

(1996) 10 AHC CK 0007
In the Allahabad High Court
Case No : C.M.W.P. No. 28928 of 1990

Abdul Rahman and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-10-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 12A, 13, 27, 27(4)

Citation : (1997) RD 160

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : Subodh Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—Though this petition was listed for admission but as the parties have exchanged counter and rejoinder affidavits and as the learned Counsel for the parties have agreed, this petition is being disposed of finally.

2. The brief facts are that aggrieved by the order dated 25.4.90 passed by Respondent No. 2, the Petitioners have filed this petition under Article 226 of the Constitution of India. The Petitioners' contention is that they were landless agricultural labourer and when the land was declared as surplus land in a proceeding under the provisions of U.P. Imposition of Ceiling on Land Holdings Act started against Mohd. Shaft and others, the State after taking possession of the surplus land settled the land with the Petitioners in accordance with law on a lease. The Petitioners on the basis of the lease-deed came in possession and continued in possession. It is further contended that in pursuance of the lease-deed, the names of the Petitioner were recorded in the revenue record and it is admitted in para 7 of the writ petition that some dispute between Respondent Nos. 1 and 3 and the State Government, was going on, but the Petitioners were not aware of such dispute. They only came to know of it when in 1990 some

official of Respondent No. 1 tried to dispossess the Petitioners from the land in dispute. It is further stated that on 25.4.90, some order was passed by the Respondent and Parwana-amal-daramad was issued. It is further stated that prior to 17.9.90, the Petitioners were not aware of the order dated 25.4.90 passed by Respondent No. 2. Grievance of the Petitioners is that as the Petitioners were allottees in possession of the property on the basis of a valid allotment order and a deed was executed in their favour by the State, Respondent No. 2 has no jurisdiction to pass such order without giving any notice to the Petitioners as the order amounts to cancellation of the lease granted to the Petitioners in respect of the land in question. The Petitioners have attacked the aforesaid order on number of grounds, but the main ground of attack is that the Petitioners should have been given opportunity of hearing before passing the impugned order.

3. A counter-affidavit has been filed on behalf of private Respondent Mohd. Shaft. He has denied all the allegations contained in the writ petition on the ground that no doubt initially certain land was declared as surplus land but an appeal was filed by the tenure-holders before the appellate authority. That appeal was dismissed. The tenure-holder aggrieved by the order of the appellate authority filed writ petition No. 4820 of 1983. That writ petition was allowed in part on 9.10.84 and the matter was sent back to the appellate authority to redetermine the surplus land, if any, with the tenure-holder in accordance with law in the light of the observation contained in the body of the judgment and the tenure-holder was given liberty to give a choice as permissible under the law. It is stated that when the matter went back before the appellate authority, the appellate authority reduced the surplus land by 1.77 acres in village Manawala. Then an application u/s 12A of the Act was moved by Respondent No. 3 on 23.6.89 to the Prescribed Authority (Ceiling) praying that instead of plot No. 253 of village Nagila Narain, the Petitioner should be given plot Nos. 255M and 200M (1.77 acre) of village Nagila Narain. The deponent has annexed a certified copy of this application as Annexure-2 to the counter-affidavit. It is stated that a report was asked from Naib Tahsildar who recommended that the choice of opposite party No. 3 be accepted. The report was accepted by the impugned order dated 25.4.90. The contention of the Respondent is that since it was not a proceeding for cancellation of the lease granted to the Petitioners as provided u/s 27(4) of the Act, therefore, there is no question of any opportunity of hearing for the Petitioners and they are not necessary party in a matter of choice which is provided u/s 12A of the Act and as the choice was given to the tenure-holder whose land has been declared surplus, therefore, this adjustment was between the state and the tenure-holder and the allottee has no right or interest in this adjustment.

4. A counter-affidavit has been filed on behalf of the State also on technical ground that the order u/s 12A of the Act is appealable u/s 13.

5. Heard learned Counsel for the parties at length. Learned Counsel for the

Petitioners Sri. Subodh Kumar has vehemently urged that since the Petitioners were granted lease in respect of the land which was declared surplus land by the prescribed authority, lease deed was executed in favour of the allottees, names have been mutated in the revenue paper, they came in possession and continued in possession, then Respondent No. 2 had no jurisdiction to allow the application for choice without hearing the Petitioners as that would amount to cancellation of the lease of the particular plot which has been given in choice by the tenure-holder. His further contention was that even if the order which was subsequently set aside in appeal on the basis of which they were granted patta, but the Petitioners continued in possession, in equity they have a right of hearing and they should be impleaded as party to the proceeding before Respondent No. 2. In reply, it has been urged by learned Counsel for the Respondent Sri. K.M. Sinha that it was not a proceeding u/s 27 of the Act before the Commissioner which lays down that before cancelling the lease, opportunity of hearing must be given to the leasee, but it was proceeding of choice given to the tenure-holder in view of direction given by the High Court in a writ petition and it was a right of the tenure-holder u/s 12A whether the Petitioners who were allottees were party or not is not a point for consideration. His contention is that the impugned order is not, vitiated in law. In my view, the argument of Sri K.M. Sinha has much force. A bare perusal of the order of the High Court passed in the writ petition would show that after setting aside the order passed by the appellate authority, the matter was sent to the Prescribed Authority to re-determine the ceiling area and the tenure-holder was given liberty to give choice in respect of the land as to which land he wants to retain or which he wants to part with. The Prescribed authority is only a competent authority to deal with the matter and if an area was subsequently reduced by the prescribed authority which was on earlier occasion and no appeal was filed against that judgment by the State, then Respondent No. 2 has committed no error in law in allowing the application of the tenure-holder for giving choice. Therefore, this choice subject was not a dispute between the Petitioners and the tenure-holder, rather it was only an adjustment between the tenure-holder and the State which wanted to take the land of the Petitioner. Therefore, the Petitioners have no right to interfere in the matter of choice and they were not a necessary party in a proceeding of choice. In other way also, their lease has not been cancelled by the order of Respondent No. 2, rather an area was declared surplus and the State has taken possession which was given to the Petitioners, but subsequently the order was modified, changed or cancelled, then the Petitioners have no right to continue. The State is entitled to acquire that much area which was declared to be surplus land keeping in view the choice of the tenure-holder given by him u/s 12A of the Act.

6. The learned Standing Counsel has urged that this petition is not maintainable as the order u/s 12A is also a subject-matter of appeal. As the petition is being disposed of on merit, the question whether any appeal was filed by the Petitioners or not is of little significance.

7. In the result, the writ petition is dismissed, but there is no order as to costs.