

State of Uttar Pradesh & Anr.

v.

Suresh Chandra Tewari & Ors.

(Civil Appeal No. 14603 of 2024)

17 December 2024

[Sudhanshu Dhulia* and Ahsanuddin Amanullah, JJ.]

Issue for Consideration

Issues arose as regards the declaration of land to be surplus when there was a family settlement regarding the said land, whereby each family member had a separate share duly demarcated and thus could not be clubbed and taken as the holding of only one tenure holder; and whether a fresh litigation could be allowed when the issue attained finality in the first round of litigation.

Headnotes[†]

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 – ss.5, 9 and 10 – Imposition of ceiling – Declaration of land to be surplus – Case of the respondent-son of the main recorded land owner that there has been a family settlement between the parties way back in the year 1967 whereby shares of all the family members have already been determined, thus, cannot be clubbed and taken as the holding of only one tenure holder-respondent's father and as such land cannot be declared as surplus – However, the Prescribed Authority held that family settlement could not be relied, and passed order declaring some part of land as surplus – District judge reduced the surplus land holding that in the view of explanation 1 to s.5(7), since the suit was instituted after the cut-off date 24.01.71, it would be deemed that no partition took place – Upon remand, the land declared surplus by the Prescribed Authority – Said order upheld by the High Court and Special Leave Petition thereagainst dismissed as withdrawn – Orders attaining finality in first round of litigation – However, the respondent moved application before the Prescribed Authority claiming that they were joint holders of land and were not given separate notice, and order of the Prescribed Authority

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be re-called – Prescribed Authority again issued notice to all the respondents – However, the Additional Commissioner held that once the matter had been settled and had attained finality, it should not have been raked up again – Writ petition by the respondent – Allowed by the High Court holding that since after the family partition, separate notice was not given to each of the tenure holder, the entire procedure initiated by the Prescribed Authority vitiated and set aside the order of the Additional Commissioner – Correctness:

Held: Respondent's attempt to re-open the matter is nothing short of abuse of process – Once the entire objection regarding the family settlement rejected not only by all the authorities, but also by the High Court and then by this Court, no occasion for starting a fresh round of litigation which were nothing less than an abuse of the process of law, apart from being barred by Res Judicata – In order of the Additional Commissioner, stringent comment made on the Prescribed Authority, that this decision by the sub-ordinate court also raises question on the integrity of the Prescribed Authority” – Views of the Additional Commissioner that the entire mischief has been done by the Prescribed Authority, who should not have interfered in this matter, is accepted – However, it is too late in the day to issue a notice for an order passed in the year 1985 by the Prescribed Authority, though this is indeed a case where a departmental enquiry should have been instituted against the concerned officer – Order of the High Court set aside – District Magistrate directed to immediately take possession of the surplus land as declared surplus and let the same be distributed to the landless or in accordance with law. [Paras 8-12]

List of Acts

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960; Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950; Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972.

List of Keywords

Declaration of land to be surplus; Family settlement; Separate share of family member duly demarcated; Holding of only one tenure holder; Fresh litigation; First round of litigation; Prescribed Authority; Additional Commissioner; Abuse of the process of law;

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Res Judicata; Land reform; Redistribution of surplus land; Partition before cut-off date; Suit instituted after cut-off date; Deemed not to be partition; No notice to joint holders.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 14603 of 2024

From the Judgment and Order dated 21.02.2022 of the High Court of Judicature at Allahabad, Lucknow Bench in WRITC No. 3000001 of 1995

Appearances for Parties

Tanmaya Agarwal, Wrick Chatterjee, Mrs. Aditi Agarwal, Advs. for the Appellants.

Satpal Singh, Ms. Netasha Thukral, Govinda Chaudhary, V. S. Dubey, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Sudhanshu Dhulia, J.

1. Leave granted.
2. Vide The Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 in the State of Uttar Pradesh the land over and above a certain limit was to be declared surplus and was then to vest with the State. The Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 as well as the earlier Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 were enacted in the State of U.P. immediately after the independence of the Country with this purpose. We must not forget that one of the main commitments of the leaders during the freedom struggle was that the wide disparity and inequality in distribution of land will be changed for the better and abolition of Zamindari and placing a ceiling on land, would be a step towards this goal towards the redistribution of land, based on the principles of equity and justice. Since land was in List II i.e., the State List under the Seventh Schedule of the Constitution of India, these legislations regarding land reforms were to be made

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by the States, and this was done not just in U.P. but throughout the country.

