

Karan Singh Vs. State of U.P. and ors.

Karan Singh Vs. State of U.P. and ors.

SooperKanoon Citation : sooperkanoon.com/447784

Court : Allahabad

Decided On : May-18-1977

Reported in : AIR1978All12

Judge : R.M. Sahai, J.

Acts : Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1961 - Sections 5, 9, 9(2), 10, 10(2), 12, 13A, 31 and 38B; Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1976

Appeal No. : Writ Petn. No. 711 of 1977

Appellant : Karan Singh

Respondent : State of U.P. and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : S.V. Goswami, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

R.M. Sahai, J.

1. A notice under Section 10 (2) of the U. P. Imposition of Ceiling on Land Holdings Act as amended by Act of 1972 ended in its discharge by the Appellate Court on 24th December 1974. Similar notice under Section 10 (2) was issued on 30th Sept. 1975 which was hotly contested both on the ground of jurisdiction and merits but with no success, even, in appeal. This petition is directed against the order dated 28th Oct. 1976 and 30th June 1976 passed by the Appellate Court and the prescribed Authority in proceedings started by the second notice dated 30th Sept. 1975.

2. The challenge to the order is based on non-applicability of Section 13-A of the Act conclusiveness of the earlier judgment and lack of jurisdiction of the prescribed Authority. The dispute in this petition is mainly confined to the area of the petitioner declared surplus by the subordinate authorities on the ground that it was covered by a sale-deed executed on 29th Dec. 1971. This was not in the knowledge of the authorities when proceedings were taken earlier under Section 10 (2).

3. The notice dated 30th Sept. 1975 points out omission on the part of the petitioner in not furnishing complete details in response to a notice published under S, 9. By Act XVIII of 1973 Sub-section (2) was added to Section 9. In the manner contemplated in Section 9 this sub-section also casts an obligation on a tenure holder to furnish details of land in excess of ceiling area after publication of general notice in the official Gazette, Sections 4, 4A, 5 and 6 lay down the method of determination, calculation and exemption. The tenure holder while submitting the return has to look into the provisions of the Act and submit the return under Section 9. In case the prescribed Authority finds that the return is incomplete or incorrect he is empowered to issue notice under Section 10 (1). Where the details are not furnished correctly and it escapes notice under Section 10 the prescribed Authority can in the exercise of power under Section 13-A issue notice for rectification of such mistake.

4. It cannot therefore be urged that once proceedings under Sections 9 and 10 have been taken Prescribed Authority is debarred from proceeding to rectify the mistake as the entire record being available with the Prescribed Authority it cannot be said that there was mistake apparent on the face of the record.

5. The question then is twofold whether notice dated 30th Sept. 1975 issued under Section 10 (2) was a notice in exercise of powers under Section 13A. If so whether on the facts there was a mistake apparent on the face of the record.

6. That the notice was issued under Section 10 (2) cannot be disputed. It is clear from the contents that it was issued on the basis that the return filed by the petitioner was incomplete or incorrect. It did not point out any mistake which necessitated the Prescribed Authority to issue this notice. The petitioner on the other hand was required to file objection as contemplated under Section 10 (2) to the statement which indicated surplus area, chart of which was attached with the notice. The scope of Section 10 (2) and Section 13A is entirely different. It cannot be said that one overlaps the other. The power has to be exercised in different circumstances on different set of facts. It is true that merely because the notice is stated to be under Section 10 (2) does not mean that the Prescribed Authority was debarred from proceeding under Section 13A. It is not the mention of a wrong section but the subject-matter of the notice which makes the entire difference. On the facts stated in the notice it can-not be considered as initiation of proceedings for rectification of mistake apparent on the face of the record.

7. In view of what has been stated above it is not necessary to decide the second point, namely whether on the facts there was a mistake apparent on the face of the record.

