

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2636/2012

NAVIN TYAGI (D) THR. LRS. & ORS.

APPELLANTS

VERSUS

STATE OF UTTAR PRADESH THR. COLLECTOR & ORS.

RESPONDENTS

O R D E R

This Civil Appeal is directed against the judgment dated 12.11.2010 passed by the High Court of Judicature at Allahabad, dismissing the appellants writ petition in which the question that fell for consideration was whether there was any surplus land in the hands of the appellants in accordance with the provisions of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (in short, the "1960 Act").

2. It seems that Brij Raj Singh had two brothers Dev Raj Singh and Yash Raj Singh. At the time when the 1960 Act came into force, the land holding in their respective hands were found to be within the prescribed limit. Their mother Smt. Anoop Devi died in the year 1977. She was also a tenure holder and upon her death, her land went to her three sons in succession. Upon getting additional land as his share, out of the land owned by his mother Smt. Anoop

Devi, it was claimed that Brij Raj Singh had become a big land owner, in the sense that some of his land holding was then proposed to be declared as surplus under Section 29 of the 1960 Act.

3. It further seems that Smt. Anoop Devi during her life time and some of her co-sharers sold a part of their land vide registered sale deeds dated 10<sup>th</sup> and 25<sup>th</sup> September, 1971. These were claimed to be "*bona fide* transactions" and "in good faith".

4. The Prescribed Authority upon consideration of the entire material, passed an order dated 08.11.1982, whereby objections submitted by Brij Raj Singh against proposal to declare his land as surplus, were partly accepted and only 4 bighas 8 biswas and 4 dhoors (biswansis) were declared surplus in his hands. On appeal, the Additional District Judge set aside the order of the Prescribed Authority and remanded the case for further proceedings. Thereupon, the Prescribed Authority upheld Brij Raj Singh's objections in entirety and no part of his land was declared as surplus.

5. The order of the Prescribed Authority, meanwhile, became appealable before the Commissioner Revenue Division. An appeal was, accordingly, filed by the State. The Commissioner Meerut Division allowed the appeal in part and remanded the case for re-determination.

6. Luck this time did not favour Brij Raj Singh. The Prescribed Authority passed an order dated 28.03.1988

declaring 24 bighas 5 biswas and 5 dhoors of his land as surplus.

7. Meanwhile, Brij Raj Singh, unfortunately, passed away, leaving behind his sons (present appellants), who were all major not only at the time of his demise, but in the year 1971 also, when some sale deeds were executed. The ancillary question, thus, that arose for consideration was whether each of the legal heirs of Brij Raj Singh, being major, would constitute an independent family unit for the purpose of determination of surplus land in their hands. Such an issue was neither examined by the Prescribed Authority in its order dated 28.03.1988 nor the Appellate Authority, namely, the Commissioner Meerut Division did so while dismissing the appellants' appeal vide order dated 15.06.1990.

8. Both these orders then came to be challenged by the appellants before the High Court by way of a writ petition filed in the year 1990 being W.P. No.18263/1990, which has been dismissed vide the impugned order dated 12.11.2010. The petition was dismissed only on the ground that the appellants did not approach the High Court with clean hands; there was a concealment of material facts, namely, the order dated 10.07.1986 declaring land measuring 4 bighas 8 biswas and little more than 4 biswansis as surplus in the hands of their predecessor and that the orders dated 28.02.1984 and 10.07.1986 have attained finality. Therefore, the appellants were not entitled to seek any

relief in exercise of powers under Article 226 of the Constitution of India - they being guilty of making false statement and concealing material facts.

9. The appellants then approached this Court. After notice in the special leave petition, leave was granted. The parties are maintaining *status quo*.

10. In this factual backdrop, we have heard learned senior counsel for the appellants as well as learned State counsel and perused the record.

11. The first and foremost issue that requires determination is whether the appellants are guilty of concealing the orders dated 28.02.1984 and 10.07.1986?

12. We do not think that the appellants can be termed guilty of concealment of facts. We say so for the reason that firstly the order dated 28.02.1984 was subject-matter of challenge before the Commissioner Meerut Division, who set aside the same and remanded the case vide order dated 10.07.1986. The order dated 28.02.1984, thus, being non-existent, there arose no occasion to conceal it. As regard to the order dated 10.07.1986, again it was not a final order determining the rights of the parties. The Commissioner, exercising power of the Appellate Authority, remanded the case to the Prescribed Authority, whereupon the order dated 28.03.1988 was passed. That order was admittedly challenged by the appellants in an appeal, which came to be dismissed on 15.06.1990. Both these orders were

under challenge before the High Court in the writ petition.

13. In our considered opinion, the order dated 10.07.1986 submerged in the orders passed on remand and/or by the same Appellate Authority subsequently. The order dated 10.07.1986, as stated earlier, did not determine the rights finally. It lost its relevance upon passing of the subsequent appellate order dated 15.06.1990. It is difficult, thus, to hold that there was any concealment of material facts. Be that as it may, both the orders dated 28.02.1984 and 10.07.1986 were brought before the High Court and admittedly were part of the judicial record at the time when the High Court dismissed the writ petition with a cryptic order.

14. Having held so, it may be seen from the impugned order of the High Court and is not disputed by learned State counsel also that the High Court has not determined the controversy on merits. The High Court has rather declined to go into the merits on the premise that there was concealment of facts on the part of the appellants. The reasons assigned by the High Court having since been found to be contrary to the record, the necessary consequence would be that, we should request the High Court to decide the appellants writ petition on merits after hearing both the sides.

15. For the reasons aforesaid, the instant appeal is allowed in part; the impugned judgment dated 12.11.2010 is set aside. The Writ Petition (C) No.18263/1990, pending

before the High Court, is revived with a request to the High Court to take up and decide the same on merits after hearing the parties.

16. It is clarified that we have not expressed any opinion on the merits of the case. All the contentions raised by the parties are kept open.

17. The parties shall maintain *status quo* re: possession and creation of third party rights till the matter is decided by the High Court.

18. Ordered accordingly.

.....J.  
(SURYA KANT)

.....J.  
(UJJAL BHUYAN)

New Delhi;  
November 13, 2024

ITEM NO.8

COURT NO.3

SECTION III-A

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s).2636/2012

NAVIN TYAGI (D) THR. LRS. & ORS.

Appellant(s)

VERSUS

STATE OF UTTAR PRADESH THR. COLLECTOR & ORS.

Respondent(s)

Date : 13-11-2024 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SURYA KANT  
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Appellant(s) Mr. S.R. Singh, Sr. Adv.  
Mr. Himanshu Tyagi, AOR  
Mr. Kunal Tyagi, Adv.

For Respondent(s) Mr. Tanmaya Agarwal, AOR  
Mr. Shwetank Sailakwal, Adv.  
Mr. Wrick Chatterjee, Adv.  
Mrs. Aditi Agarwal, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is allowed in part in terms of the signed order.

2. All pending applications, if any, also stand disposed of.

(ARJUN BISHT)  
ASTT. REGISTRAR-cum-PS

(signed order is placed on the file)

(PREETHI T.C.)  
ASSISTANT REGISTRAR