

Devendra Kumar Vs. Addl. Commissioner (Judl.), Meerut and ors.

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Court : Allahabad

Decided On : Sep-17-2001

Reported in : 2001(4)AWC2871

Judge : S.K. Singh, J.

Acts : Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Sections 5, 5(C), 5(1), 10(2), 29 and 30; Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1973

Appeal No. : C.M.W.P. No. 17653 of 1992

Appellant : Devendra Kumar

Respondent : Addl. Commissioner (Judl.), Meerut and ors.

Advocate for Def. : H.C. Saxena and ;S.C.

Advocate for Pet/Ap. : Ajit Kumar and ;H.N. Sharma, Advs.

Disposition : Writ petition allowed

Judgement :

S. K. Singh, J.

1. By means of this writ petition, the petitioner has prayed for quashing of the judgments as passed by respondent Nos. 1 and 2 dated 29.4.1992 and 29.2.1992

as contained in Annexures-5 and 4 to the writ petition respectively.

2. The proceeding under Section 10 (2) of U. P. Imposition of Ceiling on Land Holdings Act (hereinafter referred to as the Act) was started against the petitioner. By notice under Section 10 (2) of the Act, an area of 2.522-hectare land was proposed to be surplus.

3. The petitioner filed objection mainly on three grounds :

(i) the land of Neeraj Kumar has been illegally clubbed with the holdings of the petitioner. Neeraj Kumar inherited the land from his grandfather Sita Ram, the original tenure holder by means of registered Will dated 13.8.1975 and, therefore, he will be deemed to be exclusive owner of the said land.

(ii) the land belonging to Smt. Rajeshwari Devi should be separated while, determining land as surplus as judicial separation was granted by the judgment dated 29.7.1982.

(iii) there exists grove in 20 bighas for the last 20 years and, therefore, that land cannot be treated to be Irrigated land.

4. The petitioner in support of his case filed original registered Will dated 13.8.1975. Certified copy of judgment and decree dated 29.7.1982 passed in Matrimonial Petition No. 66 of 1981 regarding judicial separation. The relevant khatauni and khasra extracts have also been filed. The prescribed authority by its judgment and order dated 29.2.1992 confirmed the notice and declared an area of 2.522 hectare land as surplus. Against the judgment of prescribed authority, the petitioner filed appeal which too was dismissed by judgment dated 29.4.1992. It is against these two judgments dated 29.4.1992 and 29.2.1992, the petitioner has come up before this Court.

5. The only point which was argued by learned counsel for the petitioner before this Court is that the land in the name of Neeraj Kumar has been wrongly treated as petitioner's holding and, therefore, determination of surplus land by the courts below is erroneous. It was argued by learned counsel for the petitioner that Sita Ram, the grandfather of Neeraj Kumar was not having land in excess to

prescribed limit on 8.6.1973 and, therefore, he has every right to execute the Will which is not covered within the definition of 'transfer' as has been held by the courts below itself. In view of the fact that Sita Ram was not having excess land against the prescribed limit on 8.6.1973. the land as was given by him by means of registered Will to Neeraj Kumar cannot be termed to be a transfer to avoid clutches of the Act and the land which came to Neeraj Kumar cannot be treated to be that of the petitioner. It was next contended that to attract Section 5C of the Act, the land should be held by the tenure holder on 8.6.1973. In the present case, neither Sita Ram was having land in excess of the ceiling limit nor the petitioner received the land or could have received the land from Sita Ram on 8.6.1973 as Sita Ram died in 1989 and as such, presumption of the authorities about the rights of the petitioner over the land received by Neeraj Kumar by means of registered Will being impermissible, the determination of surplus land is uncalled for. In support of this submission, learned counsel for the petitioner places reliance on a decision in *State of U.P. v. Civil Judge, Nainital and Ors.*, 1986 (4) SCC 558. In this decision, it has been laid down that the relevant date for determining the surplus land is 8.6.1973. The same view has been taken in a decision in *Girraj v. State of U.P.*, 1979 ALJ 214. Further reliance has been placed on the decision in *Ahmad Husain v. State of U.P. and Ors.*, 1978 ALJ 248 and *Atibal Singh v. Xth Addl. District Judge, Allahabad and Ors.*, 1978 ALJ 770. It has been held in the aforesaid cases that for adjudicating the validity of a deed, it must be proved first that vendor was the tenure holder, obviously on the relevant date. i.e.. 8.6.1973. Further reliance has been placed by learned counsel on *Rajeev Kumar v. State of U.P. and Ors.*, 1979 (5) ALJ 151 and *Mohammad Abbas v. State of U. P. and Ors.*, 1979 ALR 206. In the aforesaid cases, it has been held that the Will executed by the tenure holder even after the relevant date cannot be ignored. Lastly, it has been submitted that it is not a case in which the petitioner has received any land by any mode as a subsequent acquisition and thus it being not case under Sections 29 and 30 of the Act, which speak that the land must come in the hands of tenure holder, the clubbing of the land held by Neeraj Kumar was totally unjustified. In this connection, learned counsel places reliance on the decision in *Suleman v. State of U. P. and Ors.*, 1990 (3) SCC (Suppl) 707.

