

(1985) 09 AHC CK 0031
In the Allahabad High Court
Case No : Writ Petition No.3258 of 1979

Abdul Hafiz Khan and Another	Vs	APPELLANT
Distt.Judge, bahraich and others		RESPONDENT

Date of Decision : 18-09-1985

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 11(2), 13A, 14(1)

Citation : (1985) 09 AHC CK 0031

Hon'ble Judges : K.N.Misra, J

Final Decision : Allowed

Judgement

K.N. Misra, J.—This writ petition is directed against the order passed by opposite parties 1 and 2 in proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, for short "the Act".

2. Briefly stated, the facts of the case are that a notice under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, (for short, the Act), was issued to the recorded tenureholder Nazim Ali son of Sri Kasim Khan, resident of Kanjarwa, District Bahraich. This notice was in respect of the land situate in several villages including village Kanjarwa recorded in the name of Sri Nazim Ali. An objection was filed by Sri Nazim Ali against the notice served on him. After taking into consideration the objections raised by Nazim Ali, the Prescribed Authority declared land measuring 25.648 acres to be surplus land. Sri Nazim Ali preferred appeal. The appellate court reduced the land declared as surplus to 16.766 acres. Sri Nazim Ali thereupon filed an application before the Prescribed Authority on 8121976 in which he indicated his choice and mentioned plots situate in village Kanjarwa which he wanted to be declared surplus land to the extent of 16.766 acres. At this stage of the proceedings the petitioners filed an application on 1311977 before the Prescribed Authority asserting that they are the tenureholders of the land situate in village Kanjarwa on the basis of a decree for partition under section 176 of the U.P. Zamindari Abolition & Land Reforms Act, dated 5959 and 30160. Petitioners had, thus, asserted that the land be not

declared as surplus in respect of which choice was indicated by Nazim Ali in his application before the Prescribed Authority. The objection filed by the petitioners was rejected by the Prescribed Authority, vide judgment and order dated 2311978 with the observations that since the objectors have not placed any evidence on record, in opposition to the choice indicated by Sri Nazim Ali and it is also not indicated under which provision the said objection has been filed by the petitioner, and, as such, it deserves to be rejected. The Prescribed Authority with these observations declared land measuring 16.766 acres in irrigated terms as surplus land in the hand of opposite party No.4, who was recorded as tenureholder of the land holding in question situate in several villages. Aggrieved by this order petitioners had preferred appeal which was dismissed by District Judge, Bahraich, vide order dated 3778 holding that the appeal was not maintainable as the appellants were not parties to the proceedings under Section 11(2)(a) of the Act. The land in dispute was recorded in the name of Nazim Ali as tenureholder and during the pendency of the objection filed by Nazim Ali before the Prescribed Authority, the appellants had not filed any objection asserting their claim in respect of the land in dispute. They did not make any application for being impleaded as party in the case nor they had put in appearance in the appeal filed by Nazim Ali. Thus with these observations learned District Judge held that the appeal filed by the petitioners was not maintainable because they could not be said to be aggrieved person within the meaning of Section 13 of the Act.

3. After dismissal of their appeal on the said preliminary ground the petitioners filed objection before the Prescribed Authority on 171078 under Section 13A of the Act for the cancellation of the order dated 2311978 and that they be treated to be tenureholder of the land situate irt village Kanjarwa and it be held that Nazim Ali is not the tenureholder of the same. The petitioners in their objection interalia pleaded that they are tenureholders of the aforesaid land in question and their right, title and interest has been declared in a suit for partition between the parties decided on 591959 and in pursuance thereof final partition decree was also prepared on 30th November, 1960. This objection was opposed oil behalf of the State on the ground that no such objection is maintainable; under Section 13A of the Act. The Prescribed Authority summarily rejected the objection filed by the petitioner under Section 13A, vide order dated 281078 merely on the ground that District Judge had earlier rejected appeal filed by the petitioner against order dated 2311978 vide order dated 3778. Aggrieved by the order dated 281078 passed by the Prescribed Authority, the petitioners preferred appeal under Section 13 of the Act which was dismissed by the District Judge, Bahraich vide order dated 2171979 being not maintainable. Learned District Judge observed that the objector appellants were not aggrieved from any orders passed either under Section 11(2) or under Section 12 of the Act, and, as such, the appeal was not maintainable. It has further been observed that the petitioner could not legally seek review of the order dated 2311978 which was passed in the proceedings against Sri Nazim Ali, by moving review application under

Section 13A of the Act before the Prescribed Authority. These orders have now been challenged in the present writ petition.

