

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (MS) No. 833 OF 2003

Jaipal and others.

.....Petitioners.

Versus

Additional District Judge/III FTC Haridwar and others.

....Respondents.

Present : Mr. Tapan Singh, Advocate holding brief of Mr. Lok Pal Singh, Advocate for the petitioners.

Mr. Sharad Sharma, Senior Advocate, assisted by Ms. Indu Sharma,
Advocate for respondent no. 3.

Date of Decision : 30.9.2010

Hon'ble Sudhanshu Dhulia, J. (Oral)

1. Heard Mr. Tapan Singh, Advocate for the petitioners and Mr. Sharad Sharma, Senior Advocate assisted by Ms. Indu Sharma, Advocate for respondent no.3.

2. This writ petition has been filed by the petitioner challenging the order dated 13.8.2003 (Annexure – 8 to the writ petition) passed by the Addl. District Judge/III F.T.C. Haridwar.

3. Brief facts of the case are as follows:

A suit was filed by respondent nos. 2 and 3 before the Civil Court, Roorkee being Civil Suit No. 178 of 1990 *Rajpal and another Vs. Jaipal and another*, which was decreed vide order dated 15.3.1993. Consequently, the defendant moved a first Appeal being First Appeal No. 454 of 1993 *Jaipal and another Vs. Rajpal and another*. During the pendency of the first appeal, an application was moved by the defendant/petitioner under Section 5 (2) of U.P. Consolidation of Holdings Act, 1953 (**from hereinafter referred to as the Act**) stating that the land in dispute is the part of the land in dispute which is situated at Village Beld Mushtakam, Pargana and Tehsil Roorkee, District Haridwar, in which consolidation proceedings had started vide notification dated 14.9.1991 and since the notification has already come, in view of Section 5 (2) of the Act, the proceedings before the Court below will now abate. Section 5 (2) of the Act on which reliance was placed by the defendant (present petitioner before this Court) reads as follows:

“[(2) Upon the said publication of the notification under sub-section (2) of Section 4, the following further consequences shall ensue in the area to which the notification relates, namely—

(a) every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any court or authority whether of the first instance of appeal, reference or revision, shall, on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending, stand abated:

Provided that no such order shall be passed without giving to the parties notice by post or in any other manner and after giving them an opportunity of being heard:

Provided further that on the issue of a notification under sub-section (1) of Section 6 in respect of the said area or part thereof, every such order in relation to the land lying in such area or part as the case may be, shall stand vacated;

(b) such abatement shall be without prejudice to the rights of the person affected to agitate the right or interest in dispute in the said suits or proceedings before the appropriate consolidation authorities under an in accordance with the provisions of this Act and the rules made thereunder.]

[Explanation.—For the purposes of sub-section (2), a proceeding under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 or an uncontested proceeding under Sections 134 to 137 of the U.P. Zamindari Abolition and Land Reforms At, 1950, shall not be deemed to be a proceeding in respect of declaration of rights or interest, in any land.]”

4. The application of the defendant, all the same, was rejected by the appellate Court vide its order dated 13.8.2003 on the ground that in the proceedings pending before the Court below, there is no prayer for declaration of right or interest as visualised under Section 5 (2) of the Act, therefore, the matter would not come within the ambit of Section 5, hence the proceedings will not abate. Present petition has been filed by the defendant/petitioner challenging the said order.

5. The contention of the defendant/petitioner is that the injunction has been granted in favour of the plaintiff regarding the trees, which are on the disputed property. He has further stated that the trees are part of the land and therefore it comes come within the definition of “land” and nothing was resolved by the trial Court in this regard. The

definition of “land” has been given in Section 3 (5) of the Act, which read as under:

“(5) ‘Land’ means land held or occupied for purposes connected with agriculture, horticulture and animal husbandry (including pisciculture and poultry farming) and includes—
 (i) the site, being part of a holding, of a house or other similar structure; and
 (ii) trees, wells and other improvements existing on the plots forming the holding];”

6. The above ground of challenge of the defendant/petitioner is absolutely misconceived inasmuch as it is the considered view of this Court that it was not a suit for declaration, but was for an injunction restraining the defendants (present petitioner) from cutting the trees standing on the property in dispute, and moreover, it cannot be said that once notification has been issued under Section 4 of the Act, the plaintiff or the concerned authority would be devoid of any remedy, such as of an injunction, particularly in the light of the fact that in U.P. Consolidation of Holdings Act, 1953 there are no such powers given to the concerned authorities to grant injunction.

7. The respondent has relied upon a decision of the learned Single Judge of the Allahabad High Court in **Kanchan Kumar Chaudhary Vs. District Judge, Mau and others 1999 SCD Page 171**, wherein it was held that proceedings for injunction would not be abated, merely after a notification.

8. For the reasons stated above, this Court finds no merit in the instant writ petition. The instant writ petition is liable to be dismissed and is hereby dismissed.

9. No order as to costs.

10. Interim order dated 2.9.2003 is also vacated.

(Sudhanshu Dhulia, J.)

30.9.2010

Rathour