

State of U.P. Vs. Dev Karan and ors.

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Court : Allahabad

Decided On : Oct-31-2001

Reported in : 2002(2)AWC1154

Judge : R.H. Zaidi, J.

Acts : Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Sections 10(2), 13A and 14(4)

Appeal No. : C.M.W.P. No. 10506 of 1985

Appellant : State of U.P.

Respondent : Dev Karan and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : L.N. Pandey, S.C.

Disposition : Petition allowed

Judgement :

R.H. Zaidi, J.

1. State of U.P., by means of this petition filed under Article 226 of the Constitution of India, prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 15.3.1985 passed by the respondent No. 2 (Annexure-7

to the petition) and the order dated 31.5.1982 passed by the prescribed authority in the proceedings under the U.P. Imposition of Ceiling on Land Holdings Act. 1960 (for short 'the Act').

2. The relevant facts of the case giving rise to the present petition, in brief, are that it was on 29.1.1976 that a notice under Section 10(2) of the Act was Issued to the respondent No. 1, Dev Karan to show cause as to why an area measuring 9.49 acres in term of irrigated land, within the meaning of the term used under the Act, be not declared as surplus out of his holdings. On receipt of the said notice, the respondent No. 1 filed his objection on 17.5.1976 contending that no land out of his holdings was liable to be declared as surplus for the reasons disclosed in the objection. In the said proceedings, 9.7.1976 was fixed for evidence. On the said date the respondent No. 1 did not turn up before the prescribed authority. Consequently, the prescribed authority proceeded ex parte and after perusing the material on record declared the area measuring 9.49 acres in terms of the irrigated land as surplus out of his holding. The respondent No. 1, thereafter, filed an application on 17.6.1976 to recall the order dated 9.6.1976. However, after affording the opportunity of hearing to the respondent No. 1 the prescribed authority dismissed the said application on 5.7.1976. Challenging the validity of the order passed by the prescribed authority, the respondent No. 1 filed an appeal before the appellate authority, however, the appeal filed by him was also dismissed on 3.5.1977. Challenging the validity of the orders passed by the prescribed authority and the appellate authority noted above, respondent No. 1 filed Writ Petition No. 1557 of 1977 before this Court. The said writ petition was also dismissed on 6.10.1978 with the observation that the petitioner may, if so advised, prefer an appeal against the order of the prescribed authority dismissing his objection dated 9.6.1976 as in the appeal and the writ petition only orders dated 17.6.1976 and 5.7.1976 were challenged. Thereafter, respondent No. 1 filed an appeal challenging the validity of the order dated 9.6.1976 along with an application under Section 5 of the Limitation Act. The appellate authority, after hearing the parties, dismissed the said appeal vide its judgment and order dated 10.4.1979. The respondent No. 1 again approached this Court and filed Writ Petition No. 3562 of 1979 challenging the validity of the order dated 10.4.1979 but the said writ petition was also dismissed by this Court on 5.7.1979. Thus, the

orders dated 9.6.1976 and 5.7.1976 passed by the authorities below became final. Instead of challenging the validity of the orders passed by this Court in Writ Petition No. 3562 of 1979 dated 5.7.1979 before the Supreme Court, the respondent No. 1 filed an application under Section 13A of the Act on 24.11.1980 contending that in the meanwhile the village where the land in dispute was situated came under the operation of the U.P. Consolidation of Holdings Act in which plot numbers comprised in his holding were changed and that area of his holding was also reduced. Thus, no land could be taken as surplus out of his holding. The said application was filed along with an application under Section 5 of the Limitation Act. To the aforesaid application, an objection was filed by the petitioner contending that the application filed by the petitioner was legally not maintainable as orders passed by the prescribed authority and the appellate authority as well as the orders passed by this Court in the writ petitions noted above became final and operated as res judicata between the parties. It was also contended that the provisions of Section 13A of the Act had no application to the facts of the case as there was no mistake apparent on the face of the record and that the application was also barred by limitation and delay in filing the same was not liable to be condoned. The application filed by the respondents under Section 13A of the Act was, thus, liable to be dismissed. The prescribed authority, however, disagreeing with the submissions made on behalf of the petitioner, allowed the application under Section 13A by its order dated 31.5.1982 and reviewed its order dated 9.6.1976 which had already become final as stated above. By order dated 31.5.1982 the prescribed authority permitted the respondent No. 1 to file objection under Section 10 (2) by 21.6.1982 for determination of surplus land. According to the petitioner, the order dated 31.5.1982 passed by the prescribed authority was wholly without jurisdiction and was liable to be ignored. The respondent No. 1 on the strength of the order dated 31.5.1982 filed an application on 15.12.1982 praying that fresh notice under Section 10 (2) of the Act should be issued to him and he should be afforded an opportunity to produce evidence again. Against the aforesaid application, an objection was filed by the petitioner contending that the application filed by the respondent No. 1 was legally not maintainable as provisions of Section 13A had no application to the facts of the present case. The prescribed authority, after

hearing the counsel for the parties, passed the order dated 23.2.1983 providing opportunity to the respondent No. 1 to supply the new numbers of the plots and their area which were allotted to him during the consolidation proceedings. The order dated 31.5.1982 was also recalled by the prescribed authority as the prescribed authority had no jurisdiction to pass the order reviewing its earlier order dated 19.6.1976 which became final. Challenging the validity of the order passed by the prescribed authority, the respondent No. 1 again filed an appeal before the appellate authority.

