

(1978) 02 AHC CK 0068
In the Allahabad High Court
Case No : Civil Misc. Writ No. 11180 of 1975

Ahmad Husain and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-02-1978

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 3(17), 5(1), 5(6)

Citation : (1978) AWC 299 : (1978) RD 1

Hon'ble Judges : N.D. Ojha, J

Bench : Single Bench

Advocate : Haider Husain and S.J. Haider, for the Appellant;

Final Decision : Allowed

Judgement

N.D. Ojha, J.—By this writ petition the order of the Prescribed Authority dated 6th January, 1975, and the appellate order dated 8th April, 1975, passed by the Ist Addl. District Judge, Rampur, declaring some land to be surplus treating Respondent No. 4 Mohammad Yar Khan as its tenure-holder under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Act) are sought to be quashed.

2. It was urged by counsel for the Petitioners that Mohammad Yar Khan, Respondent No. 4, had executed a sale deed on 9th September, 1971, in respect of his entire holding in favour of the Petitioners and the names of the Petitioners were also mutated over the land so transferred on 8th June, 1972, and consequently Respondent No. 4 was not a tenure-holder on 8th June, 1973, the relevant date contemplated by Section 5(1) of the Act. According to counsel for the Petitioners since Respondent No. 4 was not a tenure-holder on 8th June, 1973, no proceedings for declaration of surplus land could be initiated against Respondent No. 4, the fact of a person being a tenure-holder being the sine qua non for taking such proceedings. It was urged that the Petitioners had filed an objection asserting that they were the purchasers of the land of which

Respondent No. 4 was the tenure-holder prior to the execution of the sale deed aforesaid dated 9th September, 1971 and raising other pleas but it was not considered. In view of these facts it was submitted that the Prescribed Authority should, in place of proceeding against Respondent No. 4 have treated the Petitioners as tenure-holders and decided their objection before declaring any portion of the land purchased by the Petitioners as surplus. Reliance on the other hand was placed on Explanation II to Sub-section (1) of Section 5 of the Act by the Standing Counsel and it was urged that in view of that Explanation the Respondent No. 4 will still be presumed to be the tenure-holder and consequently the proceedings against Respondent No. 4 were valid.

3. Having heard counsel for the parties I am of opinion that the impugned orders cannot be sustained. Section 5(1) of the Act contemplates that on and from the commencement of U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no tenure-holder shall be entitled to hold in the aggregate throughout Uttar Pradesh any land in excess of the ceiling area applicable to him. The date of commencement of the aforesaid Amendment Act is 8th June, 1973. In view of Section 5(1) of the Act no tenure-holder was entitled to hold land in excess of the ceiling area applicable to him on and from 8th June, 1973, but before the ceiling area could be determined of a person such person should be a tenure-holder. It is only in proceedings for determination of ceiling area of a tenure-holder that the question of considering as to whether a sale deed executed by the tenure-holder after 24th January, 1971, should or should not be ignored can arise. If no proceeding can be initiated for determination of ceiling area against a person because he was not a tenure-holder on 8th June, 1973, the question of consideration whether any sale deed executed by him after 24th January, 1971, will not at all arise. Consequently if it is held that on 8th June, 1973, Respondent No. 4 was not a tenure-holder proceedings for determination of the ceiling area against him would be misconceived and so would be misconceived the determination of the question as to whether the sale deed executed by him on 9th September, 1971 fulfilled the requirements of Clause (b) of the proviso to Section 5(6) of the Act or not. Explanations I and II to Section 5(1) of the Act were inserted by U.P. Act No. 2 of 1975 with retrospective effect from 8th June, 1973. Explanation I would apply only in proceedings for determination of the ceiling area applicable to a tenure-holder. If a person was a tenure-holder on 8th June, 1973, and proceedings for determination of his ceiling area were initiated then in those proceedings all land held by him in his own name or ostensibly in the name of any other person shall be taken into account. But if he was not a tenure-holder at all on that date Explanation I may not apply. Explanation II, however, could be applied if the requirements of the said Explanation were established inasmuch as the said Explanation does not use the term "tenure-holder" but uses the term "person". As such if the requirements of Explanation II were fulfilled Respondent No. 4 shall be presumed unless contrary is proved to the satisfaction of the Prescribed Authority to be holding the land on 8th June, 1973. The term "tenure-holder" is defined in Section 3(17) of the Act. It means

a person who is the holder of a holding. There is no dispute that the land which was transferred by Respondent No. 4 to the Petitioners by sale deed dated 9th September, 1971, was a holding. If in view of Explanation II Respondent No. 4 is to be presumed to hold the said land which was a holding on 8th June, 1973, he would be its tenure-holder on that date. The difficulty in treating Respondent No. 4 to be the tenure-holder of the land in question on 8th June, 1973, in view of Explanation II, however, arises in view of the fact that neither the Prescribed Authority nor the Additional District Judge have recorded a categorical finding that the said Respondent continued to be in actual cultivatory possession of the land transferred on the relevant date, namely, 8th June, 1973. Their orders cannot therefore be sustained.

4. Counsel for the Petitioners has made a statement before me that in case it is held by the Prescribed Authority that Respondent No. 4 could not be treated as the tenure-holder of the land on 8th June, 1973, under Explanation II to Section 5(1) of the Act it would be open to it to proceed to determine the area of surplus land treating the Petitioners to be the tenurerholders of the land transferred in their favour by Respondent No. 4 by sale deed dated 9th September, 1971, in these very proceedings on the basis of the objection already filed by the Petitioners before the Prescribed Authority and in that event the Petitioners will not insist on a fresh notice u/s 10(2) of the Act being issued to them. In view of this statement it is made clear that if the Prescribed Authority comes to the conclusion that Respondent No. 4 was not in actual cultivatory possession of the land which was the subject matter of sale deed dated 9th September, 1971, on 8th June, 1973, and consequently he could not be treated to be its tenure-holder on that date so as to entitle it to initiate proceedings for determination of surplus land as against Respondent No. 4, it would proceed to decide the objection of the Petitioners treating them as the tenure-holders of the land transferred by the aforesaid sale deed on the basis of the objection already filed by them in these very proceedings and it would not be necessary for it to issue any fresh notice to the Petitioners u/s 10(2) of the Act.

5. In view of the foregoing discussion the writ petition succeeds and is allowed and the orders of the Prescribed Authority and the 1st Additional District Judge, Rampur, dated 6th of June, 1975, and 8th April, 1975, respectively are quashed and the Prescribed Authority, Bilaspur, Respondent No. 2, is directed to decide the case afresh in accordance with law keeping in mind the observations made above. In the circumstances of the case there will be no order as to costs.