
(1978) 07 AHC CK 0036

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 253 of 1978

Abid Ali Khan and others

APPELLANT

Vs

Fifth Addl.District Judge and others

RESPONDENT

Date of Decision : 11-07-1978

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Clause 3(a),
Explanation 1, 4A

Citation : (1978) 07 AHC CK 0036

Hon'ble Judges : M.P.Mehrotra, J

Final Decision : Partly Allowed

Judgement

M. P. Mehrotra, J.

This petition arises out of the proceedings under the U. P. Imposition of Ceiling on Land Holdings Act. The brief facts are these. The usual notice under section 10 (2) of the said Act was issued to the petitioner and he filed his objections. The Prescribed Authority rejected the said objections and thereafter the matter went to the lower appellate court. The lower appellate court partly allowed the appeal. The petitioner has now come up in the instant petition and the only point involved is whether chak no. 32 should have been treated as irrigated land or unirrigated land. The authorities below held the said land to be irrigated. The petitioner, however, contends that the said finding is completely illegal and without jurisdiction and, in my opinion, the said contention is correct. Section 4A of the Act, prescribes the manner of determining land as irrigated land. The State has relied on the third clause for contending that the land was rightly treated as irrigated. This clause lays down:

"(a) that any land situated within the effective command area of a lift irrigation cannal or a State tubewell or a private irrigation work;

(b) that the class and composition of the soil is such that it is capable of creating at least two crops in an agricultural years; then the Prescribed Authority shall determine such land to be irrigated land for the purposes of the Act."

However, it is material to point out that Explanation 1 has defined "effective command area" as such area, "the farthest field whereof in any direction was irrigated:

(a) in any of the years 1378, 1379 and 1380 Fasli; or

(b) in any agricultural year referred to in the clause's secondly."

Applying the said test, it seems to me that the authorities below have completely failed to consider the matter in the proper legal prospective. While deciding issue no. 2 which was the relevant issue regarding this controversy, the Prescribed Authority observed that if any land fell within the effective command area then it was not necessary that such land should have been actually irrigated. This observation is wholly erroneous. The requirement laid down in Explanation 1 will clearly show that even though the disputed plot might not have been, in fact, irrigated, still, it had to be established that the farthest field in the effective command area was irrigated in any of the years 1378, 1379 and 1380 Fasli. No such finding has been given in the orders of the authorities below which would show that the requirement in the first Explanation was kept in view by the said authorities. A clear definite finding has to be recorded in the light of the first Explanation of section 4A. The three Fasli years which are mentioned in clause (a) of the Explanation have to be taken into consideration.

I, therefore, allow the writ petition and quash the orders of the Prescribed Authority dated 2511977, a true copy whereof is annexure 1 to the petition, and 28101977 of the lower appellate Court, a true copy whereof is annexure 2 to the petition. The case is remanded to the Prescribed Authority for a fresh determination of the controversy about chak no. 32 being irrigated or unirrigated in the light of the requirements laid down in section 4A keeping in view the observations made above. I wish to make it clear that the Prescribed Authority shall not reopen any other controversy in the case inasmuch as the order of the lower appellate court shall be treated as final in respect of all other controversies except the one In respect of chak no. 32 which is being sent back to the Prescribed Authority for a fresh determination. In the circumstances, there shall be no order as to costs.