

Udai Raj Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Feb-14-2003

Reported in : 2003(3)AWC1876

Judge : R.H. Zaidi, J.

Acts : Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Sections 10(2) and 38B; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11

Appeal No. : Writ Petition No. 22063 of 1987

Appellant : Udai Raj

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : V.S. Choudhary, ;V.C. Srivastava and ;R.C. Singh, Advs.

Disposition : Writ petiton allowed

Judgement :

R.H. Zaidi, J.

1. Heard learned counsel for the parties.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 22.4.1982 passed by respondent No. 3 and the order dated 28.7.1987 passed by respondent No, 2.

3. The relevant facts of the case giving rise to the present petition, in brief, are that a notice under Section 10 (2) of the U. P. Imposition of Ceiling of Land Holdings Act, for short 'the Act' was issued to the petitioner to show cause as to why an area measuring 6 bighas 7 biswas 10 biswansis land out of his holding be not declared as surplus. On receipt of the said notice, the petitioner filed an objection that no land out of his holding was liable to be declared as surplus inasmuch as the entire land was either un-irrigated or grove but the same was wrongly treated in the aforesaid notice as irrigated. Parties produced evidence in support of their cases. The Prescribed Authority after hearing the parties and after perusing the material on the record, declared an area measuring 6 bighas 7 biswas 10 biswansis as surplus, by its judgment and order dated 15.7.1974. Challenging the validity of the said order, the petitioner filed an appeal before the appellate authority. The appellate authority reversed the findings recorded by the Prescribed Authority and allowed the appeal by its judgment and order dated 22.4.1976. Against the said order, no appeal was filed by the State, as such the same has become final. Thereafter, it was on 5.10.1977 that another notice under Section 10 (2) of the Act was issued to the petitioner calling upon him to show cause as to why an area measuring 6 bighas 7 biswas 10 biswansis be not declared as surplus. The petitioner, on receipt of the said notice, filed an objection that the second notice issued against him was legally not maintainable and that no land out of his holding was liable to be declared as surplus. The Prescribed Authority dismissed the objection filed by the petitioner and declared an area measuring 6 bighas 7 biswas 10 biswansis as surplus, by its judgment and order dated 30.7.1978. Challenging the validity of the said order, the petitioner filed an appeal before the appellate authority. The appellate authority allowed the appeal and remanded the case to the prescribed authority by its judgment and order dated 13.10.1980. Before the prescribed authority, the petitioner again contended that no land out of his holding was liable to be declared as surplus and that the proceedings reinitiated against him by notice dated 5.10.1977 were illegal.

However, the prescribed authority overruled the objection and again declared an area measuring 6 bighas 7 biswas 10 biswansis as surplus by its judgment and order dated 22.4.1982. The petitioner preferred an appeal against the said order, which also met the same fate and was dismissed on 28.7.1987, hence the present petition.

4. Learned counsel for the petitioner vehemently urged that the order dated 22.4.1976, which was passed after enforcement of the U. P. Act No. 20 of 1976 having become final, it was not open to the authorities below to reinitiate the proceedings against the petitioner and to declare any portion of his holding as surplus.

5. On the other hand, learned standing counsel supported the validity of the orders passed by the authorities below. It was submitted that the second notice was issued in accordance with law and from the material on the record, it was proved that 6 bighas 7 biswas 10 biswansis land out of the holding of the petitioner was surplus, therefore, the same was rightly declared as surplus. The writ, petition was concluded by findings of fact, therefore, the same was liable to be dismissed.

6. I have considered the submissions made by learned counsel for the parties and also perused the record.

7. It is not disputed that it was on 22.4.1976, the appeal filed by the petitioner against the order passed by the prescribed authority dated 15.7.1974 was allowed by the appellate authority. The said order has become final. U. P. Act No. 20 of 1976 came into force with effect from 10.10.1975, by which Section 38B of the Act was introduced, which provides as under ;

'38B. Bar against res judicata.--No finding or direction given before the commencement of this section in any proceeding or on any issue (including any order, decree or judgment) by any Court, Tribunal or authority in respect of any matter governed by this Act, shall bar the re-trial such proceeding or issue under this Act, in accordance with the provisions of this Act as amended from time to time.'

8. A reading of the aforesaid section reveals that any order passed before the enforcement of the aforesaid section shall be ignored and shall have no effect upon the rights of the parties. In the present case, it is evident that the order in favour of the petitioner was passed after enforcement of the U. P. Act No. 20 of 1976, i.e., on 22.4.1976, therefore, the said order operates as res judicata between the parties. The provisions of Section 38B of the Act will have no application in the present case. A reference in this regard may be made to the following decisions :

'(i) Devendra Nath Singh v. Civil Judge, 2000 (91) RD 28 ;

(ii) Bija v. State of U. P. and Ors., 1979 ALJ 43 ; and

(iii) Baliram Singh v. Additional Commissioner (Admn.) Varanasi, 2002 (93) RD 379.'

9. In view of the aforesaid decisions, the submissions made by learned standing counsel, to the contrary, therefore, cannot be accepted. In accordance with the law, the authorities below had no jurisdiction to issue second notice in the year 1977. The entire proceedings reinitiated on the basis of the second notice were, therefore, null and void. The impugned orders are also illegal and they are liable to be quashed. The writ petition deserves to be allowed.

10. The writ petition succeeds and is hereby allowed. The order dated 22.4.1982 passed by the prescribed authority and the order dated 28.7.1987 passed by the appellate authority are hereby quashed. No orders as to costs.

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