Consequently, different States brought about the legislations in their States, all aimed at land reforms and redistribution of land where one of the principal elements was putting a surplus on the land holding, the declaration of the surplus land and redistribution of this surplus land to those who were landless and marginalised farmers. The Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the 'Act of 1960') and the purpose of its enactment has to be seen in this context.

3. Out of the various provisions in the 1960 Act, Section 9 and Section 10 are important here for our purposes, which are as under :-

"9. General notice to tenure-holders holding land in excess of ceiling area for submission of statement in respect thereof-

— [(1)] As soon as may be, after the date of enforcement of this Act, the Prescribed Authority shall, by general notice, published in the Official Gazette, call upon every tenure-holder holding land in excess of the ceiling area applicable to him on the date of enforcement of this act, to submit to him within 30 days of the date of publication of the notice, a statement in respect of all his holdings in such form and giving such particulars as may be prescribed. The statement shall also indicate the plot or plots for which he claims exemption and also those which he would like to retain as part of the ceiling area applicable to him under the provisions of this Act.]

[(2) As soon as may be after the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, the prescribed authority shall, by like general notice, call upon every tenure-holder holding land in excess of the ceiling area applicable to him on the enforcement of the said Act, to submit to him within 50 days of publication of such notice, a statement referred to in sub-section (1).]

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[Provided that at any time after October 10, 1975, the Prescribed Authority may, by notice, call upon any tenure-holder holding land in excess of the ceiling area applicable to him on the said date, to submit to him within thirty days from the date of service of such notice a statement referred to in sub-section (1) or any information pertaining thereto.]

[(2-A) Every tenure-holder holding land in excess of the ceiling area on January 24, 1971, or at any time thereafter who has not submitted the statement referred to in sub-section (2) and in respect of whom no proceedings under this act is pending on October 10, 1975 shall, within thirty days from the said date furnish to the Prescribed Authority a statement containing particulars of all land -

(a) held by him and the members of his family on January 24, 1971 ;

(b) acquired or disposed of by him or by members of his family between January 24, 1971 and October 10, 1975.]

(3) Where the tenure-holder's wife holds any land which is liable to be aggregated with the land held by the tenure-holder for purposes of determination of the ceiling area, the tenure-holder shall, along with his statement referred to in sub-section (1), also file the consent of his wife to the choice in respect of the plot or plots which they would like to retain as part of the ceiling area applicable to them and where his wife's consent is not so obtained, the prescribed authority shall cause the notice under sub-section (2) of Section 10 to be served on her separately.]

10. Notice to tenure holders failing to submit a statement or submitting an incomplete or incorrect statement -

(1) In every case where a tenure-holder fails to submit a statement or submits an incomplete

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or incorrect statement, required to be submitted under Section 9, the Prescribed Authority shall, after making such enquiry as he may consider necessary either by himself or by any person subordinate to him, cause to be prepared a statement containing such particulars as may be prescribed. The statement shall in particular indicate the land, if any, exempted under 2[Section 6] and the plot --- proposed to be declared as surplus land.

(2) the Prescribed Authority shall thereupon cause to be served upon every such tenure-holder in such manner as may be prescribed, a notice together with a copy of the statement prepared under sub-section (1) calling upon him to show cause within a period specified in the notice, why the statement be not taken as correct. The period specified shall not be less than ten days from the date of service of the notice"

Since the respondents did not submit a statement in terms of Section 9, the Prescribed Authority prepared a statement taking into consideration the entire land of the tenure holder and then a notice was issued under Section 10(2) of the Act of 1960 to the main recorded land owner i.e., Shri Hari Shankar Tiwari on 16.03.1974 by the Prescribed Authority as to why from his large land holding a portion be not declared as surplus. Late Shri Hari Shankar Tiwari (father of the present respondent no.1) filed his objections wherein he stated that there has been a family settlement which was arrived at between the parties way back in the year 1967 and according to this family settlement, shares of all the family members have already been determined. Moreover, this settlement has also been reduced to writing way back in the year 1969 and in the year 1970 one of the sons of Late Shri Hari Shankar Tiwari had also instituted a suit in the Court of Civil Judge, Junior Division in respect of non-agricultural properties, which were also then included in the memorandum of family settlement. The said suit was decreed on 02.11.1970 and on the basis of family settlement and memorandum dated 09.11.1969, the land has been divided and share of each family member is demarcated. A suit was also filed on 30.01.1971 for permanent

