Malkhan Singh and Others

Vs

The State of Uttar Pradesh and Others

Civil Appeal No. 1824 of 1969

(CJI A. N. Ray, M. H. Beg, R. S. Sarkaria, P. N. Shinghal JJ)

10.12.1975

JUDGMENT

SARKARIA, J. -

1. This appeal by special leave is directed against a judgment of an appellate Bench of the High Court of Allahabad dismissing in limine Special Appeal No. 17 of 1968 against an order of a learned Singh Judge.

2. Malkhan Singh, tenure-holder, held 66.11 acres of agricultural land in the revenue estate of Siauri, district Jhansi, U. P. He failed to submit a correct statement in respect of his holdings under the U. P. Imposition of Ceiling of Land Holding Act, 1960 (for short, the Act), within the time mentioned in the notice published under Section 9 of the Act. Consequently, the prescribed authority issued a notice under Section 10(2) of the Act and sent along with it a statement of the area proposed to be declared surplus. In response to this notice, the tenure-holder filed objections. On of his pleas was that there were 14 members in his family including his sons, grandson and granddaughters and all of them were joint in home, hearth and estate, and that consequently there was no surplus area with him. On this point the authority framed this issue :

Are there 14 members in landholder's family, if so its effects ?

3. The authority found that the four sons of Malkhan Singh, namely, Murari Lal, Lakhan Lal, Kishan Lal and Ganeshi Lal, were tenure-holders in their own separate rights, and consequently, in view of the explanation to Section 3(c) of the Act, they could not be deemed as members of Malkhan's family. The authority further held that

their wives and issues would also naturally be considered to be in the family of their husbands and father and would therefore be excluded from objector's family.

After excluding the sons and their wives and sons' sons, the authority held that there were only two members of the family of Malkhan Singh who were alive on January 3, 1961. Accordingly he negatived his objection and declared an area of 25.70 acres as surplus land with him.

4. Against this order, dated June 29, 1963 of the authority the tenure-holder preferred an appeal to the District Judge under Section 133 of the Act. On this issue, the District Judge also held that the four sons of Malkhan Singh were tenure-holders in their own separate rights, and in view of the definition of the term 'family' in the Act, this circumstance was conclusive proof of their separation from the family "even though under Hindu Law such separation may not be recognised in face of

this legal position". Referring to the argument advanced on behalf of the appellant, he said

that the evidence to the effect of proving jointness is of unimpeachable character, has no significance. The said oral or documentary evidence cannot mitigate the effect of the objector's sons having separate holdings in their own rights.

5. Inter alia in these premises, he affirmed the findings of the authority and dismissed Malkhan Singh's appeal with a slight reduction in the area declared surplus.

6. To impugn the orders of the prescribed authority and the District Judge, Malkhan Singh and his three sons filed a petition under Article 226 of the Constitution. They attacked the constitutional validity of the provisions of the Act and the orders on the ground that they were violative of their fundamental rights under Articles 14, 19(1)(f), (g) and 31(2) of the Constitution. It was further alleged that the impugned decision was based on surmises and presumptions which could not arise. It was prayed that a writ of certiorari quashing the impugned orders be issued.

7. The writ petition was dismissed by a learned Single Judge and that decision was affirmed by the appellate Bench of the High Court on May 14, 1968. Hence this appeal.

8. Mr. Dixit, Counsel for the respondents has raised a preliminary objection that this appeal has become infructuous, if not abated, in view of Section 19(1) of the U. P. (Amendment) Act No. 18 of 1973, which came into force during the pendency of this appeal. Mr. Dixit's argument is that the words "any court or authority" in Section 19(1) of the Amendment Act would include this Court also, and similarly the "proceedings" which in terms of this section abate, would cover proceedings under Article 226 of the Constitution also. In any event, it is submitted this appeal has become infructuous because under the Amendment Act, the surplus land will have to be first determined afresh under the principal Act. In this connection, he has cited Ram Adhar Singh v. Ramroop Singh ((1968) 2 SCR 95 : AIR 1968 SC 714).

9. Mr. Pathak's reply to this preliminary objection is that the proceedings under Article 226 are not proceedings for determination of the surplus area under the Act, but independent proceedings under the Constitution. In these premises, it is urged that the words "any court" or "authority" in Section 19(1) do not take in proceedings in appeal under Article 136 before this Court. Counsel has tried to distinguish Ram Adhar Singh's case (supra) on the ground that there, the appeal has arisen out of a suit and not a writ petition under Article 226. In the alternative, it is urged that if the surplus land is first to be determined de novo by the prescribed authority, it should be clarified that the appellants would be entitled to urge and have all the arguments, pleas and objections reconsidered by the authority, which the Counsel is raising now before us.

10. Mr. Pathak's contention is that the prescribed authority and the District Judge, have both proceeded on an erroneous construction of the definition of "family" given in Section 3(c) of the Act, inasmuch as they have excluded even the grandsons and other relations from the 'family' of Malkhan Singh, notwithstanding the fact that they were not "tenure-holders in their own separate right" within the definition. In this connection, Counsel has drawn our attention to the observation of the District Judge that the "unimpeachable evidence" about the jointness of the family in the concept of Hindu Law, was of no significance.

11. Section 3(c) defines "family" as under :

> "Family" means as consisting of the holders of a holding and any or all of his

following relations not being tenure-holders in their own separate right :

(i) wife or husband, as the case may be;

(ii) dependent father and dependent mother;

(iii) son and son's son, as long as they are unseparated from the holder;

(iv) wife or widow of the persons mentioned in sub-section (iii);

(v) daughter and unseparated son's daughter, as long as they are unmarried :

Provided that where a relation falls under the above clause in more than one family, he shall nevertheless be a member of only one family in accordance with his choice, or if he is under any disability, in accordance with the choice of the person legally authorised to do so on his behalf.

