

Sita Devi and Etc. Vs. Additional Commissioner, Agra Division, Agra and Others

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Court : Allahabad

Decided On : Apr-26-1995

Reported in : AIR1996All75

Judge : Paritosh K. Mukherjee, J.

Acts : Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1961 - Sections 5(6) and 12; Urban Land (Ceiling and Regulation) Act, 1976

Appeal No. : Civil Misc. Writ Petns. Nos. 11460 and 3472 of 1988

Appellant : Sita Devi and Etc.

Respondent : Additional Commissioner, Agra Division, Agra and Others

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Sri Yatindra Singh, Adv.

Judgement :

ORDER

1. Both the writ petitions, namely, Civil Misc. Writ Petition No. 11460 of 1988 (Sita Devi v. Additional Commissioner, Agra Division, Agra and others) and the other Civil Misc. Writ Petition No. 3472 of 1988 (Harendra Pal Singh v. Additional

Commissioner, Agra Division, Agra and others) are taken up for final hearing, in the presence of learned counsel for the parties.

2. Sri Yatendra Singh, learned counsel appearing in the first writ petition (Sita Devi v. Additional Commissioner Agra Division, Agra and others) placed the following facts for consideration of this Court:--

Writ Petition is directed against the appellate order passed by the Additional Commissioner, Agra Division, Agra, being respondent No. 1 dated Feb. 25, 1988 and dated March 17, 1986 arising out of the order passed by the prescribed Authority (Ceiling), Agra being respondent No. 2.

3. By the aforesaid two impugned orders, the aforesaid respondents have declared 16 bighas 2 biswas and 19 biswansi land 'as surplus' in the hands of Harendra Pal Singh second writ petitioner herein), treating Smt. Sita Devi (first writ petitioner) as the member of the family of Harendra Pal Singh in proceedings under the U. P. Imposition of Ceiling on Land Holdings Act 1960 (from hereinafter referred to as the Act).

4. Before passing the aforesaid orders, a notice under Section 10(2) of the Act was issued against Harendra Pal Singh to show cause as to why the land mentioned in the notice may not be treated as surplus land in his hands.

5. Against the aforesaid notice Harendra Pal Singh filed objections.

6. The case of Smt. Sita Devi is that she is judicially separated wife of Harendra Pal Singh since 1957. In the year 1970 she along with her son filed original suit No. 72 of 1970 for injunction and partition. The said suit was decreed on the basis of a compromise on May 27, 1970. In the aforesaid suit she also claimed maintenance. The fact that Smt. Sita Devi is living separately from her husband Harendra Pal Singh was also recognised in the said suit, and, further it was determined that she is judicially separated wife from Harendra Pal Singh. In the said suit the share of the son was also partitioned and separated.

7. The Ceiling Authorities decided the case against Harendra Pal Singh. Aggrieved Harendra Pal Singh filed a Civil Misc. Writ Petition No. 8261 of 1975, Harendra Pal

Singh v. State of Uttar Pradesh. This writ petition was partly allowed by the judgment delivered by Hon'ble Deoki Nandan, J. on February 10, 1978, which is contained in Annexure-4 to the writ petition filed by Harendra Pal Singh.

8. In the ultimate paragraph of the aforesaid judgment the Hon'ble Judge inter alia observed as follows:--

'In the result, the petition succeeds and is allowed in part. The order of the Additional Civil Judge, Aligarh on the appeal of the State of U. P. is quashed. The order on the petitioner's appeal is maintained. In the circumstances of the case, there will be no order as to costs.'

9. After the remand of the case, the prescribed Authority again decided the case on March 17, 1986, and, at this subsequent stage also, an area, measuring 16 Bighas 2 Biswas and 19 Biswansi of the land declared as surplus.

10. Against the aforesaid order two separate appeals were preferred one by Sita Devi and the other by Harendra Pal Singh. But, both the appeals were dismissed by a common order dated February 25, 1988.

11. Both the petitions are directed against the said appellate order, and, Sri Yatindra Singh, learned counsel appearing for the petitioners in both the writ petitions, submitted that although Smt. Sita Devi is living separately from her former husband, Harendra Pal Singh since 1957 but this fact has not been judicially recognised as well as factum of obtaining partition decree was not recognised very wrongfully by the respondents.

