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PREM KUMAR AND ANR.

v.

STATE OF U.P. AND ORS.

MAY 7, 2007

B

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

C

Constitution of India, 1950—Art. 226—Non-impleadment of party—Respondents, without impleading the Appellants, filed writ petition—High Court disposed of the same summarily in a cryptic manner—On facts, held, without impleading Appellants as parties, the impugned order of High Court could not have been passed—Matter remitted to High Court for fresh consideration—Appellants directed to be impleaded as parties in the proceedings—U.P. Imposition of Ceiling on Land Holdings Act, 1960—s.10(2).

D

In the present appeal, the primary contention is that the Respondents, without impleading the Appellants, filed a writ petition and without any detailed discussion, the High Court allowed the same relying on a 1986 order passed by the Prescribed Authority under the U.P. Imposition of Ceiling on Land Holdings Act, 1960, which did not have any effect so far as the Appellants were concerned and related to three other persons.

E

Disposing of the appeal, the Court

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HELD: The High Court disposed of the writ petition summarily and rather in a cryptic manner. There is no reference in its order as to the effect of the order dated 21.3.1986. That being so, without impleading the appellants as parties the impugned order could not have been passed. Therefore, the impugned order of the High Court is set aside and the matter is remitted to it for fresh consideration. The appellants shall be impleaded as parties in the proceedings. [Paras 7 and 10] [103-G-H; 104-F-G]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2392 of 2007.

From the Final Judgment and Order dated 25.02.2003 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 43437 of 2002.

Rakesh Dwivedi and Lakshmi Raman Singh for the Appellants.

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S.R. Singh, Rajeev Dubey, Kamendra Mishra, Nitin Bhardwaj and Mirdula Ray Bharadwaj for the Respondents. A

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court allowing the writ petition filed by the respondents. B

3. Primary stand in this appeal is that the respondents, without impleading the present appellants, filed a writ petition and without any detailed discussion, the learned Single Judge allowed the writ petition relying on an order dated 21.3.1986 passed by the prescribed authority which did not have any effect so far as the present appellants are concerned. C

4. Background facts in a nutshell are as follows: D

5. A notice was issued under Section 10(2) of U.P. Imposition of Ceiling on Land Holdings Act, 1960 (in short the 'Act'). The said notice was issued to Bhairo Prasad, Jagannath Prasad and Ram Prasad and by order dated 13.2.1979 certain lands were declared to be surplus. An appeal was preferred against the said order. The learned District Judge, Allahabad by order dated 3.2.1981 remanded the matter and the prescribed authority was directed to decide the effect of sale deeds executed by Jagannath, Bhairo Prasad, Madho Prasad and Smt. Ganga Devi. The Prescribed Authority decided the matter by an order dated 21.3.1986 and declared about 107 bighas of land of Jagannath, Madho Prasad and Ganga Devi as surplus. There was no challenge to this order. E F

6. The challenge before the High Court was to the order dated 11.12.1995 passed by the Additional Commissioner, Allahabad Division, Allahabad whereby the appeal filed against the orders dated 31.1.1994 and 23.9.1995 was dismissed. G

7. The High Court disposed of the writ petition summarily and rather in a cryptic manner with the following observations:

"Learned counsel for the petitioners submitted that when by the aforesaid order dated 21.3.1986 the Prescribed Authority decided the H

A matter and declared an area of 107 bighas as surplus and this order has become final as no appeal against the same was filed, only an area of 107 bighas could have been taken by the State and, therefore, the impugned orders dated 25.9.2002 and 30.3.2002 are not sustainable.

B The submission made by the learned counsel has got force. The writ petition succeeds and is partly allowed. The impugned orders dated 30.3.2002 and 25.9.2002 passed by the Prescribed Authority and the Additional Commissioner, Allahabad Division, Allahabad respectively are quashed. It is held that the petitioners have got an area of 107 bighas as surplus land, possession of which, if not taken earlier, may be taken by the State within a period of 2 months from the date of filing of certified copy of this order.”

C 8. The appellants who were not parties before the High Court pursuant to the permission granted have filed this appeal. According to them the order dated 21.3.1986 related to Jagannath, Madho Prasad and Ganga Devi and had nothing to do so far as the present appellants are concerned. In fact the Prescribed Authority/Chief Revenue Officer in order dated 31.1.1994 has clearly observed that the dispute did not relate to Ram Prasad and Bhairo Prasad. In the order of the Prescribed Authority/Chief Revenue Officer it was clearly noted in the orders dated 23.9.1995 and 31.1.1994 that the orders did not have any relevance so far as the appellants are concerned.

E 9. Learned counsel for the respondents submitted that in an earlier writ petition i.e. 11749 of 1995 and 13584 of 1996 certain directions had been given which have relevance.

F 10. We find that there is no reference in the impugned order of the High Court as to the effect of the order dated 21.3.1986 on the lands of Bhairo Prasad and Ram Prasad are concerned. That being so, without impleading the appellants as parties the impugned order could not have been passed. We, therefore, set aside the impugned order of the High Court and remit the matter to it for fresh consideration. The present appellants shall be impleaded as parties in the proceedings. They are granted 8 weeks time to file the counter affidavit, if any. The High Court shall, if deemed necessary, grant time to the writ petitioners to file further affidavit. The State of U.P. may also file counter affidavit, if so advised.

G 11. The appeal is disposed of accordingly. There will be no order as to costs.

H B.B.B.

Appeal disposed of.