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injunction for restraining Late Shri Hari Shankar Tiwari (father of the respondent no.1) from interfering in the agricultural lands on the basis of the family settlement. The suit was decreed on 09.08.1971. In other words, what was projected through family settlement and court cases was that now each family member has a separate share duly demarcated and therefore all of this cannot be clubbed and taken as the holding of only one tenure holder i.e. Hari Shankar Tiwari for the purpose of declaration of surplus land.

The Prescribed Authority, however, after hearing all the objections came to the conclusion that the family settlement cannot be relied upon and passed an order in the year 1974 declaring 37 Bigha 5 Biswa and 17.8 Biswansi on Late Hari Shankar Tiwari (father of the respondent no.1) as surplus under the provisions of the Act of 1960.

4. Against the said order of the year 1974, an appeal was filed by Late Shri Hari Shankar Tiwari before the District Judge Hardoi, which was partly allowed by reducing the surplus land of late Hari Shankar Tiwari to 33 bigha 8 biswa and 14.8 biswansi and the file was sent back to the Prescribed Authority by an order dated 24.09.1975. What weighed in with the District Judge, Hardoi was the fact that even though the land had been partitioned vide a Decree dated 09.08.1971 passed by the Ld. Munsiff, Hardoi, the partition was liable to be ignored and not taken into account for the purposes of imposition of ceiling in view of Explanation I to sub-section 7 of Section 5 of the 1960 Act, which reads as under:

[5. Imposition of ceiling- (1) On and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no tenure-holder shall be entitled to hold in the aggregate, throughout Uttar Pradesh, any land in excess of the ceiling area applicable to him.

.....
.....

(7) In determining the ceiling area applicable to a tenure-holder, any partition of land made after the twenty-fourth day of January, 1971 which but for the partition would have been declared surplus land under this Act shall be ignored and not taken into account:

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Provided that nothing in this sub-section shall apply to

(a) [* * * *]

(b) a partition of a holding made in a suit or a proceeding pending on the said date :

Provided further that notwithstanding anything contained in the preceding proviso, the prescribed authority, if it is of opinion that by collusion between the tenure-holder and any other party to the partition, such other party has been given a share which he was not entitled to, or a larger share than he was entitled to, may ignore such partition.

[Explanation I- If a suit is instituted after the said date for declaration that a partition of land has taken place on or before the said date, then such declaration shall be ignored and not be taken into account, and it shall be deemed that no partition has taken place on or before the said date.]

(emphasis provided)

The institution of the Suit by Late Hari Shankar Tiwari was on 30.01.1971 i.e. after the cut-off date of 24.01.1971. This would mean that in spite of the decree dated 09.08.1971, it is to be deemed that no partition took place at all, in terms of sub-section (7) of Section 5, read with the proviso and the explanation.

Upon remand, again by the order of the Prescribed Authority, the land was declared as surplus. Against the declaration of this surplus land, a writ petition was filed before the High Court of Judicature at Allahabad, which was dismissed by the High Court on 07.08.1978. The High Court reiterated the finding of the District Judge that since the partition suit was instituted after the cut-off date of 24.01.1971, the decree dated 09.08.1971 is liable to be ignored. Against the judgment of the High Court, the father of the respondent no.1 Late Shri Hari Shankar Tiwari preferred a Special Leave Petition before this Court which was subsequently dismissed as withdrawn. In other words, in the first round of litigation the respondents had lost from all courts including this Court (*albeit* by withdrawal of petition), and thus claim based on family settlement, etc. stood rejected, and these orders had attained a finality.

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Late Shri Hari Shankar Tiwari (father of the respondent no.1) in fact gave his option on 23.07.1981 before the Prescribed Authority which was accepted by the Prescribed Authority and 33 Biswa 8 Bigha and 14.8 Biswansi was declared as a surplus area out of plot no.1353.