12. It was further contended that both the prescribed authority as well as appellate authority have committed manifest error on the face of law by not accepting the case of the petitioner, Smt. Sita Devi whose partitioned land should not be clubbed together with the ceiling on land of her former husband, Harendra Pal Singh. In this connection, to prove that the petitioner Smt. Sita Devi is judicially separated, all relevant documents, namely, copy of the plaint and decree were filed before the Ceiling Authorities, Apart from it, Harendra Pal Singh (D. W. 1), Shri Jagdish Prasad (D. W. 2), who was Ex-Lekhpal of the area as well as Pradhan of the

village, and Shri Sushilendra Pat Singh (D. W. 3), cousin of Shri Harendra Pal Singh were examined in order to prove that Smt. Sita Devi was living separately from her former husband, Harendra Pal Singh, and, this fact was judicially recognised. It may be mentioned here that the plot No. 150 which belongs to Smt. Sita Devi does not belong to Harendra Pal Singh, by the reason of partition. Moreover, Smt. Sita Devi had executed ten sale deeds in favour of the strangers on April 5, 1971 after January 24, 1971 i.e. the date for exemption and acquisition of surplus land, as contemplated under Section 5(6) of the Act. Further, since the land being not benami was bona fide sold for the benefit of Smt. Sita Devi, or, her family members for adequate consideration, under a irrevocable instrument, the same may not be clubbed together with the land of her former husband, treating her land to be surplus, for the purpose of ceiling.

13. On being enquired by this Court as to how the sale deeds having been executed after the cut off date, i.e. January 24, 1971 can be justified, learned counsel for the petitioner Sri Yatindra Singh drew my attention to the proviso to Section 5(6) of the Act, and, submitted that under the aforesaid provision if the sale was made bona fide, such sale can always be looked into. In the present case admittedly the sale deeds were executed after the cut off date, i.e. January 24, 1971.

14. Sri Singh has categorically asserted in paragraph 7(c) (iv) of the writ petition of Smt. Sita Devi about the point that the land covered by the sale deeds should be excluded while calculating the ceiling area of the petitioner Smt. Sita Devi, and, the same point was also taken in the grounds of appeal which was specifically argued before the Additional Commissioner, respondent No. 1, who has chosen not to decide said point, and, ultimately decided the matter against the petitioners.

15. Sri Singh further referred to a decision of Apex Court regarding simultaneous conducting the proceedings under Urban Land (Ceiling and Regulation) Act, 1976 (being Central Act), and, placed strong reliance on the observations made by the Apex Court in the case of Krishna Bhimrao Deshpande v. Land Tribunal, Dharward, reported in (1993) 1 SCC 287: (AIR 1993 SC 883), wherein a Division Bench consisting of Hon'ble L. M. Sharma and K. JayachandraReddy, JJ. took the

following view (Para 4):--

'Therefore, in respect of imposing ceiling on the land under urban agglomeration the provisions of the Ceiling Act alone are applicable and to that extent the provisions of Chapter IV of the Act which also deal with the imposition of ceiling would not be applicable.'

16. On the contrary, learned standing counsel appearing for the State of U. P. submitted that the points raised in the writ petition have been taken for the first time before this' Hon'ble Court, and, have not been taken earlier.

17. I have gone through the facts of both the writ petitions filed by Smt. Sita Devi and Harendra Pal Singh and the impugned orders dated February 25, 1988 and March 17, 1986, passed by the respondents Nos. 1 & 2, respectively. I find very much difficulty to sustain the aforesaid both the impugned orders, as the prescribed authority in most unlawful manner did not recognise the judicial separation of Smt. Sita Devi from her former husband Harendra Pal Singh as she was living separately since 1957, long before the enforcement of Act 1960.

18. It is also unbelievable that statutory authority did not pay heed to the decree passed by the Civil Court regarding judicial separation, and, or, partition for the purpose of grabbing the land, in a most unwarranted and unlawful manner in spite of the orders passed by this Court in the case of Harendra Pal Singh v. State of Uttar Pradesh (supra).

19. In the aforesaid circumstances, I set aside the impugned orders dated February 25, 1988 and dated March 17, 1986, passed by the respondents Nos. 1 and 2, respectively, contained in Annexures-1 and 2 to the writ petitions and, remand the matter back to the prescribed authority, being respondent No. 2 for redecision by taking into consideration the decree in the partition suit No. 72 of 1970, referred to in paragraph 3 of the writ petition filed by Smt. Sita Devi to decide whether both the proceedings, namely, the provisions of Section 5(6) of the aforesaid Act, and, UrbanLand, (Ceiling and Regulation) Act, 1976 (being Central Act) are entitled to continue simultaneously, in view of the observations made in the aforesaid judgment of Apex Court.

20. As it is an old matter, it is desired that an early disposal of the matter is necessary. Therefore, prescribed authority is directed to re-determine the ceiling within three months from the date of production of a certified copy of this order.

21. Petitioners are also directed to ascertain the next date of hearing in the office of the prescribed authority.

22. Pending re-determination, parties are directed to maintain status quo in respect of land as on today.

23. Writ petition is allowed to the extent indicated above.

24. In view of the orders passed in Civil Misc. Writ Petition No. 11460 of 1988, Smt. Sita Devi v. Additional Commissioner, Agra Division, Agra and others, no separate order may be passed in the Civil Misc. Writ Petition No. 3472 of 1988, Harendra Pal Singh v. Additional Commissioner, Agra Division, Agra and others.

25. Parties are directed to bear their own costs.

26. Order accordingly.