4. I have heard learned counsel for the parties and have gone through the impugned orders very carefully.

5. Learned counsel for the petitioner, Sri AR. Khan, Advocate, urged that objection filed by the petitioner under Section 13A of the Act was, as a matter of fact, covered by Section 11(2) of the Act and the same should have been treated to be one under that provision. Learned counsel urged that the Prescribed Authority and also the learned District Judge have acted illegally and with material irregularity in exercise of jurisdiction in rejecting the objection of the petitioner being not maintainable instead of deciding it on merits treating it to be under Section 11(2) of the Act. In reply learned Standing counsel urged that since objection under Section 13A could not be treated to be one under Section 11(2) of the Act as no such prayer was made by the petitioner before the Prescribed Authority, and, as such, the Prescribed Authority has committed no error in rejecting the objection under Section 13A of the Act as not maintainable, which provides for the review of the order passed in a case either suo moto at the instance of the concerned tenureholders against whom the order has been passed. Learned counsel urged that under Section 13A of the Act the alleged claim of title of the petitioner in respect of the land in dispute could not be gone into. Petitioners had not sought the amendment of their objection nor any prayer was made for treating the objection under Section 11(2) of the Act, and, as such, the Prescribed Authority was not obliged to proceed to decide the case on merits treating the objection to be one under Section 11(2) of the Act. Learned Standing counsel has further contended that since the declaration of surplus land has been notified under Section 14(1) of the Act, and, as such, the objection filed by the petitioners claiming right, title and interest in the land in dispute as tenureholder could not be entertained even under Section 11 (2) of the Act The Prescribed Authority, therefore, could not treat the objection filed by the petitioners under Section 13A to be one under Section 11(2) of the Act.

6. I have considered the arguments of the learned counsel for the parties very carefully. I do not find any merit in the contention of the learned Standing Counsel and there appears to be much substance in what has been urged by the learned counsel for the petitioner.

7. So far as the question regarding maintainability of objection under Section 11(2) of the Act after the surplus land had been notified under Section 14(1) of the Act, is concerned, I find that it stands concluded by a Full Bench Decision of this Court in *Baldeo Singh v. State of U. P. and others* (1980 Lucknow Law Journal, 31). According to the majority view expressed in the said decision an objection can be entertained under Section 11(2) of the Act even after the surplus land had been notified under Section 14(1) of the Act. The deletion of subsection (3) of Section 14 of the Act will not affect the tenability of that objection. In this view I do not find any merit in the contention of the learned

Standing Counsel that the petitioners had no right to file objection under Section 11(2) of the Act. Even if the name of the objectors is not recorded over the land in dispute as tenureholder they could file an objection under Section 11(2) of the Act as held by the Full Bench of this Court in *Upper Ganges Sugar Mills Ltd. v. Civil Judge, Bijnor and others* (1969 All LJ 556).

8. In the present case the petitioner had filed an objection on 28th October, 1978 (Annexure 4) asserting that they are the tenureholders of the land which they had received in the aforesaid decree for partition and that the opposite party No.4 Nazim Ali Khan is not the tenureholder of the land situate in village Kanjarwa and his surplus land be determined excluding the land of village Kanjarwa, which belongs to the petitioner. This objection was filed under Section 13A of the Act though in fact it purported to be an objection under Section 11(2) of the Act and deserved to be treated as such for deciding it on merits. It is well settled that wrong mentioning of the section or not mentioning a correct section in the objection filed would not by itself disentitle an objector to appropriate relief which the Prescribed Authority could grant to the objector in accordance with the law. In *Ram Kumar Singh v. State of U.P.* (1985 Lucknow Law Journal, 81), I had an occasion to consider similar question, whether an objection filed under subsection (3) of Section 14 could or could not be treated to be one under Section 11(2) of the Act. It was held in *Ram Kumar Singh's* case (supra) that even without formal application for amendment the Prescribed Authority (Ceiling) should have proceeded to decide the objection treating it to be one under Section 11(2) of the Act because wrong mentioning of section or not mentioning of correct section in the objection not by itself disentitle the objector to the appropriate relief which the Prescribed Authority could grant in accordance with the law.

9. In *Abdul Rahman and others v. The Prescribed Authority and others*, 1979 Allahabad Civil Journal, 10, a similar question arose for consideration before the Division Bench and it was held:

?Although the application made by the petitioners purported to be under Section 13A of the Act it was substantially an objection under Section 11 (2) of the Act.?

The Prescribed Authority in the aforesaid case was, therefore, directed to consider the claim of the petitioners treating the application as an objection under Section 11(2) of the Act.

10. Thus in view of the above I find that the Prescribed Authority had erred in rejecting the objection filed by the petitioner as not maintainable instead of deciding it on merits treating it to be an objection filed under Section 11(2) of the Act. Learned District Judge also fell in the same error. The impugned orders, therefore, cannot be sustained and deserve to be quashed.

11. In the result the writ petition succeeds and is hereby allowed and the impugned order dated 21/7/1979 passed by the District Judge, Bahraich (Annexure 5) and the order dated 28/10/1978 (Annexure 4) passed by the

Prescribed Authority (Ceiling), Bahraich are hereby quashed, and the Prescribed Authority (Ceiling), Bahraich is directed to restore the objection dated 17101978 filed by the petitioners under Section 13A of the Act and treating it to be one under Section 11(2) of the Act decide the same on merits after giving opportunity to the parties to lead evidence in support of their respective cases. No order as to costs.