

State Of U.P vs Civil Judge, Nainital & Ors on 5 November, 1986

Equivalent citations: 1987 AIR 16, 1987 SCR (1) 99, AIR 1987 SUPREME COURT 16, (1986) 2 APLJ 33.1, (1986) JT 774 (SC), 1987 (1) UJ (SC) 33, (1987) 100 MAD LW 111, (1986) REVDEC 424, 1986 (4) SCC 558, (1986) 4 SUPREME 227, (1987) 3 SCJ 32, (1986) ALL WC 1235, (1987) 1 CURCC 183

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, M.M. Dutt

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
CIVIL JUDGE, NAINITAL & ORS.

DATE OF JUDGMENT 05/11/1986

BENCH:
VENKATARAMIAH, E.S. (J)
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VENKATARAMIAH, E.S. (J)
DUTT, M.M. (J)

CITATION:
1987 AIR 16 1987 SCR (1) 99
1986 SCC (4) 558 JT 1986 774
1986 SCALE (2) 714

ACT:

Uttar Pradesh Imposition of Ceilings on Land Holdings Act 1960/ Uttar Pradesh Imposition of Ceiling on Land Holding Rules, 1961: Sections 5, 9 & 10/rule 19-- 'surplus Land '-Determination of--Principle applicable--Is date on which ceiling is imposed by statute.

HEADNOTE:

Section 5 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 provided that on and from the commencement of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, which came into force on 8.6.1973, no tenure-holder would be entitled to hold in the aggregate throughout Uttar Pradesh, any land in excess of the 'ceiling

area', as defined in Sub-s.(2) ors.3 of the Act.

Since Smt. Anna Begum, the tenure-holder was holding in the aggregate land in excess of the ceiling area, she became liable to surrender the surplus land. Pursuant to a general notice issued under s.9 to all tenure-holders, holding land in excess of the ceiling area, she did not file any statement before the Prescribed Authority- After the publication of the general notice but before she could be served with a notice under s.10(2) she died. The Prescribed Authority not knowing of her death issued a notice under s.10(2) calling upon her to show cause why the statement prepared by him under s. 10(1) should not be taken as correct. The father of respondent No. 4, one of the heirs, filed objections which were over-ruled, and it was declared that Smt. Anna Begum was holding 17.37 hectares of land as surplus land.

The District Judge holding that since the tenure-holder was dead by the time the notice under s. 10(2) was issued, the order of the Prescribed Authority passed against a dead person could not be allowed to stand, allowed the appeal, set aside the order of the Prescribed Authority and remanded the case.

Fresh notices under s.10(2) were issued to the heirs. Respondent No. 3 contended that she held only 91.12 bighas of land as her one-fourth share and that 12 acres of land had been transferred through registered sale deed for adequate consideration and in good faith and

100

the land to that extent should be excluded from the holding while determining the surplus land and that the determination of the surplus land should be made on the basis of the share held by each of them as an individual tenure-holder.

The Prescribed Authority held that there was no surplus land that could be claimed from the holding in question since none of the heirs of deceased tenure-holder was in possession of the land in excess of the ceiling area.

The appeal by the State Government against the order of the Prescribed Authority was dismissed by the Civil Judge holding that Smt. Anna Begum could not be treated as a tenure-holder after her death, and that since none of the heirs of Anna Begum was holding the land in excess of the ceiling area they were not liable to surrender any surplus land.

The petition under Article 226 filed by the State Government was dismissed holding that the State Government was not entitled to question the correctness of the orders of the Prescribed Authority and the Civil Judge as the order of remand of the case passed by the District Judge had become final.

Allowing the Appeal,

HELD: 1. The orders passed by the High Court, the Civil Judge and the Prescribed Authority are set aside and the case is remanded to the Prescribed Authority for fresh disposal. [107D]

2. The reason given by the High Court for holding that the contentions urged on behalf of the State Government were barred by the rule of *res judicata* is wholly untenable since the District Judge while remanding the case had not recorded any finding on the merits of the contentions of the parties. He had set aside the order of the Prescribed Authority passed earlier only on the ground that a proceeding which had been commenced against a dead person was a nullity. He, however, remanded the case to the Prescribed Authority for fresh disposal in accordance with law after issuing notices to the heirs of Smt. Amna Begum whom he wrongly described as tenure-holders so far as her estate was concerned. The High Court was, therefore, wrong in dismissing the writ petition on that ground. [104D-105A]

