

Shiv Ganesh and Vs. State of U.P.,

Shiv Ganesh and Vs. State of U.P.,

SooperKanoon Citation : sooperkanoon.com/491355

Court : Allahabad

Decided On : Sep-02-2005

Reported in : AIR2005All412

Judge : Krishna Murari, J.

Acts : Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act 1974 - Sections 5, 9, 10(2), 13, 13A, 31(2), 31(3) and 31(4); Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1976; Uttar pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 - Sections 19(2); Code of Civil Procedure (CPC) - Order 47, Rule 1; [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Review Application No. 102005 of 2003 in Civil Misc. Writ Petition No. 2505 of 1985

Appellant : Shiv Ganesh and ;ram Krishna Sons of Shri Brij Bhushan and Ashok Kumar Son of Sri Shiv Ram

Respondent : State of U.P., ;iind Additional District Judge and Prescribed Authority

Advocate for Def. : Sanjai Goswami, ;R.C. Gupta and ;Awadesh Singh, Advs. and ;S.C.

Advocate for Pet/Ap. : B. Malik and ;K.K. Bajpai, Advs.

Disposition : Petition dismissed

Judgement :

Krishna Murari, J.

1. Heard Sri B. Malik, learned counsel for the applicants-petitioners, Sri Sanjai Goswami, Learned standing counsel for the State respondents and Sri Awadhesh Singh holding brief of Sri R.C. Gupta appearing for the allottees seeking impleadment.

2. By means of this application the applicants - petitioners have sought a review of the judgment of this court dated 9.4.2002 dismissing the writ petition. The facts in short are that tenure holder Sri Brij Bhushan Lal (father of the petitioner no.1 and 2 and grand father of petitioner no. 3) was issued a notice under Section 10 (2) of the U.P. Imposition of Ceiling on Land Holdings Act (hereinafter referred to as the Act) in the year 1974 proposing to declare an area of 12.90 acres in terms of irrigated land as surplus. The said notice was contested by the tenure holder by filing objection which was registered as case no. 75 of 1974. The Prescribed Authority vide order dated 10.12.1974 confirmed the notice and declared 12.90 acres of land as surplus in the hands of the tenure holder against which the appeal was filed.

3. During the pendency of the appeal the Act was amended by the Act No. 20 of 1976.

4. The amended Section 31(2), (3) and (4) relevant for the purpose of the present case is quoted here under:-

(2) Where an order determining the surplus land in relation to a tenure-holder has been made under the principal Act before January 17, 1975, and the Prescribed Authority is required to re-determine the surplus land under Section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act 1974, then notwithstanding anything contained in sub-section (2) of Section 19 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, every

appeal under section 13 of the Principal Act or other proceedings in relation to such appeal, preferred against the said order, and pending immediately before the tenth day of October 1975, shall be deemed to have abated on the said date.

(3) Where an order determining surplus land in relation to a tenure-holder has been made under the principle Act before the tenth day of October, 1975, the Prescribed Authority (as defined in the principal Act) may, at anytime, within a period of two years from the said date, re-determine the surplus land in accordance with the principal Act as amended by this Act, whether or not any appeal was filed against such order and notwithstanding any appeal (whether pending or decided) against the original order of determination of surplus land.

(4) The provisions of Section-13 of the principal Act shall mutatis mutandis apply to every order re-determining surplus land under sub-section (3) of this section or Section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) act, 1974:

Provided that period of thirty days shall, in the case of an appeal against the order referred to in Section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act 1974, be computed from the date of such order on October, 10, 1975, whichever is later.

Section 5 of the amended Act provides that the provision of 13-A of the principal Act shall mutatis mutandis apply to every re-determination of surplus land under this section or under Section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974.

5. In view of the aforesaid amendment the Prescribed Authority issued a fresh notice and proceedings were drawn afresh for determination of the surplus area and accordingly a fresh case no. 293 of 1976 was registered.

6. The Prescribed Authority vide order dated 31.12.1976 found that the tenure holder was having surplus land to the tune of 12.90 acres which was declared surplus during the earlier proceedings and there is no further surplus land in his possession. Aggrieved by the order dated 31.12.1976 passed by Prescribed

Authority, the State of U.P. filed an appeal no. 320 of 1977 before the District Judge Fatehpur which was dismissed on 2.8.1983 as abated on account of non substitution of the heirs of deceased tenure holder. However, the petitioners had moved a substitution application to substitute them on record as heirs of deceased. Since the appeal of the State was dismissed as abated hence the substitution application also stood rejected.

7. The petitioners filed a Writ Petition No. 8012/83 Shiv Ganesh and Ors. v. State of U.P. and Ors. before this Court which was disposed of vide order dated 2.8.1983 making the following observations.

'...further it should be seen that the petitioners' own stand is that the Prescribed Authority's order passed on 31s' December 1976 in the subsequent ceiling proceedings became final between the parties. In the said order itself it had been declared that the land declared as surplus in the earlier proceedings remain intact and was not disturbed. The notice under Section 10(2) stood discharged only to the extent that no further land beyond 12.90 acres (which had been declared as surplus in the earlier ceiling proceedings) was declared as surplus in the subsequent ceiling proceedings. If the tenure holders had any grievance against the said direction regarding the effect of the earlier ceiling proceedings declared in the said order dated 31.12.1976 then the petitioners should have filed an appeal against the same. This admittedly was not done.'