Explanation. - For the purpose of this clause, a son or son's son shall be deemed to be separate where land is recorded separately in his name or where his separate share has been declared under a family settlement either registered or acted upon prior to the twentieth day of August, 1959, or by a decree of court passed prior to or in a suit pending on the twentieth day of August, 1959, or where separate land has been assigned to him under Section 12-B of the U. P. Consolidation of Holdings Act, 1953, or the separation of his share has been accepted under the U. P. Large Land Holdings Tax Act, 1957.

12. The point pressed into argument is, that only those relations enumerated in the definition would go out of the "family" of the land-holder who are "tenure holders in their own separate right" and not other members of the joint family who were not such tenure-holders. Since the grandsons of Malkhan Singh who by "unimpeachable evidence" had been shown to be members of the joint Hindu family of the landholder, admittedly were not tenure-holders in their "own separate rights", they could not on a proper construction of the definition of the terms 'family' in Section 3(c), be excluded from the family of the grandfather. In treating the grandsons as members of the families of their fathers, that is, the sons of Malkhan Singh, who were tenure-holders in their own separate right, the authority and the District Judge have offended the fundamental canon of interpretation according to which a legal fiction has to be strictly limited to the purpose indicated by the context and cannot be given a larger effect.

13. Section 19(1) of the Amendment Act of 1972 reads as follows :

(1) All proceedings for the determination of surplus land under Section 9, Section 10, Section 11, Section 12, Section 13 or Section 30 of the principal Act, pending before any Court or authority at the time of the commencement of this Act, shall abate and the prescribed authority shall start the proceedings for determination of the ceiling area under that Act afresh by issue of a notice under sub-section (2) of Section 9 of that Act as inserted by this Act :

Provided that the ceiling area in such cases shall be determined in the following manner -

(a) Firstly, the ceiling area shall be determined in accordance with the principal Act, as it stood before its amendment by this Act;

(b) thereafter, the ceiling area shall be re-determined in accordance with the provisions of the principal Act as amended by this Act.

14. In this connection Section 5 of the Amendment Act may also been seen :

(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.

#(2) * * * *##

(3) Subject to the provisions of sub-section (4), (5) and (6), the ceiling area for purpose of sub-section (1) shall be -

#(a) * * * *##

(b) In case of tenure-holder having a family of more than five members, 7.30 hectares of irrigated land (including land held by other members of the family) besides, each of the members exceeding five and for each of his adult sons who are not themselves tenure-holders or who hold less than two hectares of irrigated land, two additional hectares of irrigated land or such additional land which together with the land held by such adult son aggregates to two hectares, subject to maximum of six hectares of such additional land.

Explanation. - The expression 'adult son' in clauses (a) and (b), includes and adult son who is dead and has left surviving behind him minor sons or minor daughters (other than married daughters) who are not themselves tenure-holders or who hold land less then two hectares of irrigated land.

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15. Section 4 of the Amendment Act, 1972 provides :

Section 9 of the principal Act shall be renumbered as sub-section (1) therefore, and after sub-section (1) as so renumbered the following sub-section shall be inserted, namely :

(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 be 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 30 days of publication of such notice, a statement referred to in sub-section (1).

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16. The first part of sub-section (1) of Section 19 of the Amendment Act is susceptible of two interpretations. First, that all proceedings whatever relating to the determination of surplus land under the principal Act, pending before any court or authority, including the High Court and this Court at the time of commencement of this Act, shall abate. Second, that proceedings for

determination of surplus land under the principal Act pending before the District Judge or the prescribed authority, only, at the time of commencement of this Act shall abate. In this view, the words "any Court" occurring in the first part of sub-section (1) of Section 19 will not include the High Court or this Court exercising jurisdiction under Article 226 of the Constitution.

17. It is not necessary for us to express any final opinion as to which of these two constructions is correct because the scheme and other provisions of the Amendment Act have, in effect, rendered the earlier proceedings infructuous.

18. The latter part of sub-section (1) of Section 19 gives a mandate to the prescribed authority to start proceedings for determination of the ceiling area under the principal Act, afresh, by the issue of a notice under Section 9(1). Sub-section (2) of Section 9 of the principle Act, a modified an inserted by Section 4 of the Amendment Act (extracted above), requires the prescribed authority to call upon every tenure-holder holding land in excess of the ceiling area to submit to him within 30 days of the publication of notice a statement referred to in its sub-section (1).

19. The proviso to sub-section (1) of Section 19 of the Amendment Act does not detract from the requirement of determining over again the surplus land/ceiling area of a landholder in accordance with the provisions of the principal Act. The proviso is in the nature of a procedural provision. It, in terms, prescribed the manner in which determination of ceiling area is to be made. Clauses (a) and (b) of the proviso fix the stages and sequence for such determination. Clause (a) read with the main body of the sub-section which, in terms, refers to Section 9, shows that at the first stage, the ceiling area is to be determined de novo in accordance with the provisions of the principal Act as it stood immediately before the coming into force of the Amendment Act, 1973. It is only after this has been done, that the stage for going over to clause (b) is reached.

20. If this be the correct import of Section 19(1) - as it appears to be - the proceedings for the determination of the surplus land/ceiling area of Malkhan Singh will have to be taken afresh, under the principal Act from the very start after a notice under Section 9 of that Act. This means that all the earlier proceedings for determination of his surplus land before the prescribed authority and the District Judge have become infructuous, rendering, in consequence, the appeal before us, also futile.

21. In view of the position explained above, we do not think it necessary to decide the question raised by Mr. Pathak. We leave the same open, and dismiss this appeal as infructuous. The parties shall pay and bear their own costs.

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