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Abdul Haee, Vs. Prescribed Authority,

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Court : Allahabad

Decided On : Feb-08-2007

Reported in : 2007(3)AWC2641

Judge : S.U. Khan, J.

Appellant : Abdul Haee, ;muzaffar Hasan and Saghir Ahmad Sons of Shri Allah Razi

Respondent : Prescribed Authority, ;additional Commissioner, Meerut Division and State of Uttar Pradesh

Disposition : Petition allowed

Judgement :

S.U. Khan, J.

1. The main issue in between tenure holder and the State is as to whether the sale deeds dated 19.1.1971 and 17.11.1971 are saved by Section 5(6) of U.P Imposition Of Ceiling On Land Holdings Act, 1960 or not.

2. Earlier proceedings were initiated against the tenure holder Smt. Mahmooda Khatoon. It appears that both Smt. Mahmooda Khatoon and her husband Abdul Quddus petitioner in the second writ petition are the tenure holders. Proceedings were initiated against Smt. Mahmooda Khatoon and land held by her as well as

her husband Abdul Quddus was clubbed. Prescribed authority through order dated 29.1.1975, held that there was no vacant land with Smt. Mahmooda Khatoon. State filed appeal against the said order, which was dismissed on 23.2.1976. The aforesaid two sale deeds dated 19.1.1971 and 17.11.1971 were executed by Smt Mahmooda Khatoon and prescribed authority held that the said sale deeds were quite bonafide and for valuable consideration.

3. Thereafter on 11.9.1977, fresh proceedings were initiated. This time proceedings were initiated against Abdul Quddus husband of Mahmooda Khatoon. He filed objections and stated that the two questions having already been decided were barred by principles of res judicata. Prescribed authority accepted the contention and through order dated 6.12.1978 dropped the proceedings. Copy of the said order is annexure 3, which was passed by the prescribed authority Ceiling (S.D.O) Mawana district Meerut in State v. Quddus. Against the said order State filed appeal being Revenue Appeal No. 35 of 1979. V Additional District Judge, Meerut allowed the appeal on 29.1.1981, true copy of the judgment is annexure 4 to the second writ petition. The appellate court remanded the matter on the ground that the names of transferees had been mutated in the revenue records hence under Rule 8 of the Rules framed under the Ceiling Act, it was necessary to issue notice to the transferees. For the said proposition reliance was placed upon full bench authority of this Court reported in Shantanoo Kumar v. State 1979 AWC 585.

4. The appellate court remanded the matter to the prescribed authority holding that for want of notice to transferees proceedings of the prescribed authority were vitiated, without jurisdiction and void ab initio. The court completely fails to understand that what was the occasion for the appellate court to hold the proceedings before the prescribed authority without jurisdiction for want of notice to the transferees when the said point was not raised either by the transferor or transferees. The matter had been decided in favour of the transferees by the prescribed authority hence there was absolutely no occasion to set-aside the said judgment for want of notice to them. Before appellate court transferees were nowhere in picture. Appellate court could set-aside the judgment of the prescribed authority only if it found such error in the said judgment, which vitiated the ultimate

order of the prescribed authority. If order of court or tribunal is in favour of a party then it can not be set aside on the ground that no notice was given to that party. The argument of absence of notice could be raised only and only by transferees or by maximum by the transferor. Neither they raised the said point nor there was any sense in raising the said point by them as ultimate judgment was in their favour.

5. After remand prescribed authority/S.D.O Mawana district Meerut decided the matter on 30.3.1984. Copy of the said order passed in case No. 5 (under Ceiling Act) State v. Abdul Quddus is annexure 6 to the second writ petition. Through the said order prescribed authority held that both the sale deeds were liable to be ignored, as they were not bonafide. Against the said order two appeals were filed one by the tenure holder Abdul Quddus and the other by the transferees which were registered as Appeal No. 27 and 27-A of 1985-86. Additional Commissioner, Meerut Division, Meerut dismissed both the appeals on 25.9.1986. The said judgments have been challenged through first writ petition by the transferees and through second writ petition by the tenure holder/husband of the tenure holder.

6. In the orders dated 30.3.1984 and 29.9.1986, it has been held that earlier proceedings were taken against Smt Mahmooda Khatoon hence they were without jurisdiction as proceedings should have been initiated against her husband. Prescribed authority and the State themselves initiated proceedings against Smt. Mahmooda Khatoon hence they could not say that the proceedings were without jurisdiction. If husband and wife both are tenure holder then. normally proceedings are initiated against the husband however, if proceedings are initiated against the wife and land of husband and wife is clubbed then the proceedings can not be said to be without jurisdiction. Absolutely nothing was stated on behalf of State as to why earlier Ceiling proceedings were initiated against wife and not husband. State can not take advantage of its own wrong, if at all there was any thing wrong in initiating proceedings earlier against wife.

7. The order of the appellate court dated 29.1.1981 has also been challenged through amendment application filed on 6.2.2007, which has been allowed today.

8. It has been held by the Supreme Court that if order of remand is not appealable at once under Order 43 Rule l(u) C.P.C then it may be challenged afterwards also before higher court i.e. after decision of the court/authority below in consequence of remand and subsequent decision of same appellate court which earlier remanded the matter, when the latter decisions are challenged before the higher court vide K.P.R. Nair v. P. Pillai 2004 AIR SCW 106 and M.P. Tamoli v. N. Misra : AIR 2005 SC1964 . In the later authority earlier remand order passed by High Court in 1966 was permitted to be challenged in appeal which was filed in Supreme Court in 1999 directed against orders passed after remand and confirmed by the High Court. The Supreme Court set aside the said remand order of 1966 passed by High Court.

9. Both the writ petitions are liable to be allowed on two grounds, firstly the remand order dated 29.1.1981 is utterly without jurisdiction for the reasons given above and secondly the decision at the earlier' stage regarding the sale deeds dated 19.1.1971 and 17.11.1971 being bonafide could not be reopened in respect of Section 38-B of Ceiling Act vide : AIR 1999 SC2264 B.N. Singh v. Civil Judge.

10. Accordingly both the writ petition are allowed. Impugned orders dated 29.8.1986 and 30.3.1984 are set aside. Order of appellate court dated 29.1.1981 is also set-aside. The ultimate result of this judgment is that the order of prescribed authority dated 6.12.1978 stands restored.

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