Subsequently, when the possession of land was being taken from the petitioners they moved an application under Section 13 -A of the Act which was dismissed vide order dated 2.8.1984. The appeal filed against the said order was also dismissed by the appellate authority vide order dated 9.11.1984. The present writ petition was filed by this court challenging the aforesaid two orders. This court vide order dated 9.4.02 while dismissing the writ petition has made following observations.

'In the instant matter, this is not a matter of consideration that whether the earlier notice issued and the proceedings pending on the basis of the earlier notice and the order of the prescribed authority becomes non est in the eye of law as soon as the notice for re- determination of surplus land under Section 13-A has been

issued, or not. A point of consideration before this court was that the notice issued and the order passed by the Prescribed Authority on 31.12.1976 when no appeal was preferred and the order of the prescribed authority holding 12.90 acres of , surplus land which was declared earlier and no more surplus land was held with the petitioners, the application in the year 1983 moved for re-determination of the surplus land under Section 13-A was maintainable or not and whether the prescribed authority as well as the appellate court has rightly rejected the same. As already quoted above the matter came up before this court and this court has observed that the order dated 31.12.1976 passed by the prescribed authority has become final. If the petitioners were aggrieved against the same, they could have filed the appeal but they did not do so. Therefore, the petitioners have to lose 12.90 acres of land. The prescribed authority had mentioned in his order dated 2.8.1984 that the possession of the surplus land has already been taken on 10.9.1982.

Therefore, at this stage, this court cannot interfere with the order passed by it earlier as it does not sit over the same'

8. The applicants are seeking review of the aforesaid order on the ground that in writ petition no. 8012/83 challenge was made to the order dated 8.4.1983 passed in Ceiling appeal no. 320 of 1977 rejecting the substitution application and the matter was not challenged on merits. It has been urged by the learned counsel for the applicants that the only question which was before the court in the said writ petition was whether the substitution application should or should not have been allowed and any observation made by the court in the said proceedings on the merit of the case in the process of judgment making has no legal effect on the rights of the parties or on the merits of the case' and the order passed in the said writ petition has wrongly been made the basis of dismissal of the present writ petition.

9. Before coming to the merits of the contention raised by the learned counsel for the applicants it may be pointed out that the review application has been filed and is being argued by a new counsel who has not filed the writ petition or appeared or argued the case when the judgment under review was passed.

10. The question of propriety of filing the review petition and argument by a new counsel who did not appear in the earlier proceedings has already been considered by the Hon'ble Apex Court in the case of Tamil Nadu Electricity Board v. N. Raju Reddiar : AIR 1997 SC1005 where in was observed as under.

'The record of appeal indicates that Sri Sudarsh Menon was the Advocate on record when appeal was heard and decided on merits. The Review petition has been filed by Sri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the Review Petition as it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would be not in the interest of the profession to permit such practice '.

11. Even on merits the applicants have failed to make out any case for reviewing the judgment. The scope of a review petition has been explained by the Hon'ble Apex Court in several decisions. Reference may be made to the case of Meera Bhanja (Smt.) v. Nirmala Kumar chaudhury (Smt.) reported in : AIR 1995 SC455 wherein it has been observed as follows.

'It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule I CPC. In connection with the limitation of the powers of the Court under Order 47, Rule 1 while dealing with similar jurisdiction available to the High Court while seeking review of the orders under Article 226 of the [Constitution of India](#), this Court, in the case of Aribam Tuleswar Sharma v. Aribam Pishak Sharma, speaking through Chinnappa Reddy, J., has made the following pertinent observations (SCCp. 390, para 3).

'It is true as observed by this Court in Shivdeo Singh v. State of Punjab, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which is inherent in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not

within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; that may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court'

12. Order 47 Rules 1 C.P.C. providing for review reads as under.

1. Application for review of judgment (1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed or

(c) by a decision on a reference from a Court of Small Causes,

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order '.

13. A bare perusal of the aforesaid provision make it clear that review petition can be field on discovery of new important matter or evidence which even after the exercise of due diligence was not within his knowledge or would not be produced at the time when the decree or order was passed on account of some mistake or error apparent on the face of record or for any other sufficient reason.

14. Thus power of review is not to be confused with the power of appeal. The power of review cannot be exercised on the ground that decision is incorrect or

erroneous on merits as the same lies within the ambit of a higher court having an appellate power which is in a position to correct the error committed by the subordinate courts by virtue of power of appeal conferred on the said court by some statute.

15. On the facts there is no dispute that review is not being sought on the ground that discovery of a new matter of evidence or even on account of some mistake or error apparent on the basis of record. The ground for review is that since in writ petition no. 8012/83 the only question to be considered by this court was whether substitution should or should have been allowed and as such any observation made by this court in the said writ petition on merits will have no legal effects and thus could not have formed the basis of dismissal of the present writ petition.

16. I am afraid that the ground for review totally lacks merits, if any observation was made by the court while deciding the earlier writ petition which was beyond the scope or the pleadings it was open to the petitioners to have brought this fact to the knowledge of the court by invoking powers of review to correct the said mistake or to have challenged the said judgment before the higher court. However, the petitioners failed to take any such remedial steps and allowed the said judgment dated 2.8.1983 passed on their own writ petition to become final. Once the said judgment became final between the parties it was not open to this court to have either over looked the same or to have gone outside the binding effect of the said judgment.

17. As a matter of fact the applicants, by means of the present application intends this court to sit in the appeal over the judgment dated 2.8.1983 passed in writ petition no. 8012 of 1983 which is not permissible in law. The writ petition was rightly dismissed by placing reliance on the finding in the earlier judgment which had become final between the parties and has binding effect.

18. Consequently, the review petition lacks merits and stands dismissed.