
(2001) 07 AHC CK 0062
In the Allahabad High Court
Case No : C.M.W.P. No. 2283 of 1984

Abdul Muid Khan

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 13-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 3(13)
Uttar Pradesh Imposition of Ceiling on Land Holdings Rules, 1961 — Rule 5(1)

Citation : (2001) 3 AWC 2227 : (2001) 92 RD 647

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Anil Sharma, for the Appellant;

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—Heard learned counsel for the petitioner, learned standing counsel and also perused the record.

2. By means of this petition filed under Article 226 of the Constitution of India, the petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 23.8.1983 whereby an area measuring 7.06 acres of the petitioner's holding situated at Balrampur, district Gonda was declared as surplus by the prescribed authority at Najibabad. district Bijnor and the order dated 27.10.1983, whereby appeal filed by the petitioner was dismissed by the appellate authority under the provisions of U. P. Imposition of Ceiling on Land Holdings Act, 1960, (for short "the Act).

3. The relevant facts of the case, in brief, are that it was in the year 1976, a notice u/s 10 (2) of the Act was issued to the petitioner by the Prescribed Authority, Najibabad in which the total holding of the petitioner was shown as 27.09 acres in terms of irrigated land. The ceiling limit of the petitioner was shown at 18.03 acres and 7.09 acres of land was proposed to be declared as surplus out of the holdings of the petitioner. On receipt of the said notice,

petitioner filed an application dated 31.5.1983 before the Prescribed Authority challenging the jurisdiction of the prescribed authority to issue the aforesaid notice contending that the land in dispute was situated at Balrampur, district Gonda, therefore, the prescribed authority at Najibabad, district Bijnor had no jurisdiction to issue the said notice. On this application, no orders were passed. The same remained pending, therefore, the petitioner again filed an application on 28.6.1983 before the Prescribed Authority. Najibabad, the respondent No. 3. praying for stay of the proceedings of the case till the decision on the aforesaid application. The prescribed authority, instead of deciding the application filed by the petitioner dated 31.5.1983, proceeded to decide the case ex parte and by judgment and order dated 23.8.1983 declared an area of 7.06 acres land as surplus. Challenging the validity of the said order, the petitioner filed an appeal before the appellate authority. The appellate authority also dismissed the appeal and affirmed the bindings recorded by the prescribed authority by judgment and order dated 27.10.1983. Hence, the present petition.

4. Learned counsel for the petitioner vehemently urged that admittedly, the land in dispute is situated at Balrampur, district Gonda. The petitioner is also a permanent resident of Balrampur, district Gonda. It was in connection with business that he was temporarily staying at Kiratpur, district Bijnor, therefore, there was no justification for the respondent No. 3 to issue the notice u/s 10 (2) of the Act. Reliance is being placed in support of the submissions on the provisions of sub-section 13 of Section 3 of the Act read with Notification No. 1-15 71/Rajaswa-I/-73, dated July 17, 1973, published in U. P. Gazette, dated 21.7.1973.

5. On the other hand, learned standing counsel supported the validity of the impugned orders and submitted that the authorities below have rightly decided the case. Reliance upon the provisions of sub-rule (1) of Rule 5 of the Rules framed under the Act. According to him, the present petition has no force and is liable to be dismissed.

6. I have considered the submissions made by the learned counsel for the parties.

7. The question which arises for consideration and decision by this Court is as to whether the prescribed authority at Najibabad had the jurisdiction to issue a notice u/s 10 (2) of the Act to the petitioner. Admittedly, the land in dispute was situated at Balrampur, district Gonda and the petitioner was a permanent resident of that place. The statutory provisions, notification and Rules, which are relevant for the purposes of the present case, are quoted below :

"3. Definition.--in this Act. unless the context otherwise requires :

.....

(13) "prescribed authority" means such officer not below the rank of an Assistant Collector of the first class as may be empowered by the State Government, by notification in the Gazette, to perform the functions of prescribed authority under

this Act for such area or areas as may be specified in that behalf".

Notification No. 1-1 (5) 71/Rajaswa-I-73 dated July 17, 1973, published in U. P. Gazette, dated 21.7.1973.

"in exercise of the powers under clause (13) of Section 3 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 [U. P. Act 1 of 1961) and in suppression of Government Notification No. U.O. 561/I-A-153-1961, dated May 18, 1961, the Governor is pleased to authorize all Sub-Divisional Officers and Additional Sub-Divisional Officers to perform the functions of the prescribed authority under the aforesaid Act in the areas within their respective parganas."

"Rule 5.-- (1) All proceeding under the Act shall be held before the prescribed authority within Whose jurisdiction the tenure holder ordinarily resides."

8. A joint reading of the aforesaid provisions reveals that the Sub-Divisional Officers of various districts were conferred the power of the prescribed authority under the Act. They were supposed to perform the functions of the prescribed authority under the said Act for such area or areas as may be specified in that behalf. The notification, referred to above, clearly provides that the Sub-Divisional Officers and Additional Sub-Divisional Officers of various places were to act as the prescribed authorities in respect of their territorial jurisdiction. So far as Rule 5 (1) is concerned, it clearly provides that all proceedings under the Act shall be held by the prescribed authority within whose jurisdiction the tenure holder ordinarily resides. Word "ordinarily" is adverb of the word "ordinary", in Black's Law Dictionary, word "ordinary" means regular ; usual ; normal ; common ; often recurring. It appears that enacting the Rule 5 (1) of the Rules framed under the Act, the intention of the Legislature was that the ceiling proceedings should be held before the prescribed authority in whose jurisdiction the tenure holder permanently resides to avoid the difficulties to tenure holders from attending the Courts of prescribed authority. in the present case, admittedly, the land in dispute is situated in Balrampur. district Gonda. Petitioner is a permanent resident of that place. It was in connection with his business that he came to Kiratpur, district Bijnor, therefore. admittedly he is not the resident of Kiratpur, thus, the prescribed authority, the respondent No. 3 had no jurisdiction to issue notice to the petitioner at Najibabad, district Bijnor, in case. If the prescribed authority felt that proceedings were not being taken against the petitioner, he could write to the prescribed authority of Balrampur. district Gonda to take proceedings against the petitioner. Further, before deciding the case on merits, it was obligatory upon the respondent No. 3 to take decision on the application dated 31.5.1983 filed by the petitioner whereby the jurisdiction to issue notice u/s 10 (2) of the Act was challenged. The said application was not decided at all. The authorities below have thus committed errors, which are apparent on the face of the record in misreading and misconstruing the provisions of the Rule 5 (1) and in holding that petitioner though a resident of Balrampur but for the time being was residing at Kiratpur, therefore, they had the jurisdiction to issue notice and to determine the ceiling limit and to declare

- an area measuring 7.06 acres land out of the holding of the petitioner as surplus.
9. In view of what has been stated above, this petition deserves to be allowed. The impugned orders are liable to be quashed.
10. The writ petition is allowed. The impugned order dated 23.8.1983 and 27.10.1983 passed by the authorities below are hereby quashed.
11. The case is remanded to the Prescribed Authority, Balrampur district Gonda for decision afresh after following the procedure prescribed under the law.
12. No order as to costs.