provisions contained in Rule 19 (2) cannot be relied upon by the opposite party-State. The Division Bench has specifically held that no proceedings for declaring the land of the tenure holder who is dead on the date of notification under Section 9 of the Ceiling Act can be taken.
15. As in the present case this factual assertion made in the writ petition that the tenure holder Hanuman Singh had died prior to issuance of the notice under Section 9 (2) of the Ceiling Act has not been denied in the counter affidavit, in view of the law laid down by the Division Bench in **Horam Singh** (supra) no proceedings under the Ceiling Act could continue on the basis of notice under Section 9 (2) issued in the name of a dead person.
16. Moreover, the approach of the Prescribed Authority and the Appellate Court declaring in any land to be surplus for the sole reason that the petitioners could not provide copies of the records, which ought to have been maintained by the State authorities, is against the basic principle of dispensation of justice, which requires the person asserting a claim to prove

the facts which form the basis of the claim. If the State asserts that some land is liable to be declared as surplus under the provisions of the Ceiling Act, the burden to prove the relevant facts lies on the State. The land cannot be declared surplus only because the tenure holder could not provide copies of some records, the liability to maintain which records rests on the State authorities.

17. The prescribed authority and the appellate authority have not taken into consideration the aforesaid fact and the position of law and have passed the impugned orders against the petitioners, without application of mind to these facts, which makes the impugned orders unsustainable in law.
18. Accordingly, the writ petition is ***allowed***. The impugned order dated 02.05.1985, passed by the Prescribed Authority (Ceiling), Tehsil Malihabad, District Lucknow in Case No. 7, whereby 22 bigha 5 biswa 6 biswanshi and 17 kachhwanshi land of the petitioners mentioned in Forms 3 A, B and C was declared surplus and the order dated 13.09.1974, passed by the learned Additional Commissioner (Judicial), Lucknow Division, Lucknow are hereby quashed.
19. However, it will be open for the authorities to institute fresh proceedings under the Ceiling Act against the petitioners, in accordance with law.
20. The parties will bear their own costs of litigation.

(Subhash Vidyarthi, J.)

Order Date : 08.05.2024

Ram.