

Devendra Nath Singh (Dead) Through Lrs. and Others

Vs

Civil Judge, Basti and Others

Civil Appeal No. 4173 of 1982

(G. b. Pattanaik, A. P. Mishra JJ)

23.09.1998

ORDER

1. The sole question for consideration in this appeal is whether the prescribed authority in exercise of his powers under Section 13-A of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 can reopen a matter already decided and readjudicate the question whether the two sons of the original landholder, deceased Devendra Nath Singh, namely, Hamendra and Shailendra were major or minor. On a proceeding being initiated, pursuant to notice under Section 10(2) of the Act, the prescribed authority by his order dated 30-1-1975 came to the conclusion that the deceased Devendra Nath Singh had no surplus land in his possession inasmuch as the two major sons, Hamendra and Shailendra were entitled to their share in the property. Shortly thereafter a fresh notice was issued by the said prescribed authority in purported exercise of his power under Section 13-A of the Act, intimating thereunder that some other land has not been taken into account. In the course of the subsequent proceeding which stood initiated, the prescribed authority came to the conclusion that the two sons of the deceased Devendra Nath, namely, Shailendra and Hamendra were not major on the appointed date and, therefore, they would not be entitled to any share while computing the surplus land in the hands of deceased Devendra Nath Singh. The landholder contested the proceeding on several grounds including the grounds that the prescribed authority had no jurisdiction to reopen the question of the majority of the two sons, in exercise of his power under Section 13-A of the Act. The said contention, however, was negatived by the authorities under the Act as well as by the High Court on the ground that Section 38-B clearly indicates that no finding or decision given before the commencement of the said section can be treated as a bar against the principle of res judicata and, therefore, the prescribed authority could annul its earlier decision on the question of majority of the two sons, Hamendra and Shailendra.

2. The learned counsel appearing for the appellants contends that the power under Section 38-B will not enlarge the power of redetermination of surplus land conferred on the prescribed authority under Section 13-A of the Act and, therefore, the prescribed authority did not have the jurisdiction to reopen the question of the majority of the two sons. The learned counsel appearing for the respondent on the other hand contended that the landholder having subjected himself to the jurisdiction of the prescribed authority and having led evidence in the proceeding after the matter was reopened, is not entitled to challenge the jurisdiction of the authority and, therefore, the findings arrived at by those authorities cannot be annulled at this point of time.

3. Having examined the provisions of Section 13-A and Section 38-B of the Act, we are of the considered opinion that under Section 13-A, the prescribed authority has the power to reopen the matter within two years from the date of the notification under sub-section (4) of Section 14 to rectify any apparent mistake which was there on the face of the record. That power will certainly

not include the power to entertain fresh evidence and re-examine the question as to whether the two sons, namely, Hamendra and Shailendra were major or not. The power under Section 38-B merely indicates that if any finding or decision was there by any ancillary forum prior to the commencement of the said section in respect of a matter which is governed by the Ceiling Act then such findings will not operate as res judicata in a proceeding under the Act. That would not cover the case where findings have already reached their finality in the very case under the Act. In this view of the matter, we have no hesitation to come to the conclusion that the prescribed authority had no jurisdiction to reopen the question of the majority of the two sons in purported exercise of the power under Section 13-A. If the authority had no jurisdiction, question of waiver of jurisdiction does not arise, as contended by learned counsel for the respondent.

4. In the aforesaid premises, the impugned orders of the prescribed authority as well as that of the High Court are set aside and it is held that in the computation of ceiling, Hamendra and Shailendra will be treated as two major sons.

5. In the course of hearing, a decision of the Full Bench of the Allahabad High Court was brought to our notice in the case of Ram Charan v. State of U.P. [AIR 1979 All 114 : 1979 All LJ 166]. In that decision, a finding which was arrived at under the provisions of the Consolidation Act was under consideration and, therefore, the Full Bench held that in view of Section 38-B of the Ceiling Act, the said finding will have no binding effect in the ceiling proceeding. The said decision has no application to the facts of the present case.

6. This appeal is allowed. But there will be no order as to costs.