3. Smt. Amna Begum was alive on 8.6.1973 on which date ceiling

101

on the holdings in the State of Uttar Pradesh was imposed by s.5 of the Act. Smt. Amna Begum became liable to surrender the surplus land in excess of what she could retain in accordance with that section. Merely because she had died before the issue of the notice under s.10(2) of the Act the liability to surrender the surplus land would not come to an end. [105C]

4. Rule 19 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Rules, 1961 framed under the Act provides that where a tenure-holder dies before the publication of the general notice under s.9 of the Act, such publication shall be deemed to apply to the executor, administrator or other legal representatives and the Prescribed Authority may proceed to determine the ceiling area applicable to the deceased person as if such executor administrator or other legal representatives were the tenure-holder- It also provides that where a tenure-holder dies before he is served with a notice under sub-s. (2) of s. 10 of the Act, the Prescribed Authority may serve such notice on his executor, administrator or other legal representatives and may proceed to determine the ceiling area applicable to the deceased person as if such executor, administrator or other legal representatives were the tenureholders. [105D-F]

5. The principle applicable to the determination of the surplus land under the land reform laws in the hands of person holding land is the date on which the ceiling is imposed. [105G]

6. 'The surplus land in the case of a person who held land in excess of the ceiling area on the appointed day had to be determined as on the appointed day even though such person might have died before the actual extent of surplus land was determined - ,tad notified. The persons on whom his holding devolved on his death would be liable to surrender the surplus land as on the appointed day because the liability attached to the holding of the deceased would not come to an end on his death. [106E-F]

Raghunath Laxman Wani v.State of Maharashtra, [1971] 3 S.C.C. 391 at page 397 & Bhikoba Shankar Dhumal (dead) by Lrs. and Others v. Mohan Lal Punchand Tathed and Others, [1982] 1 S.C.C680, followed.

7. For the purpose of deciding the surplus land which is liable to be surrendered from and out of the estate of Smt. Arena Begum, the relevant date that might be taken into account is 8.6.1973 on which date the ceiling on holdings was imposed and she became liable to surrender the surplus land. Her heirs or legal representatives together are entitled

102

to retain out of her estate only an extent of land equal to the area which she could have retained in her hands after the imposition of ceiling on land holdings and are liable to surrender the surplus land. [107B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3947 of From the Judgment and Order dated 30.8.1982 of the Allahabad High Court in Civil Misc. Writ Petition No. 5105 of 1982.

Pramod Swarup, R. Singh Rana and Ashok K. Srivastava for the Appellant.

G.N. Dixit, M.K. Dua, Aman Vachher and S.K. Mehta for the Respondents.

The Judgment of the Court was delivered by VENKATARAMIAH, J. Smt. Amna Begum was a resident of Rehpura Village, Tehsil Kichha, District Nainital in the State of Uttar Pradesh. She owned a fairly large extent of agricultural land. On 8.6.1973 the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 came into force. Section 5 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as 'the Act') provided that on and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 no tenure-holder would be entitled to hold in the aggregate throughout Uttar Pradesh, any land in excess of the ceiling area applicable in him or her. The expression 'ceiling area' is defined in sub-section (2) of section 3 of the Act as the area of land not being exempted under the Act, determined as such in accordance with the provisions of section 5 thereof Since Smt. Arena Begum, the tenure-holder, was holding in the aggregate in the State of Uttar Pradesh land in excess of the ceiling area applicable to her, she became liable to surrender the surplus land, i.e., the land held by her in excess of the ceiling area. applicable to her, in favour of the Government under the Act. A general notice was issued under section 9 of the Act to all tenure-holders holding land in excess of the ceiling area for submission of statements in respect thereof. She did not file any statement before the Prescribed Authority as provided by section 9 of the Act. After the publication of the said general notice but before she could be served with a notice under section 10(2) of the Act to submit her statement, Smt. Arena Begum died. The Prescribed Authority who had no knowledge of the death of Smt. Amna Begum, however, issued a notice addressed to her under section 10(2) of the Act calling upon her to show cause within the period specified in the notice why the statement

