

Mahabir Vs. 4th Additional District Judge, Fatehpur and ors.

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Court : Allahabad

Decided On : Sep-10-1981

Reported in : AIR1982All8

Judge : M.P. Mehrotra, J.

Acts : [Limitation Act, 1963](#) - Sections 12

Appeal No. : Civil Misc. Writ Petn. No. 10073 of 1980

Appellant : Mahabir

Respondent : 4th Additional District Judge, Fatehpur and ors.

Advocate for Pet/Ap. : C.B. Singh, Adv.

Disposition : Petition allowed

Judgement :

ORDER

M.P. Mehrotra, J.

1. This petition arises out of the proceedings under the U. P. Imposition of Ceiling on Land Holdings Act.

2. The facts, in brief, are these. The petitioner was treated as the tenure holder and the notice under Section 10 (2) was issued to him. He filed objections and

they were decided by the Prescribed Authority by his order dated 30-4-1979. Thereafter, an appeal was filed by the petitioner tenure holder. It seems that the cross-appeal was filed by the State on 18th August, 1980. The petitioner moved an application in the State's appeal claiming that the same was time-barred and that accordingly, it should be dismissed. This application was rejected by the appellate court by its order dated 6-10-1980, a certified copy whereof is Annexure 4 on the record.

3. Feeling aggrieved, the petitioner has now come up to this Court in the instant writ petition and in support thereof. I have heard Sri C. B. Singh, learned counsel for the petitioner. In opposition, the learned Standing Counsel has made his submissions.

4. It has seemed to me that the impugned order cannot be allowed to remain as an effective order inasmuch as it contains findings, which are erroneous in law. It should be seen that from the evidence on the record it is clear that the certified copy was ready on 22-5-1979: What happened to the said copy is a matter of controversy between the parties. The petitioner led evidence to show that the copy was received by the Ceiling Officer, Fatehpur, on 13-6-1979. The witness concerned, Sri Govind Prasad Srivastava, made the statement in the witness-box on the basis of the copy-register maintained in the official course. The appellate court found fault with the said statement on the ground that the witness had not himself prepared the register. It should be seen that it was a public record and, therefore, there was no necessity that it should have been formally proved. The learned lower appellate court observed : 'If some clerk, who received the copy did not forward to the Ceiling Officer then the interest of the State will not be allowed to suffer adversely. From the fact that another copy was got prepared in the month of August, 1980 by In charge, Ceiling, shows that the first copy did not reach the proper place.'

5. In my opinion, the aforesaid statement cannot be treated as laying down good law. It is obvious that the State cannot have a higher right under the law of limitation than the subjects of the land. It is only the time requisite for obtaining the certified copy which can be excluded, under Section 12 of the Limitation Act. From

the material on the record, it is obvious that the State claimed a differential right by directing the copying department to prepare a second copy for its benefit. I do not think that the State can be allowed to exercise such a privilege. As I have stated above, it has come in the evidence that the first copy was ready on 22-5-1979. It should further be seen that while excluding the period under Section 12 of the Limitation Act, what is material is not the date of delivery of the copy to the applicant but the date when the copy is ready. When in the facts of the instant case, there was complete lack of diligence in getting the delivery of the copy, the State could not be allowed to get advantage of such lack of diligence.

6. Accordingly, I allow this petition and quash the order of the appellate court (Annexure 4). The appeal shall be held to be time-barred and dismissed on the said ground. There will be no order as to costs.

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