2025 INSC 1005

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10256 OF 2025

MAHESH CHAND (DEAD)
THROUGH LR(S) **... Appellant (s)**

VERSUS

BRIJESH KUMAR & ORS. **... Respondent(s)**

J U D G M E N T

Rajesh Bindal, J.

1. The appellant-landlord has filed the present appeal impugning the judgment of the High Court[1] in Second Appeal No.1623 of 1992[2]. Vide aforesaid judgment, the appeal preferred by the appellant was partially accepted while setting aside the judgment of

[1] High Court of Judicature at Allahabad
[2] Dated 15.02.2024

the First Appellate Court[3]. However, the High Court passed an order under Order VII Rule 10 of CPC[4] directing return of plaint to the appellant for presentation before the Court of competent jurisdiction. The Trial Court[5] had decreed the suit filed by the appellant for possession and recovery of rent. An appeal was preferred by the respondent nos.1 to 3 - tenants. The First Appellate Court had reversed the findings while holding that the Trial Court did not have jurisdiction to entertain the *lis* because the land in question is agricultural.

2. Brief facts of the case as available on record are that a tenancy agreement was entered into between the parties on 31.07.1970, vide which portion of land was taken on rent by the predecessor-in-interest of respondent nos.1 to 3 @ ₹150/- per month. The land was taken for the purpose of setting up of Indian Oil petrol pump by the predecessor-in-interest of respondent nos.1 to 3. It was mentioned in the tenancy agreement that on failure by the tenant to pay rent regularly, the appellant shall have the right to evict him and recover the arrears of rent. The aforesaid tenancy agreement was duly registered on 31.07.1970.

[3] Court of Special Judge & Additional District Judge, Bulandshahr
[4] Hereinafter referred to as the Code of Civil Procedure, 1908
[5] Court of Additional Civil Judge, Bulandshahr

3. As the predecessor-in-interest of respondent nos.1 to 3 failed to pay rent regularly, a suit for eviction was filed by the appellant in the year 1974. In the aforesaid suit, an application was filed by the predecessor-in-interest of respondent nos.1 to 3 contending that the Civil Court lacked jurisdiction. It was claimed that land in question is agricultural. Hence, only the Revenue Court will have jurisdiction to deal with the issue. The aforesaid application was rejected by the Trial Court vide order dated 14.08.1976 as the land in question, since the very beginning, was let out for non-agricultural purpose for setting up of a petrol pump, hence, Civil Court will have jurisdiction. The order was not challenged by the predecessor-in-interest of respondent nos.1 to 3.

4. Finally, after trial, the suit for possession and arrears of rent filed by the appellant, was decreed vide judgment dated 30.11.1981. Aggrieved against the same, both the parties preferred appeals before the First Appellate Court. The First Appellate Court, referring to various provisions of the UPZALR Act[6], opined that the land in question was not declared non-agricultural in terms of Section 143 of the UPZALR Act. Hence, the Civil Court will not have jurisdiction. The judgment and decree of the Trial Court was set aside. In the appeal preferred by

[6] The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950

the appellant, the claim was for increase of mesne profit. However, the same was dismissed.

5. Against the judgment of the First Appellate Court, the appellant preferred second appeal before the High Court. The High Court allowed the appeal in part. The judgment and decree of the First Appellate Court was set aside and substituted by an order, under Order VII Rule 10 of CPC, directing return of the plaint to the appellant for presentation before the appropriate forum. The High Court opined that there being no declaration under Section 143 of the UPZALR Act for the land in question to be non-agricultural, the jurisdiction of the Civil Court is barred.

6. The aforesaid judgment is impugned before this Court.

7. Learned counsel for the appellant submitted that from the very beginning, the land in question was let out to the predecessor-in-interest of respondent nos.1 to 3, way back in the year 1970, for setting up of a petrol pump, which was non-agricultural purpose. Nothing lies in the mouth of the respondent nos.1 to 3 to claim that the land is agricultural, just with a view to defeat the rightful claim of the appellant. He further submitted that initial approval was granted by the competent authority under Section 143 of the UPZALR Act for use of land for non-agricultural purposes on 10.12.1975. However, after

litigation, finally vide order dated 14.03.1986 passed by the Deputy Collector, Khurja, the land was declared non-agricultural. The same attained finality. No doubt, civil suit for eviction was filed prior to aforesaid declaration of the land as non-agricultural. However, the nature of the land having been changed in terms of the provisions of UPZALR Act during the pendency of the proceedings, the suit filed by the appellant could not have been dismissed on account of jurisdiction as appeals are continuation of proceedings and subsequent events also have to be taken note of. The First Appellate Court, while adjudicating the appeal of the respondent nos.1 to 3, failed to take notice of this development.

8. In the case in hand, suit was filed seeking eviction on account of non-payment of rent, which was due from 01.07.1972 onwards. Infact, it was admitted by the respondent nos. 1 to 3 that rent was paid to the appellant only up to 30.06.1972. Thereafter, claim of payment of rent to a third person was of no relevance as that person had no concern with the land in question. Since day one, the respondent nos. 1 to 3 knew that the land had been taken by them on rent for commercial purpose. They had taken all the permissions from different departments for setting up of a petrol pump. Hence, their argument is totally misconceived.

9. On the other hand, learned counsel for the respondent nos. 1 to 3 submitted that the declaration made by the competent authority under Section 143 of UPZALR Act is required to be registered in terms of Section 145 thereof. In the case in hand, there was no registration. Any declaration without registration is merely a paper, which cannot be relied upon to claim that the land was declared as non-agricultural. The declaration had to be on the date of filing of the suit. He further referred to various provisions of UPZALR Act to claim that the tenant will become owner without transferable rights in the facts and circumstances of the case. There is no error in the order passed by the High Court. The appeal deserves to be dismissed.