prepared by him under section 10(1) of the Act should not be taken as correct. The said notice could not, no doubt, be served on her, but one Fazai Ahmad, the father of Shams Ahmad--respondent No. 4, who was one of the heirs of Smt. Amna Begum filed objections before the Prescribed Authority to the notice issued under section 10(2) of the Act. The Prescribed Authority overruled the said objections and declared that Smt. Amna Begum was holding 17.37 hectares of land as surplus land by his order dated November 29, 1975. Aggrieved by that order Fazal Ahmad, since deceased, and Shams Ahmad, son of Fazal Ahmad filed on appeal in Ceiling Appeal No. 541 of 1975 before the District Judge, Nainital. That appeal was allowed on February 14, 1977. The order against which the appeal had been filed was set aside and the case was remanded to the Prescribed Authority to issue fresh notice to the tenure-holders concerned, if necessary. The reason given in the order passed by the District Judge, Nainital for allowing the appeal was that the tenure-holder, Smt. Amna Begum was dead by the time the notice under section 10(2) of the Act was issued and the order of the Prescribed Authority passed against a dead person could not be allowed to stand. The learned District Judge did not record any other finding on the merits of the case. After remand the case was enquired into by the Prescribed Authority. In that proceeding fresh notices under section 10(2) of the Act was issued to the heirs of Smt. Amna Begum. Smt. Sharifan Begum, respondent No. 3, one of the heirs of Smt. Amna Begum appeared before the Prescribed Authority and contended inter alia that she held only 91.12 bighas of land in village Rehpura, as her one-fourth share in the estate of Smt. Amna Begum along with the other heirs of Smt. Amna Begum. She also pleaded that 12 acres of land had been transferred in favour of Daulat Ram and Prem Nath through registered sale-deed for adequate consideration, the transfer was in good faith and, therefore, the said extent of land should be excluded from the holding while determining the surplus land. She further contended that the determination of the surplus land should be made on the basis of the share held by each of the heirs of Smt. Amna Begum treating each of them as an individual tenure-holder entitled to land equal to one ceiling area in the estate of Smt. Amna Begum as she had died prior to the service of the notice. The Prescribed Authority accepted the contentions urged on behalf of the heirs of Smt. Amna Begum and found that there was no surplus land that could be claimed from the holding in question since none of the heirs of Smt. Amna Begum was in possession of the land in excess of the ceiling area. Against the order of the Prescribed Authority, the State Government filed an appeal before the Civil Judge, Nainital in Civil Appeal No. 32 of 1981. The learned Civil Judge dismissed the appeal holding that Smt. Amna Begum could not be treated as a tenure-holder after her death and that after her death each of the heirs of Smt. Amna Begum should be treated as an independent tenure-holder entitled to one unit of ceiling area for purposes of determination of the surplus land. He agreed with the Prescribed Authority that since none of the heirs of Smt. Amna Begum was holding the land in excess of the ceiling area, they were not liable to surrender any surplus land. The learned Civil Judge also held that the contention urged on behalf of the State Government that Smt. Amna Begum who was alive on 8.6.1973 which was the relevant date for determining the surplus land should be treated as the tenure-holder could not be maintained because the said contention was barred by res judicata on account of the decision of the District Judge, Nainital in Ceiling Appeal No. 541 of 1975, under which the case had been remanded earlier to the Prescribed Authority for fresh disposal. The appeal filed by the State Government was, therefore, dismissed. Aggrieved by the decision of the learned Civil Judge, Nainital, the State Government filed a writ petition before the High Court. That writ petition was dismissed by the learned Judge, who heard it by his order dated August 30, 1982. The only reason given by the learned Judge, who heard the writ petition, for dismissing it was that

the State Government was not entitled to question the correctness of the orders of the Prescribed Authority and the Civil Judge as the order of remand of the case passed by the District Judge had become final and the contentions of the State Government were barred by the rule of res judica- ta. This appeal by special leave is filed against the order of the High Court dismissing the writ petition. At the outset it should be stated that the reason given by the High Court for holding that the contentions urged on behalf of the State Government were barred by the rule of res-judicata is wholly untenable since the learned District Judge, who disposed of the appeal on 14.2.1977 had not recorded any finding on the merits of the contentions of the parties. He had set aside the order of the Prescribed Au- thority passed earlier only on the ground that a proceeding which had been commenced against a dead person was a nulli- ty. He, however, remanded the case to the Prescribed Author- ity for fresh disposal in accordance with law after issuing notices to the heirs of Smt. Amna Begum whom he wrongly described as tenure-holders solar as the estate of Smt. Amna Begum was concerned. The High Court was, therefore, wrong in dismissing the writ petition on that ground. As regards the contention urged on behalf of re- spondent Nos. 3 to 5-Smt. Sharifan Begum, Shams Ahmad and Smt. Ahmadi Begum who were the heirs of Smt. Amna Begum, namely, that for purposes of computation of the surplus land in their hands the relevant date that should be taken into consideration is the date on which such computation was made and not the date on which the ceiling was imposed by section 5 of the Act it has to be stated that the orders of the Prescribed Authority and the Civil Judge passed after the order of remand are wholly erroneous.

