

Mansoor Ali Khan and others

Vs

State of U.P. and others

Civil Appeal No. 728 of 1980

(G. N. Ray, N. M. Kasliwal JJ)

01.11.1991

JUDGEMENT

G.N. RAY, J. :-

1. In this appeal by grant of special leave the appellants, four in number, being sons of late Shri Wadood Ali Khan, have challenged the legality, validity and propriety of redetermination of ceiling on lands of the said Wadood Ali Khan under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (here in after referred to as the Ceiling Act). The relevant facts of the case of the appellants in this appeal are as follows -

- (a) The appellants are four sons and legal representatives of late Shri Wadood Ali Khan who had died on 20-8-1974. It is contended that in addition to the appellants the said Wadood Ali Khan had left the other heirs and legal representatives, namely, three sons - Maskhur Ashud Khan, Mohdud Ali Khan and Mashkooor Ali Khan, widow Smt. Firdaus Begum and daughters Shabana Begum, Farzana Begum and Qaiser Jahan Begum.
- (b) That after the death of Wadood Ali Khan, the Prescribed Authority under the Ceiling Act served a notice under S. 10 of the Ceiling Act proposing to declare lands to the extent of 178-15-19 bighas of irrigated land as surplus. Such notice under S. 10 was served on appellant No. 1 although the notice was addressed to the deceased Wadood Ali Khan.
- (c) Appellant No.1 filed objections before the Prescribed Authority and also participated in the proceedings for determination of ceiling. Such proceeding was decided by the Prescribed Authority by its judgment dated 29th April, 1975, inter alia, partly upholding objections of the appellant and declaring 871-19-19 bighas of irrigated lands as surplus and treating the late Wadood Ali Khan as the tenure holder.
- (d) The appellants filed an appeal before the learned Civil Judge against the aforesaid decision of the Prescribed Authority and it is stated in the appeal petition that such appeal was pending.
- (e) The Ceiling Act was amended from time to time and in 1976 the Ceiling Act was further amended by the U. P. Act No. 20 of 1976. Such Amending Act received the assent of the President on 30th April, 1976 and was published in the U.P. Gazette extraordinary dated 3rd May, 1976. Various changes in different Sections of the

Ceiling Act were introduced by the said U.P. Act, 1976. S. 31(3) of the said U.P. Act 20 of 1976 provides as follows:

31.(3) Where an order determining surplus land in relation to a tenure holder has been made under the principal Act before the tenth day of October, 1975, the Prescribed Authority (as defined in the principal Act) may, at any time within a period of two years from the said date, redetermine 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 or determination of surplus land.

(f) The Prescribed Authority issued a notice to the appellant No. 1 on 8th July, 1976 under S. 10(2) of the Act inter alia holding that 199-1-1 bighas of irrigated lands were proposed to be declared surplus. The appellants filed objections to the proposed action of redetermination of ceiling by raising various objections. The Prescribed Authority thereafter disposed of the proceeding of redetermination of ceiling by order dated 22nd December, 1976 to the effect that 125-38-16 bighas of irrigated lands belonging to the said Wadood Ali Khan were surplus which were owned by Wadood Ali Khan as tenure holder on the appointed day.

(g) The appellants preferred an appeal in the Court of District Judge, Saharanpur, against such order dated 22nd December, 1976, but such appeal was dismissed by the learned Additional District Judge by Judgment and Order dated 16th May, 1977. The appellants thereafter moved a Writ Petition in the Allahabad High Court being Civil Misc. Writ 2955/ 77 which was disposed of by Order dated 29th November, 1976 (sic).

(h) The writ petitions moved by the appellants were disposed of by the Allahabad High Court inter alia to the effect that previous determination of surplus land by the Prescribed Authority did not operate as resjudicata and the appellate authority was justified in ignoring the Sale Deed dated October 27, 1971. The High Court of Allahabad, however, held inter alia that the determination about some plots of lands had not been properly made. Accordingly, the case was remanded to the appellate authority with the direction to the appellate authority to issue notice to the other brothers of the appellants.

2. Mr. Satish Chandra, learned senior counsel appearing for the appellants, has strongly contended at the hearing of this appeal that such redetermination could only be made under the provisions of the Act as amended by U.P. Act No. 20 of 1976 in view of the fact that the initiation of the proceedings for redetermination was made after the said Act 20 of 1976 was enforced. He has also contended that the notice under S. 10(2) was deliberately issued to the appellants by ignoring the other heirs of late Wadood Ali Khan although the concerned Prescribed Authority was aware that the said Wadood Ali Khan had died in 1974. He has also contended that the notice under S. 10(2) was purported to have been issued under the Amending Act of 1975 although the Amending Act of 1976 had come into force, Mr. Satish Chandra has also contended that if the Prescribed Authority had prima facie come to the finding that the lands indicated in the notice under S. 10(2) were surplus lands, it was his bounden duty to serve notices on all the heirs of Wadood All Khan and initiation of any proceeding without such notice to all the heirs was void. In support of this contention, he has relied upon a Full Bench decision of the Allahabad High Court made in the case of Shanthu Kumar v.

