

Tribeni and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Aug-28-1985

Reported in : AIR1986All125

Judge : V.K. Mehrotra, J.

Acts : Urban Land (Ceiling and Regulations) Act, 1976 - Sections 10(2) and 33

Appeal No. : Civil Misc. Writ No. 7472 of 1982

Appellant : Tribeni and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : R.S. Misra and ;R.P. Misra, Advs.

Disposition : Petition allowed

Judgement :

ORDER

V.K. Mehrotra, J.

1. In respect of plot No. 461 situated in Gorakhpur City, after the enforcement of the Urban Land (Ceiling and regulations) Act, 1976 (Parliament Act No. 33 of 1976) a statement under Section 6(1) was filed by Tribeni, son of Munesar. According to

him, the plot had a residential house with Sehan along with it. Also, that he had only 1/5th share in the property which was ancestral in character, his four sons also had 1/5th share each. After necessary enquiry, a draft statement was served by respondent No. 3 on the party interested. On May 31, 1977, the Competent Authority made an order saying that Tribeni alone was the owner of the entire area. He held that there was excess land in possession of Tribeni which was declared as vacant land. This order under Section 8(4) of the Act was not assailed by Tribeni in any appeal taken against it under Section 33. The order became final.

2. Subsequently, the final statement was served upon Tribeni and the particulars of the vacant land held in excess of the ceiling limit were published for information to the general public in the official gazette. An objection to it was filed by Tribeni under Section 10 of the Act. The four sons filed two sets of objections one being by Anil Kumar and the other by Sita Ram, Ram Adhar and Ramesh Kumar under Section 10 of the Act. They claimed that they had 1/5th share each in the land and that the order saying that there was excess vacant land in plot No. 461 was erroneous. The competent authority, after hearing these objections, together with the objections filed by Tribeni under Section 10, passed an order on July 30, 1979. The objections were rejected.

3. An appeal was jointly filed by Tribeni and his four sons against the order of July 30, 1979 under Section 33 of the Act. This was ceiling appeal No. 379 of 1981. The District Judge, Gorakhpur who heard this appeal came to the conclusion that the order under Section 8(4) having not been challenged and having become final, the appeal filed by Tribeni and his four sons was not maintainable. He dismissed the appeal without going into the merits of the contentions sought to be raised by Tribeni and his four sons. Thereafter, the present writ petition was filed in this Court.

4. A supplementary affidavit was filed in the case by Anil Kumar, one of the petitioners, in which it was stated in para 10 that the writ petition be treated to have been filed only by him and his three brothers, that is, petitioners Nos. 2 to 5 and that the name of Tribeni be deleted from amongst the array of the petitioners.

5. When the writ petition was taken up for hearing, Sri R. P. Misra, appearing for the petitioners requested that the Writ Petition be treated to have been filed only by petitioners Nos. 2 to 5 and that the name of Tribeni be deleted from the array of petitioners. This statement was in terms of the assertions contained in para 10 of the supplementary affidavit. The present Writ Petition is now confirmed to the four petitioners mentioned at serial Nos. 2 to 5. The name of Tribeni shall be deleted from the array of parties as prayed.

6. There is no dispute that objections filed by the sons of Tribeni under Section 10(2) of the Act were entertained and decided on merits by the competent authority, Section 33 provides for appeal by any person aggrieved by an order made by the competent authority under the Act, not being an order under Section 11 or Section 30(1). The decision under Section 10(2) of the Act is, thus, clearly appealable under this provision. The learned District Judge was in error in taking the view that an appeal against the order passed by the competent authority under Section 10(2) was not maintainable even at the instance of the sons of Tribeni whose objection had been entertained by the competent authority and decided under Section 10(2) of the Act. The appellate order is, therefore, not sustainable in law, in so far as it relates to the four sons of Tribeni. It deserves to be quashed to that extent.

7. The appellate order of the District Judge dt. April 1, 1982 (Annexure 5 to the Writ Petition) shall stand quashed in so far as it states that the appeal was not maintainable on behalf of Sita Ram, Ram Adhar, Anil Kumar and Ramesh Kumar all sons of Tribeni. It shall stand confirmed in so far as it dismisses the appeal of Tribeni who had not challenged, the order passed earlier under Section 8(4) of the Act. The learned District Judge will restore the appeal to its original number and decide it on merits on the basis that the appeal was filed by the aforesaid four sons of Tribeni. The appeal shall be disposed of very expeditiously and, if possible, within two months of a certified copy of the judgment being placed before the District Judge on behalf of the four sons of Tribeni who are directed to do so without delay. It is, however, made clear that this judgment will have no effect on the correction already made by the competent authority in exercise of its powers under Section 45 of the Act.

8. Parties are left to bear their own costs.

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