

(1968) 05 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3334 of 1963

Ahibaran Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 23-05-1968

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 3, 4

Citation : AIR 1969 All 399

Hon'ble Judges : R.S. Pathak, J

Bench : Single Bench

Advocate : V.K.S. Chaudhary, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, J.—The petitioner is a tenure-holder in a number of villages of Tehsil Kannauj, in the district of Farrukhabad. In proceedings under the U. P. Imposition of Ceiling on Land Holdings Act, 1960, for the determination of surplus land a notice u/s 10 was served upon the petitioner enclosing a statement which inter alia, specified the plots proposed to be declared as surplus land. The family of the petitioner was shown as consisting of two persons, only, namely the petitioner and his wife. The petitioner filed an objection claiming that his family consisted of sixteen members living as members of a joint Hindu family. They included himself, his wife, four sons, four daughters-in-law, three sons* sons and three unmarried sons' daughters. The petitioner admitted that however, a number of plots consisted of ancestral tenancy land which upon a family settlement had been given to the petitioner's sons. The names of the three sons were entered separately over the land as tenure-holders under the said family settlement.

2. The prescribed Authority, by its order of March 13, 1962, rejected the objection and held that the petitioner's family consisted of himself and his wife only and determined the surplus land accordingly.

3. An appeal filed by the petitioner was partly allowed by the learned Additional Civil Judge, Farrukhabad. He held that while the petitioner's son's sons were entitled to be treated as members of the petitioner's family his sons' wives and sons' daughters could not be treated as such members. Holding that the petitioner's family consisted of five persons, and that, therefore, they were entitled to forty acres of Fair Quality Land only, which had already been allowed to the petitioner, the learned Additional Civil Judge dismissed the appeal. The petitioner prays for certiorari against that order.

4. The U. P. Imposition of Ceiling on Land Holdings Act, 1960 provides for the acquisition of surplus land. The surplus land is determined on certain principles laid down under the Act and in accordance with the procedure prescribed by the Act. "Surplus land" has been defined in section 3 (k) as land held by a tenure-holder in excess of the ceiling area applicable to him. Ceiling area is defined by Section 3 (a) as meaning the area of land, not being land exempted under the Act, determined as such in accordance with the provisions of Section 4. Section 4 provides:

"4 (1) Subject to the provisions of this Act, the ceiling area applicable to a tenure-holder shall be calculated after taking into account all the land in any holding in the State held by him, in his own right, whether in Ms own name or ostensibly in the name of any other person.

(2) (a) The ceiling area of a tenure-holder shall be forty acres of Fair Quality Land.

(b) Where the tenure-holder has, or consists of, a family having more than five members the ceiling area of such tenure-holder shall be the area mentioned in Clause (a) together with eight acres of Fair Quality Land for every additional member of the family, subject to a maximum of twenty-four such acres:

Provided that, if at any time the family comes to consist of not more than five members, all land held by the tenure-holder in excess of the ceiling area under Clause (a) shall become liable to be treated as surplus land".

It Is clear that the ceiling area of a tenure-holder is forty acres of fair Quality Land but if the tenure-holder has or consists of a family having more than five members the ceiling area is greater. The petitioner says that the ceiling area In his case should be more than forty acres because his family consists not merely of himself, his wife and his three sons' sons but also his sons' wives and sons' daughters. After careful consideration, I am of opinion that the claim of the petitioner is without substance.

5. A "family", for the purposes of the Act, is defined by Section 3 (c) as:

"consisting of the holder of a holding and any or all of his following relations, not being tenure-holders in their own separate right:

(i) wife or husband, as the case may be,

- (ii) dependent father and dependent mother;
- (iii) son and son's son, as long as they are unseparated from the holder;
- (iv) wife or widow of the person mentioned in Sub-clause (iii);
- (v) daughter and unseparated son's daughter, as long as they are unmarried;

Provided that where a relation falls under the above clause in more than one family, he shall nevertheless be a member of only one family in accordance with his choice or if he is under any disability in accordance with the choice of the person legally authorised to do so on his behalf.

Explanation:-- For the purposes of this clause, a son or son's son shall be deemed to be separate where land is recorded separately in his name or where his separate share has been declared under a family settlement either registered or acted upon, prior to the twentieth day of August, 1959, or by a decree of court passed prior to or in a suit pending on the twentieth day of August, 1959, or where separate land has been assigned to him u/s 12B of the U. P. Consolidation of Holdings Act, 1953, Or the separation of his share has been accepted under the U. P. Large Land Holdings Tax Act, 1957." There is no dispute that the petitioner's sons are separate from him. They fall within the terms of the Explanation to Section 3 (c). The question is whether the sons' wives and the sons' daughters can be treated as members of the family of the petitioner as defined by Section 3 (c). Sub-clause (iv) of Clause (c) of Section 3 speaks of the wife of the person mentioned in Sub-clause (iii). Sub-clause (iii) mentions the son of the holder so long as he is unseparated from the holder. Therefore, Sub-clause (iv) refers to the wife of a son so long as the son is unseparated from the holder. If the son has separated from the holder, the son's wife will no longer fall within Sub-clause (iv). And that is in keeping with the purpose for which a "family" has been specially defined, namely, the determination of the ceiling area for the purposes of the Act. It is difficult to conceive that while a son should be considered separate from the holder, because he possesses land recorded separately in his name or has a separate share declared under a settlement, the son's wife should be considered as a member of the holder's family and not as a member of her husband's family. So long as the son continues to be a member of the holder's family, there is reason for treating the son's wife as a member of that family. But that reason disappears the moment the son ceases to qualify as a member of the holder's family. As regards a son's daughter she can be considered as a member of the holder's family only if she satisfies the description set out in Sub-clause (v). She must be the daughter of an unseparated son and must be unmarried. Admittedly the sons are separate from the holder. Their daughters cannot be considered as members of the holder's family.

6. In my judgment, the learned Civil Judge was plainly right in holding that the sons' wives and sons' daughters cannot be treated as members of the petitioner's family.

7. No other ground has been pressed before me.
8. The petition fails and is dismissed with costs.