State of Uttar Pradesh, 1979 All LR 564: (1979 All LJ 1174). Mr. Satish Chandra has also contended that service of proper notice under S. 9(2) of the Ceiling Act on all the heirs of late Wadood Ali Khan was essential for assuming jurisdiction to redetermine the ceiling lands. Admittedly, when such notice had not been issued to all the co-sharers, no proceeding for redetermination could have been lawfully initiated. Therefore, the adjudication made by the Prescribed Authority and consequential adjudication by the appellate authority and the Allahabad High Court must be held to be illegal, void and without jurisdiction. He has contended that since two years elapsed from the enforcement of the said Act 20 of 1976, no fresh redetermination is permissible in law at present. He has also contended that the purported initiation of the proceedings for redetermination of ceiling on lands and order passed by the Prescribed Authority and the consequential orders passed by the appellate authority and by the High Court of Allahabad on the writ petitions mentioned hereinbefore must be quashed.

3. We are, however, not inclined to accept the contention of Mr. Satish Chandra that the proceeding for redetermination of ceiling land could not have been initiated by the Prescribed Authority until Notice under S. 9(2) was issued by him to all the heirs and he could only assume jurisdiction for initiation of a proceeding for redetermination of ceiling land after serving such notices to all the heirs of late Wadood Ali Khan. S. 31(3) of U.P. Act 20 of 1976, in our view, authorises the Prescribed Authority to redetermine the surplus land in relation to the tenure holder if initiated within two years from October 10, 1975. Admittedly, the previous determination of ceiling was made before tenth of October, 1975. Accordingly, under sub-sec. (3) of 'S. 31 of the said U. P. Act 20 of 1976, the Prescribed Authority had jurisdiction to initiate the said proceeding and such jurisdiction did not depend on issuance of notice under S. 9(2) of the Ceiling Act to the tenure holder and/or the successors-in-interest of the tenure holder. It, however, appears to us that although the Prescribed Authority had jurisdiction to initiate the proceeding for redetermination of surplus land and he had in fact initiated such proceeding within two years as referred to in sub-sec. (3) of S. 31 of U.P. Act 20 of 1976, such determination could not have been made without affording to the heirs and legal representatives of Wadood Ali Khan an opportunity of being heard and showing cause before the Prescribed Authority. Admittedly, Wadood Ali Khan had died in 1974 and the said fact was made known to the Prescribed Authority when the initial determination of surplus lands was made. It is unfortunate that in spite of the said fact, the Prescribed Authority failed and neglected to ascertain the names of all the legal heirs and representatives of Wadood Ali Khan, and did not issue notices to such heirs for redetermination of surplus land. The High Court of Allahabad has directed to issue notice to other brothers of Wadood Ali Khan. The High Court has also remanded the case to the appellate authority so that other brothers get opportunity to appear and make submissions. The High Court has, however, not directed to issue notices to other heirs and legal representatives. Moreover, in our view, without giving other heirs and legal representatives an opportunity of being heard, adjudication of the case on merits by the concerned authorities or by the High Court was not warranted. In the aforesaid facts, we dispose of this appeal by setting aside the order passed by the Prescribed Authority on 22nd December, 1976 and the impugned appellate orders passed by the learned Additional District Judge on 26th May, 1976 and also the impugned decision of Allahabad High Court in Writ Petition No. 2955/77. Mr. Satish Chandra has contended that in view of subsequent changes of the Ceiling Act by the Amending Act 20 of 1976, there is no surplus land liable to be vested in the State of Uttar Pradesh. It is not necessary to express any opinion on such contention of Mr. Satish Chandra in view of the fact that the Prescribed Authority will have to determine the case of surplus land on the basis of existing provisions of the Ceiling Act applicable on the relevant date and the parties will get opportunity to make appropriate submissions on fact and law. The Prescribed Authority is directed to issue notices to all the heirs and legal

representatives of late Wadood Ali Khan including the appellants herein and the other heirs and legal representatives referred to in this judgment. The Prescribed Authority will decide the question of surplus land in accordance with the provisions of the Ceiling Act after issuing such notices to the heirs and legal representatives of late Wadood Ali Khan and giving such heirs and legal representatives a reasonable opportunity of being heard. In order to avoid any difficulty and any attempt to delay the disposal of redetermination of surplus land by the appellants or the other heirs of Wadood Ali Khan, it is directed that if there has been any change in the survivorship of legal representatives of late Wadood Ali Khan or devolution of interest of such heirs by lapse of time, the appellants should inform the prescribed Authority within a month from today the names and other particulars including the addresses of all such heirs and legal representatives of late Wadood Ali Khan so that appropriate notices may be issued by the Prescribed Authority. If the names and particulars of the legal representatives are not furnished within a month from today by the appellants to the Prescribed Authority in terms of this direction, liberty is given to the Prescribed Authority to serve the notices to the appellants and to the other heirs mentioned in this judgment by sending such notices under the care of the appellant No. 1 Mansoor Ali Khan, Village Kailashpur Pargana Haraura, Tehsil and P.O. Saharanpur, U. P., and it will be deemed that he is representing the interest of other heirs and legal representatives. The Prescribed -Authority is directed to, dispose of the proceeding for redetermination of surplus land as early as possible in view of the fact that the matter is pending determination for long. In the facts of the case, there will be no order. as to costs. Appeal allowed.

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