5. Meanwhile, not satisfied with the dismissal of the case right up to the Apex Court, an innovative ploy was devised, which is nothing short of an abuse of the process and has thus reached now to this Court. The present respondent no.1 (son of Late Hari Shankar Tiwari) moved an application on 23.04.1981 under Section 11 of the Act of 1960 stating that they were joint holders of the land and they were not given any notice by the Prescribed Authority. It was said that the order passed by the Prescribed Authority in 1974 should be recalled, however, this objection of the respondent no.1 was rejected by the Prescribed Authority vide its order dated 14.09.1981. The said order dated 14.09.1981 was challenged by the respondent no.1 in an Appeal which was pending before the IVth Additional District Judge Hardoi and vide order dated 16.11.1981 the IVth Additional District Judge Hardoi accepted the appeal and set aside the order of the Prescribed Authority and remanded the matter back to the Prescribed Authority.
6. Now on this remand, the Prescribed Authority again issued a notice under Section 10(2) of the Act of 1960 to all the respondents and therefore, passed an order dated 23.09.1985 holding that prior to cut off date, entire land shown in the notice belonged to Late Shri Hari Shankar Tiwari which had been partitioned through a private party settlement reduced to writing and through this family settlement the entire joint family, agricultural and non-agricultural land and property was divided by metes and bounds and since then each of the members of the erstwhile joint family have got their share separated, they ought to have been given a separate notice, which has not been given, as each of them were in exclusive possession of the property.
7. Against the above order of the Prescribed Authority, the State filed an Appeal under Section 13 of the Act of 1960 before the District Judge, Hardoi and due to the subsequent amendment in the Act of 1960, the Appeal was transferred to the Court of Additional Commissioner (Judicial), Lucknow Division, Lucknow for decision in Appeal. The Additional Commissioner (Judicial), Lucknow Division,

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Lucknow passed an order on 18.10.1994 holding that once the matter had been settled and had attained finality, it should not have been raked up again. The entire case of the respondents rests on a family settlement which has been disbelieved in the earlier round of litigation. This finding as we know was upheld right up to Supreme Court, or at least till the High Court, as we have seen the petition was withdrawn in the Supreme Court in the first round of litigation. In other words, the matter had attained finality. No benefit ought to have been given of this family settlement and therefore the appeal of the State was allowed. The order of the Prescribed Authority declaring the land to be surplus was upheld. Against this Order, respondent filed a Writ Petition before the High Court which has been allowed vide impugned order dated 21.02.2022 on the ground that after the family partition separate notice ought to have been given to each of the tenure holder and since it has not been given, the entire procedure initiated by the Prescribed Authority are vitiated and the High Court thus has set aside the order dated 18.10.1994 of the Additional Commissioner (Judicial), Lucknow Division, Lucknow.

8. According to us, the learned Single Judge of the High Court has not appreciated either the position of law or the facts in the case as were required. Once the entire objection of Late Shri Hari Shankar Tiwari regarding the family settlement, etc. were rejected not only by all the authorities, but also by the High Court and then ultimately by this Court, where the Special Leave Petition itself was withdrawn, there was absolutely no occasion for starting a fresh round of litigation which were nothing less than a ruse and an abuse of the process of law, apart from being barred by *Res Judicata*.
9. We are not surprised therefore that the order of the Additional Commissioner (Judicial), Lucknow Division, Lucknow in its order dated 18.10.1994 while allowing the appeal of the State had made a stringent comment on the Prescribed Authority, who ought not to have passed an order on 23.09.1985. The Additional Commissioner (Judicial) in his order has said that “this decision by the sub-ordinate court also raises question on the integrity of the learned Prescribed Authority”.
10. In fact, we totally agree with the views of the Additional Commissioner that the entire mischief has been done by the Prescribed Authority in this matter, who should not have interfered in this matter. Now it is

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too late in the day to issue a notice for an order which was passed in the year 1985 by the Prescribed Authority, though this is indeed a case where a departmental enquiry should have been instituted against the concerned officer.

11. Be that as it may, the appeal is allowed and the order of the High Court dated 21.02.2022 is set aside.
12. The District Magistrate, Hardoi is directed to immediately take possession of the surplus land as declared surplus (33 Biswa 8 Bigha and 14.8 Biswansi) and let the same be distributed to the landless or in accordance with law and process which is now to be followed in such cases.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Nidhi Jain