8. Sri Yudhishtir the learned standing Counsel then urged that in view of Section 9 of Act II of 1975 and Section 38-B as inserted by Act 20 of 1976 the earlier order passed by the Prescribed Authority did not have the force of collusiveness. The notice dated 30th Sept. 1975 under Section 10 (2) for redetermination of the surplus land was in accordance with the law as it stood after these amendments were incorporated. It is admitted that when notice dated 30th Sept. 1975 was issued Act 20 of 1976 was not in operation. But as the Act came into force with retrospective effect i.e. from the notice issued under Section 10 (2) was not invalid when the occasion arose to exercise of powers under that section. According to him the transitory provision contained in Section 9 of Act II of 1975 and Section 31 of Act 20 of 1976 read with Section 38-B removed all possible obstacles for

redetermination of surplus land. He stressed that by Section 38-B the finality of judgments rendered by other than ceiling court has been taken away. And by different sub-clauses of Section 31 and Section 9 the finality as visualised under Section 10 1) and (2) has been restricted to such narrow limit that It amounts to permitting the Prescribed Authority to reopen the matters afresh.

9. The doctrine of res judicata or the rule of conclusiveness of judgment is based on public policy and is aimed at curtailment of superfluous litigation. The rule really is one of convenience and does not rest on absolute justice. The Act is directed in achieving socialization and equitable distribution of land. To achieve this public good the legislature added provisions which widened the scope of redetermination. The law was altered vitally in 1973 and 1975. Some sections were added, others substituted and yet others modified. The definition of ceiling area, family, method of calculation for determining ceiling area, under Sections 4, 4A, 5 and 6 changed the whole complexion of the Act. As the amendments are retrospective they are bound to render those orders incorrect which were given under the old law. It was considered therefore necessary to enact provisions as are contained in Section 9 and Section 31 of Act 2/75 and 20 of 1976 (transitory provision). The effect of these provisions is that the prescribed Authority is empowered to initiate proceedings where redetermination is necessary due to amendment in the principal Act. The conferment of power would have been illusory unless the bar of res judicata of earlier judgments was also removed.

10. It is however urged on behalf of the petitioner that Section 12 (2) Section 38-B and Section 31 with its various sub-sections must be read in harmonious manner. The finality of a judgment under Sections 12 (1) and 12 (2) of the Act is taken away by these provisions only in so far where redetermination is required under the principal Act as amended by the amending Act. In other words if the principal Act has not been amended by any of the amending Acts then no occasion arises for redetermination and to that extent the judgment rendered under Sections 12 (1) and 12 (2) shall remain final. Sub-section (3) of Section 31 as a matter of fact completely demolishes the argument advanced on behalf of the petitioner. It specifically permits re-determination of the surplus land even where the appeal was decided and had become final. The only way to reconcile these provisions is

that Section 12 (2) shall apply only in those cases where the order passed by the Prescribed Authority is not amenable to re-determination.

11. Admittedly the sale deed was executed in Dec. 1971 i.e. after Jan. 1971 the date after which every transfer has to be ignored in accordance with the provisions of Section 5 of the Act unless it is covered by one of the exceptions as laid down in the Explanations. The relevant date, of 24-1-71 was brought in the statute by the amendment in 1973. After the publication of Notification under Section 9 (1) the petitioner was duty bound to disclose it in his return which is required to be filed under Section 9 (2). The petitioner cannot be heard to say that he was not aware of the law. Ignorance of law is no excuse and the petitioner being under a legal obligation failed to discharge his responsibility. The fact that Section 5 (6) was amended by U. P. Act XX of 1976 with effect from 10th Oct. 1975 cannot be disputed. The addition of Explanation II which casts a burden on the tenure holder to establish that a transfer effected after 24-1-71 was a transfer effected in good faith. In other words the presumption is that the transfer effected after 24-1-1971 is not in good faith and has to be ignored. This amendment in law in 1978 with retrospective effect necessitated redetermination of surplus land. It cannot therefore be said that the authorities in any manner acted against the provisions of law in issuing notice under Section 10 (2). The argument regarding jurisdiction is equally untenable. In the counter affidavit it has been clearly stated that the Prescribed Authority for Sadabad was Prescribed Authority for Chhatta as well. It was transferred by the S.D.O. to A.S.D.O. Chhatta on 24-3-1976.

12. In the circumstances there is no merit in this writ petition. It is accordingly dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com