6. Learned standing counsel, in response to the aforesaid submission has argued that the Will as was executed by Sita Ram was just a device for getting the land saved from the clutches of the Act. It has been argued that in normal course, the petitioner being son, was to inherit the land of Sita Ram and, therefore, the courts below are fully justified in clubbing the land which stands in the name of Neeraj Kumar and accordingly, the determination of the land as surplus is not illegal in any manner.

7. Section 5 (1) of the Act contemplates that on and from the commencement of U. P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1973. no tenure holder shall be entitled to hold aggregate throughout U. P. any land in excess of ceiling area applicable to him. The date of commencement of the aforesaid Amendment Act is 8.6.1973. In view of Section 5 (1) of the Act, no tenure holder will be entitled to hold land in excess of ceiling area applicable to him on and from 8.6.1973 but before the ceiling could be determined of a person, such person should be tenure holder. It is only in proceedings for determination of ceiling area, of a tenure holder, the question of consideration as to whether a deed executed by him after 24.1.1971 should or should not be Ignored, can arise. Admittedly, Sita Ram was the tenure holder who has executed registered Will in favour of Neeraj Kumar in the year 1975. There appears to be no dispute about the fact that Sita Ram was not having any land in excess of ceiling limit at any stage, either before 8.6.1973 or even thereafter and thus to my mind, he was legally entitled to execute registered Will in respect to the land held by him in favour of any body. NeeraJ Kumar on the death of Sita Ram in the year 1989, received property in his own rights. The present proceedings against the petitioner appears to have been started in 1991. Neither on the relevant date, Sita Ram was having land in excess of ceiling limit nor the petitioner was having land in excess of ceiling limit and otherwise also, he has not acquired any additional land in any manner from Sita Ram, if the petitioner was having the land within permissible limit on 8.6.1973, it not being case under Sections 29 and 30 of the Act, on the basis of any subsequent acquisition in any manner so provided, inclusion of land in the name of Neeraj Kumar which he received by the registered Will from Sita Ram for which, Sita Ram was legally competent to do so, the authorities appear to have committed error. If the tenure holder was not having land in excess of ceiling limit

on the relevant date, i.e.. 8.6.1973, can only be proceeded on contingencies as provided under the Act. The Courts below have given a clear finding that the land is not covered within the definition of 'transfer' but on the premises that the will appears to have been executed for defeating the purpose of the Act and, therefore, it is to be ignored, have included the land in the name of Neeraj Kumar in the holding of the petitioner. In my opinion, in view of the discussions as made aforesaid, as Sita Ram was not the tenure holder, having land in excess of ceiling limit at any stage, he was fully competent to execute the Will in favour of Neeraj Kumar and, therefore, on the death of Sita Ram, the presumption as has been drawn by the Courts below that in normal course, the land might have come to the petitioner and, therefore, that land can be treated that of the petitioner, is not justified. The right of person who is to receive property on the basis of Will comes into existence on the date of death of executor of the Will. Sita Ram had died in 1989. Although the Will was executed on 13.8.1975 in favour of Neeraj Kumar when he was minor but at the time of death on own finding of the courts below, Neeraj Kumar appears to be aged about 30 years. In my opinion; the courts below have not properly appreciated the claim of the petitioner in this respect and have concluded the matter in sketchy manner.

8. In view of the aforesaid discussions, the matter requires reconsideration in the light of the cases referred on behalf of the petitioner and the observations as has been made in this judgment.

9. Accordingly, this writ petition succeeds and is allowed. The impugned judgments dated 29.4.1992 and 29.2.1992 passed by respondent Nos. 1 and 2 respectively as contained in (Annexures-5 and 4 to the writ petition) are hereby quashed. The matter is remanded back to the prescribed authority concerned to redetermine the surplus land, if any, in the hand of the petitioner, in the light of the observations as made in this judgment.

10. Parties are directed to bear their own costs.