10. Heard learned counsel for the parties and perused the relevant documents on record.

11. The basic facts that have been noticed above, which are not in dispute, are that a registered tenancy agreement was entered into between the parties on 31.07.1970. From day one, the land of the appellant was taken by the predecessor-in-interest of the respondent nos.1 to 3 for setting up of a petrol pump, which is a commercial and non-agricultural purpose. The suit was filed in the year 1974 seeking possession and arrears of rent. An application filed by the predecessor-in-interest of respondent nos.1 to 3 raising issue of

jurisdiction, was dismissed by the Trial Court vide order dated 14.08.1976. The order was not challenged and the Trial Court decreed the suit. During pendency of the suit, initial approval was given to the appellant under Section 143 of the UPZALR Act vide order dated 10.12.1975. However, after litigation, the issue was finally resolved by order dated 14.03.1986. The aforesaid fact is not in dispute. Meaning thereby, the initial order was passed when the civil suit was pending. However, the finality was attained during the pendency of the appeal before the First Appellate Court. Without even noticing the factum of the land in question being non-agricultural, declared vide order dated 14.03.1986, the First Appellate Court came to the conclusion that the Civil Court will not have jurisdiction to entertain the *lis* and only a Revenue Court is the competent forum. Impugned judgment and decree of the Trial Court was set aside and the suit of the appellant was dismissed.

12. The High Court framed the following substantial questions of law vide order dated 20.02.2020:

> *"1. Whether the provisions of U.P.Z.A.&L.R. Act, 1950 would apply to the (sic) land let out for non agricultural purposes?*
>
> *2. Whether the provisions of U.P.Z.A.&L.R. Act, 1950 would apply to the (sic) agricultural land located in an area that has fallen within the limits of a town area upon extension of boundaries after the date of vesting?*

3. Whether the land situate in an urban area utilized for to (sic) a non agricultural purposes would still be deemed to an agricultural land in the absence of a declaration under Section 143 U.P.Z.A.&L.R. Act?

4. Whether a tenant is estopped from disputing the nature of the land demised after utilizing the same for non agricultural purposes?

5. Whether the provisions of Section 165 U.P.Z.A.&L.R. Act would be attracted either in its amended form or un-amended, to land that has been found to be utilized for non agricultural purposes post letting?"

13. While dealing with question nos.1 to 3 together, the High Court opined that unless there is mandatory declaration under Section 143 of the UPZALR Act, the land will retain its character of being agricultural. Hence, the findings recorded by the First Appellate Court regarding jurisdiction of the Civil Court were upheld. It may be relevant to add here that even the High Court had not noticed the fact that the land in question was declared to be non-agricultural initially vide order dated 10.12.1975, which was finally passed on 14.03.1986. It happened during the pendency of the litigation.

14. The High Court while upholding the judgment and decree of the First Appellate Court on the issue of jurisdiction, was of the opinion that in the circumstances, the plaint of the appellant deserved to be returned, hence, passed an order under Order VII Rule 10 of CPC directing the same.

15. There is no quarrel on the proposition of law that appeal is continuance of proceedings and any developments which may take place during pendency of the appeal or suit, going to the root of the case, can always be taken notice of to avoid multiplicity of litigation. It remained an undisputed fact that finally vide order dated 14.03.1986, the land in question was declared non-agricultural. In the case in hand, from the very beginning, vide registered tenancy agreement, the land was taken by the predecessor-in-interest of the respondent nos.1 to 3 for non-agricultural purposes. This fact also cannot be denied that on the date when the First Appellate Court passed the judgment on 27.07.1992, which was upheld by the High Court on 15.02.2024, the land in question had already been declared as non-agricultural under Section 143 of the UPZALR Act. After return of plaint in terms of judgment of the High Court dated 15.02.2024, the Revenue Court will not have the jurisdiction to entertain the *lis,* as the land has been declared non-agricultural during pendency of the litigation. The Civil Court has the jurisdiction to entertain the suit.

16. The argument raised by the learned counsel for the respondent nos. 1 to 3 is that on the date of filing of the suit, declaration under Section 143 of the UPZALR Act being not available, hence, the suit was not maintainable, is liable to be rejected.

17. His further argument that because of non-registration of the declaration of the section 143 of the Act, it was a waste paper and could not be relied upon, is also of no consequence. Section 145 of the UPZALR Act, on which reliance is sought to be placed, in support of the arguments, does not cast any duty on the land owner to get it registered. As per Section 145 of the UPZALR Act, it is the duty of the Assistant Collector-in-charge of the Sub-Division to forward a copy of the declaration made under Section 143 of the UPZALR Act to the Sub Registrar to do the needful. Such registration is to be made free of cost notwithstanding anything contained in the Indian Registration Act, 1908. Meaning thereby, no duty is cast on the appellant to get the same registered. Apparently, it is merely a procedure. No fee has to be paid as the relevant registration was free of cost. Merely on account of deficiency by the officers, the appellant cannot be deprived of the benefits of the declaration so made.

18. For the reasons mentioned above, in our opinion, there is merit in the present appeal. The same is accordingly allowed. The impugned judgment and decree passed by the High Court is set aside. As the merits of the controversy were not dealt with by the First Appellate Court or the High Court, the case is remitted back to the First Appellate Court to be considered and decided on merits. Litigation

being more than 50 years old, we direct the First Appellate Court to hear and decide the appeal within a period of six months from the date of receipt of the copy of this order.

19. Pending applications, if any, shall also stand disposed of with no order as to costs.

.....J.
(RAJESH BINDAL)

.....J.
(MANMOHAN)

NEW DELHI;
AUGUST 19, 2025.