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

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Court : Allahabad

Decided On : Jan-12-2009

Reported in : 2009(2)AWC1587

Judge : S.U. Khan, J.

Appellant : Devinder Singh and ors.

Respondent : State of U.P. and ors.

Judgement :

S.U. Khan, J.

1. Heard learned Counsel for the parties.

First Writ Petition:

2. The facts of the first writ petition are that Surjit Singh, petitioner No. 4 was tenure holder/bhumidhar of 20.08 acres of land. He filed an application before Tehsildar purporting to be an application for mutation under Section 33/34/39 of U.P. Land Revenue Act seeking mutation of the names of his three sons, i.e., petitioners No. 1 to 3 over an area of 9 acres of agricultural land (3 acres to each) comprised in Plot No. 6 (M). Naib Tehhsildar, Tehsil and District Pilibhit allowed the application on 29.1.1982. The case was registered as Case No. 30 of 1981. Through the said order, 9 acres of land of Surjeet Singh was mutated in the names

of his three sons (3 acres each). It was stated by the petitioners that it was done in pursuance of oral family settlement/partition. A.D.M., (Finance and Revenue), Pilibhit started proceedings for determination of stamp duty on the family settlement. The case was registered as Case No. 30 of 1986-87, State v. Devendra Singh and Ors. A.D.M. held that family settlement was included in the definition of instrument. It was further held that father transferred the land to his three sons illegally without getting any sale consideration and without executing any sale deed and that no father could transfer his land during his life time to his sons on the basis of settlement. Accordingly, it was held that 800 times of the land revenue, i.e., an amount of Rs. 2,040 was payable due to transfer of land by the father to each of his sons. The case was decided by A.D.M. on 20.10.1986. In the said order, it was further held that the arrangement was made to avoid the imposition of ceiling as Surjeet Singh held more land than the maximum permitted under U.P. Imposition of Ceilings on Land Holdings Act (hereinafter referred to as Ceiling Act). It was further held that the Naib Tehsildar also misused his power and jurisdiction by allowing the mutation. Strong observations were made in the said order against Lekhpal and Naib Tehsildar. Ultimately, an amount of Rs. 2,040 alongwith five times penalty, i.e., Rs. 10,200 was imposed as stamp duty and penalty against each of the three sons of Surjeet Singh, i.e., petitioners No. 1 to 3. At the end of the order, it was directed that the copy of the order should be sent to D.M. for perusal and to S.D.M. for taking action against concerned Lekhpal and Naib Tehsildar and proceedings under Ceiling Act should be initiated and after enquiry order should be passed for cancellation of mutation order.

3. Against order passed by the A.D.M., petitioners filed Stamp Revision No. 390 (P) of 1987. The revision was allowed in part and penalty was set aside by C.C.R.A./Board of Revenue through judgment dated 14.12.1990, hence this writ petition.

Second writ petition:

4. The facts of the second writ petition are that Sadhu Singh, petitioner No. 12 was tenure holder/bhumidhar of 31.3 acres of land comprised in plot No. 41. He filed application for mutation stating therein that he had given 5 acres of land to each of

his four sons, who are petitioner Nos. 8 to 11, on the basis of family settlement/partition. Naib Tehsildar through order dated 14.7.1982, passed mutation order. The matter of determination of stamp duty and penalty was registered before A.D.M. (Finance and Revenue), Pilibhit in the form of Case No. 15 of 1986-87. The A.D.M. decided the matter through order dated 22.10.1986. In the said order, on the basis of exactly same reasoning, which was given in the earlier order, A.D.M. held that the oral family settlement and consequent mutation amounted to transfer. Accordingly, 800 times of the land revenue, i.e., Rs. 3,400 was determined as stamp duty payable in respect of transfer to each son. Five times penalty was also imposed. Copy of the said order was also sent to S.D.O., Pilibhit with same directions as given in the earlier case.

5. Against the said order, four revisions were filed. The revisions filed against the order of A.D.M. which is subject-matter of this writ petition and the order of A.D.M. which is subject-matter of the earlier writ petition were consolidated. Revisions were numbered as Stamp Revisions Nos. 390 (P) to 395 (P) of 1986-87, C.C.R.A./Board of Revenue through common judgment dated 14.12.1990 disposed of all the revisions and set aside only the direction of payment of penalty.

The points involved in both the writ petitions:

6. The A.D.M. was right in holding that agricultural land cannot be transferred through mutation application. Partition among co-tenure holders may be effected only through the suit under Section 176 of U.P.Z.A. and L.R. Act filed before S.D.O. Moreover, partition can take place amongst co-tenure holders and not between tenure-holder and stranger. Concept of the Joint Hindu Family property where sons may have right by birth in the ancestral property, which is in the hands of their father, is not applicable to agricultural land in U.P. which is governed by U.P.Z.A. and L.R. Act. As far as Ceiling Act is concerned, such mutation is meaningless for the Ceiling Act and under Ceiling Act in spite of mutation, the entire land would be treated to belong to the father/tenure holder. However, the A.D.M. was not correct in holding that stamp duty was payable on the oral arrangement in between father and sons and consequent mutation order. Moreover, A.D.M. himself rightly held that the mutation order was utterly illegal and

without jurisdiction and void ab initio. This finding was additional reason for not directing payment of any stamp duty.

7. Accordingly, both the writ petitions are disposed of. Only those parts of the impugned orders are set aside whereby petitioners have been directed to pay stamp duty. Rest of the findings and directions are maintained and shall be strictly enforced.

8. The amounts deposited by the petitioners under interim orders passed in these writ petitions shall be refunded to the petitioners.