Smt. Arena Begum was alive on 8.6.1973 on which date the ceiling on the holdings in the State of Uttar Pradesh was imposed by section 5 of the Act. Smt. Amna Begum became liable to surrender the surplus land in her hands in excess of what she could retain in accordance with that section. Merely because she had died before the issue of the notice under section 10(2) of the Act her liability to surrender the surplus land would not come to an end. Rule 19 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Rules, 1961 flamed under the Act provides that where a tenure- holder dies before the publication of the general notice under section 9 of the Act, such publication shall be deemed to apply to the executor, administrator or other legal representatives and the Prescribed Authority may proceed to determine the ceiling area applicable to the deceased person as if such executor, administrator, or other legal represen- tatives were the tenure-holder. It also provides that where a tenure-holder dies before he is served with a notice under sub-section (2) of section 10 of the Act, the Prescribed Authority may serve such notice on his executor, administra- tor or other legal representatives and may proceed to deter- mine the ceiling area applicable to the deceased person as if such executor, administrator, or other legal representa- tives were the tenure-holder.

The principle applicable to the determination of the surplus land under the land reform laws in the hands of persons holding land on the date on which the ceiling is imposed is explained by this Court in Raghunath Laxman Wani v. State of Maharashtra, [1971] 3 S.C.C. 391 at page 397, thus:

"The scheme of the Act seems to be to deter- mine the ceiling area of each person (includ- ing a family) with reference to the appointed day- The policy of the Act appears to be that on and after the appointed day no person in the State should be permitted to hold any land in excess of the ceiling area as determined under the Act and that ceiling area would be that which is determined as on the appointed day.

Therefore, if there is a family consisting of persons exceeding five in number on January 26, 1962, the ceiling area for that family would be the basic ceiling area plus 1/6th thereof per member in excess of the number five. The ceiling area so fixed would not be liable to fluctuations with the subsequent increase or decrease in the number of its members, for, there is, apart from the explicit language of sections 3 and 4, no provision in the Act providing for the redetermination of the ceiling area of a family on variations in the number of its members. The argument that every addition or reduction in the number of the members of a family requires redetermination of the ceiling area of such a family would mean an almost perpetual fixation and re-fixation in the ceiling area by the Revenue authorities, a state of affairs hardly to have been contemplated by the legislature."

The principle enunciated in the above decision has been followed by this Court in *Bhikoba Shankar Dhumal (dead) by Lrs. and Others v. Mohan Lal Punchand Tatbed and Others.*, [1982] 1 S.C.C. 680. In that case it was held that the surplus land in the case of a person who held land in excess of the ceiling area on the appointed day had to be determined as on the appointed day even though such person might have died before the actual extent of surplus land was determined and notified. It was further held that the persons on whom his holding devolved on his death would be liable to surrender the surplus land as on the appointed day because the liability attached to the holding of the deceased would not come to an end on his death.

Although the above decisions are rendered in cases arising under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 the principle set out therein applies to all cases where there is an imposition of ceiling on lands held by land holders by land ceiling laws with effect from a specified date. In fact rule 19 of the Rules framed under the Act which is referred to above also leads to the same view. Whatever surplus land was liable to be surrendered by a tenure-holder has to be determined as on 8.6.1973 and taken possession under the Act even though the tenure-holder might have died after 8.6.1973 and before such ascertainment.

We, therefore, do not agree with the view of the Prescribed Authority and the Civil Judge that for purposes of determining the surplus land the share of land in the hands of each of the heirs of Smt. Amna Begum should be treated as a separate unit for determining the surplus land. We hold that for purposes of deciding the surplus land which is liable to be surrendered from out of the estate of Smt. Amna Begum, the relevant date that should be taken into account is 8.6.1973 on which date the ceiling on holdings was imposed and Smt. Amna Begum became liable to surrender the surplus land in accordance with the provisions of the Act. The heirs or legal representatives of Smt. Amna Begum together are entitled to retain out of the estate of Smt. Amna Begum only an extent of land equal to the area which Smt. Amna Begum could have retained in her hands after the imposition of ceiling on land holdings and are liable to surrender the surplus land. The High Court failed to consider this aspect of the question when it disposed of the writ petition. We, therefore, set aside the orders passed by the High Court, by the Civil Judge on 4.12.1981 and by the Prescribed Authority on 16.1.1981 and remand the case to the Prescribed Authority for fresh disposal in accordance with law and in the light of this judgment. All other questions are left open. This appeal is accordingly allowed will be no order as to costs.

A.P.J.
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Appeal al -