

Jabar Singh and Another Vs. Additional Commissioner, Meerut and Another

Jabar Singh and Another Vs. Additional Commissioner, Meerut and Another

SooperKanoon Citation : sooperkanoon.com/458617

Court : Allahabad

Decided On : Oct-14-1997

Reported in : 1998(1)AWC539

Judge : S.P. Srivastava, J.

Acts : Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Sections 11(2); [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 18; Uttar Pradesh Tenancy Act, 1939; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 1310 of 1987

Appellant : Jabar Singh and Another

Respondent : Additional Commissioner, Meerut and Another

Advocate for Def. : S.C.

Advocate for Pet/Ap. : S.N. Singh and ;R.N. Singh, Adv.

Judgement :

S.P. Srivastava, J.

1. Heard the learned counsel for the petitioners and the learned standing counsel representing the respondents.
2. Perused the record.

3. The petitioners feel aggrieved by an order passed by the Prescribed Authority under the U. P. Imposition of Ceiling on Land Holdings Act, 1960 rejecting their objection filed under Section 11 (2) of the aforesaid Act.

4. This objection, which was filed on 17.8.81 was directed against the order passed by the Prescribed Authority dated 15.5.76 whereunder plot No. 259/2 having an area of 3 bigha 10 biswa of village Tabar Ahtamal and plot No. 1232M., having an area of 18 biswa situate in village Tabar Mustaqil were declared surplus treating the said plots to be the holding of Kapura Singh, the father of the petitioners.

5. The petitioners had come up with the case that the plots in dispute which had been declared as surplus initially constituted Sir and Khudkasht and being ancestral Sir and Khudkasht of the joint Hindu Family of which the petitioners were coparceners, they were entitled to 1/3rd share each on account of their having been born prior to the date of vesting contemplated under the U. P. Zamindari Abolition and Land Reforms Act.

6. The aforesaid objection was dismissed by the Prescribed Authority holding that the said objection was filed on 17.8.81 and was not entertainable on account of the same having been filed beyond the prescribed period of 30 days which had to be computed taking the starting point to be the date of the order declaring the land as surplus.

7. The aforesaid order passed by the Prescribed Authority has been affirmed by the Additional Commissioner in appeal.

8. A Full Bench of this Court vide its decision in the case of Shantanu Kumar v. State of U. P. and others, 1979 ALJ 1174 had observed that it was obvious that service of a notice to show cause as to why the statement be not taken as correct must be served by the Prescribed Authority on the concerned tenure-holder who is sought to be proceeded with in the matter relating to the determination of the extent of the surplus land held by him. It was observed that service of such a notice was preliminary to the acquisition of jurisdiction to proceed in the matter and decide whether the land ostensibly held in the name of some person could be

declared as surplus. The Full Bench also observed that the mere fact that the person concerned knew of the proceedings but kept silent was not sufficient to prevent this Court from interfering in the exercise of its discretionary jurisdiction under Article 226 of the [Constitution of India](#) indicating that it is well-settled that an objection to lack of jurisdiction can be taken at any stage of the proceedings and even in collateral proceedings.

9. In the present case, it is not disputed that no notice had been served on the petitioners and the Prescribed Authority had proceeded to determine the extent of the surplus land treating the land in dispute to be the exclusive agricultural holding of Kapura Singh who was according to the petitioners, only an ostensible owner, so far as the share of the petitioners in the land in dispute is concerned.

10. Taking into consideration the ratio of the decision of the Full Bench of this Court in the case of Shantanu Kumar v. State of U. P. and others (supra), it seems to me that the approach of the respondent-authorities is vitiated in law and has resulted in manifestly erroneous conclusions.

11. In the circumstances of the case as brought on record, the objection of the petitioners filed under Section 11 (2) of the Act should have been entertained and disposed of on merits affording them the opportunity to establish their case.

12. In the aforesaid connection, it may be noticed that this Court in its decision in the case of Chetanya Raj Singh v. IInd Additional Civil Judge, Aligarh and others. 1977 AWC 289, after taking into consideration the implications arising under the decision of the Apex Court in the case of Kailash Rai v. Jai Jai Ram, AIR 1973 SC 893, as well as the decision of the Apex Court in the case of Budhan Singh v. Nabi Bux, AIR 1970 SC 1880, had clarified that Section 18 of the U. P. Zamindari Abolition and Land Reforms Act envisaged that Sir and Khudkasht land either in possession of the tenure-holder or held or deemed to be held by the intermediary will become his bhumidhari. It was emphasised that in the circumstances, it was not necessary that the intermediary had to be in actual possession as Khudkasht holder. It was indicated that in an ancestral Sir and Khudkasht, a person could be entitled to an interest by virtue of his birth and the devolution in respect of Sir and Khudkasht land would be governed by Hindu Law.

13. A Division Bench of this Court in its decision in the case of Ram Chander and others v. Commissioner and Director Consolidation, Meerut. 1970 RD 283, had clarified that in a case of Khudkasht land belonging to the Joint Hindu Family and coparcenery, the same would be deemed to have been settled on the co-sharers and coparceners under Section 18 of the U. P. Zamindari Abolition and Land Reforms Act and the mere circumstance that the name of such a co-sharer or coparcener was not recorded in the village records would not deprive him of the right he possessed in such land. It was noticed that the normal practice in a case of coparcenery was to record the name of the father alone even though the property was jointly owned by him and his sons.

14. In the aforesaid view of the matter, it is apparent that the accrual of interest in the holdings falling in the category of Sir or Khudkasht or grove, etc., the succession in respect whereof was governed by the personal law as provided under the United Provinces Tenancy Act, 1939, had to be taken into account while determining the extent of the interest of a tenure-holder of any holding after the enforcement of the U. P. Zamindari Abolition and Land Reforms Act as provisions contained therein did not affect the rights of co-sharer in such holdings to which he was entitled in accordance with the personal law applicable before the enforcement of U. P. Zamindari Abolition and Land Reforms Act. This position in law had to be taken into account while determining the extent of interest of a bhumidhar recorded as such irrespective of the fact that the entry in his name ex facie showed him to be the sole bhumidhar as the omission to record the name of any other co-sharer who succeeded in establishing that he had also a right in the Sir. Khudkasht or grove, etc., which had accrued in his favour prior to the date of vesting in accordance with the principles of personal law applicable to him could not be taken to have been wiped out or extinguished merely because of the omission to record his name indicating him to be a co-sharer bhumidhar.

15. This Court in its decision in the case of Rajeshwar Pratap Sahi v. Commissioner, Gorakhpur and others. Civil Misc. Writ Petition No. 36434 of 1996, decided on 21.8.97 had while noticing above observed that ordinarily the presumption of correctness attaches to an entry in the Khatauni which is the record of right but this presumption is, however, rebuttable indicating that an entry

in the record of right ex-facie showing a person to be the sole bhumidhar could not be taken to have wiped out or extinguished the right of a co-sharer bhumidhar, merely on account of the omission to record his name indicating him to be a co-sharer bhumidhar but this right has to be established by cogent evidence.

16. In the result, this writ petition succeeds in part. The impugned orders passed by the Prescribed Authority as well as appellate authority, the respondents No. 2 and 1 respectively are quashed with the direction that the Prescribed Authority to consider and dispose of the objections of the petitioners in accordance with law in the light of the observations made hereinabove.

17. There shall, however, be no order as to costs.

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