The said appeal was transferred to respondent No. 2. The respondent No. 2 allowed the said appeal by its Judgment and order dated 15.3.1985. Hence, the present petition.

3. This writ petition was admitted on 29.8.1986 and notices were directed to be issued to the respondents, which were issued. This Court, by its order dated 21.5.1988, held the service of notice upon the respondents including the respondent No. 1 as sufficient under Chapter VIII. Rule 12 of the Rules of Court. In spite of service of notice issued by this Court, the respondent No. 1 did not file any counter-affidavit in reply to the facts stated in the writ petition supported by an affidavit. The facts stated in the writ petition, thus, remained un rebutted.

4. Learned standing counsel vehemently urged that the orders passed by the authorities below dated 9.7.1976, 3.5.1976, 10.4.1979 and the orders passed by this Court dated 10.6.1978 and 5.7.1979 have become final and operated as res judicata between the parties. The prescribed authority, therefore, had no jurisdiction to review its order, that too in exercise of powers under Section 13A of the Act which has no application to the facts of the present case. It was urged that ultimately the prescribed authority rightly passed the order dated 23.2.1983 asking respondent No. 1 to supply the new numbers of the plot allotted to him so that the same be treated and taken as surplus land. It was urged that the appellate authority has exceeded its jurisdiction in allowing the appeal filed by respondent No. 1 and passing the order dated 15.3.1985 which was liable to be quashed.

5. I have considered the submissions made by learned standing counsel and also perused the record.

6. As stated above, the facts stated in the writ petition remained unrebutted as no counter-affidavit on behalf of respondent No. 1 was filed. This Court, therefore, has got no option but to treat the said facts as correct and rely upon the same.

7. Section 13A of the Act provides as under :

' 13A. Re-determination of surplus land in certain cases.-(1) The prescribed authority may, at any time, within a period of two years from the date of the notification under Sub-section section (4) of Section 14, rectify any mistake apparent on the face of the record :

Provided that no such rectification which has the effect of increasing the surplus land shall be made, unless the prescribed authority has given notice to the tenure-holder of its intention to do so and has given him a reasonable opportunity of being heard.

(2) The provisions of Sections 10, 11, 12, 12A, 13, 14, 15 and 16 shall mutatis mutandis apply in relation to any proceeding under Sub-section section (1) and for purposes of application of Section 10, the notice under the proviso to Subsection (1), shall be deemed to be a notice under Section 9.'

8. A reading of the aforesaid Section reveals that an application under the aforesaid Section can be filed only for rectification of any mistake apparent on the face of the record. A reference in this regard may be made to a decision in *Chandra v. State*, 1980 All LJ 705 at 706, wherein it was held that Section 13A of the Act could only be invoked if it could be shown that there was any mistake apparent on the face of the record. It was also held that no mistake can be said to be apparent on the face of the record which requires evidence to be tendered for establishing the facts. In another decision in *Rakesh Pratap Singh v. State of U.P.*, 1980 All LJ 1065 at 1066, it was held that a perusal of Section 13A of the Act makes it clear that it does speak of such re-determination at the Instance of the prescribed authority, but jurisdiction has been conferred upon the prescribed authority to correct the mistake apparent on the face of the record within a period of two years from the date of notification under Section 14 (4) of the Act. In the present case, no mistake apparent on the face of the record was at all pointed out

and application under Section 13A of the Act was also filed beyond the period of limitation prescribed in the aforesaid Section. Further, legally Section 13A of the Act does not empower the prescribed authority to re-open the proceedings under Section 10 (2) of the Act, which have become final. Therefore, the application filed by respondent No. 1 under Section 13A was legally not maintainable. The prescribed authority has acted illegally in entertaining the said application and allowing the same. However, the said mistake was corrected by the prescribed authority vide its order dated 23.2.1983. The appellate authority has committed error which is apparent on the face of record in allowing the appeal filed by respondent No. 1 and upsetting the orders passed by the prescribed authority which have become final and were binding upon the parties. The orders impugned in the present petition are, thus, liable to be quashed and the present petition is liable to be allowed.

9. The writ petition succeeds and is hereby allowed. The order dated 15.3.1985 passed by respondent No. 2 and order dated 31.5.1982 passed by the prescribed authority are hereby quashed. No orders as to costs.

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