(1998) 08 AHC CK 0028

In the Allahabad High Court

Case No : C.M.W.P. No. 9715 of 1983

Ahmad Ullah Khan APPELLANT

Vs

State of U.P. and another RESPONDENT

Date of Decision : 19-08-1998

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 14, 14(8), 16

Uttar Pradesh Imposition of Ceiling on Land Holdings Rules, 1961 — Rule 18, 18A, 18A(2)

Citation : (1998) 3 AWC 2107 : (1998) RD 689

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : S.A. Shah, for the Appellant;

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 1.7.1983 whereby the objection, of the petitioner has been rejected by the Prescribed Authority, respondent No. 2.

2. The facts in brief are that the proceedings for determination of surplus land were taken against the petitioner under the provisions of U. P. Imposition of Ceiling on Land Holdings Act. 1960. The Prescribed Authority declared 12.86 acre as surplus land. The petitioner filed appeal against the said order. The appeal was dismissed. The petitioner filed Writ Petition No. 3353 of 1976. He also filed an application for interim stay order. The Court granted interim stay staying the dispossession of the petitioner on the condition that the petitioner deposits the damages at the rate of Rs. 300 per acre per annum. The petitioner deposited Rs. 3,900 with the Prescribed Authority on 7.10.1976 and again the same amount on 12.4.1978. The writ petition was dismissed by the Court on 17.10.1978. The petitioner preferred SLP before the Hon''ble Supreme Court. He also prayed for grant of interim stay order. The Hon''ble Supreme Court directed the petitioner to furnish the security of three year average mesne profits to the satisfaction of the Prescribed Authority. The petitioner deposited Rs.. 16.000 with the Prescribed

Authority in accordance with the direction of the Court. The petitioner was issued a notice by the Prescribed Authority to pay the amount of damages. The petitioner filed objection and in that objection, he stated that he had deposited Rs. 23.800 in pursuance of the order of the High Court and the Hon''ble Supreme Court. His contention was that the damages may be calculated in accordance with Rules 18 and 18A of the U. P. Imposition of Ceiling on Land Holdings Rules. 1961. The Prescribed Authority rejected the objection taking the view that as regards the amount of damages which was deposited by the petitioner cannot be refunded as it was deposited in pursuance of the order of the Court.

3. Learned counsel for the petitioner submitted that the amount of damages has to be ascertained under Rules 18 and 18A which read as under :

"18. (1) As soon as the Collector takes or is deemed to have taken possession of any land u/s 14. he shall inform the Prescribed Authority concerned about the date of taking over such possession by sending a copy of C.L.H. Form 7 in respect of each tenure-holder.

(2) The Prescribed Authority shall, thereupon, determine the amount of damages for use and occupation payable by each tenure-holder in accordance with Rule 18A.

18A. The amount of damages for use and occupation referred to in Rule 18 shall; subject to the provisions of sub-rule (2) in accordance with the following principles :

(a) Except as provided in clause (d). damages shall be ascertained in respect of each crop (Kharif and Rabi) separately.

(b) For the first five crops commencing from the Kharif of 1380 Fasli, damages for each crop shall be equal to the annual land revenue calculated at sanctioned hereditary rates applicable to the land concerned.

(c) For the remaining crops commencing from Rabi of 1382 Fasli, damages for each crop shall be equal to 61/4 times of the annual land revenue calculated at the sanctioned hereditary rates applicable to the land concerned.

(d) in respect of a grove-land damages for each Fasli year shall be equal to five times of the annual land revenue calculated at the sanctioned hereditary rates applicable to the land concerned.

(e) Damages shall not exceed the amount payable to the tenure-holder concerned under Chapter III of the Act if the possession of the land in respect whereof such amount is payable was taken u/s 14 (8) before October 10. 1975.

(f) The aggregate damages in respect of the crops grown during the first five crops referred to in clause (b) shall not exceed the amount payable to the tenure-holder concerned under Chapter III of the Act."

Rule 18 is applicable when the possession is taken by the Collector or is deemed to have been taken by him u/s 14 of the Act and still if a person remains in possession, the amount of damages will be determined as provided under Rule 18A. In case, however, the tenure-holder obtains an order of the Court to remain in possession in pursuance of the order of the Court on certain terms and conditions, the amount is fixed by the Court while imposing, the terms and conditions on the petitioner to remain in possession, that shall be taken as an amount which has been ascertained by the Court as damages. It is open to the Court while disposing of the writ petition finally to pass an order in respect of the amount which has been deposited but in case the Court does not pass any order, the amount shall be taken to have been deposited taking as amount of damages fixed by the Court while granting the stay order. The petitioner had deposited the amount in pursuance of the order of this Court and the Hon''ble Supreme Court. It is now not open to urge that the amount of damages should have been ascertained afresh in accordance with Rule 18A of 1961 Rules.

4. Learned counsel for the petitioner has placed reliance upon the decision Laxmi Prasad v. District Judge, Banda and another, 1978 AWC 279. wherein it was held that Section 16 passed liability on the tenure-holder for payment of compensation to the State Government for use and occupation of surplus land. The manner of calculation is provided in Rule 18A. The Court was considering an application in respect of grant of interim stay order. The Court had confirmed the stay order with the modification that the petitioner shall not be required to deposit Rs. 2,200. It was not a case where the writ petition was finally disposed of. The Court while granting the interim stay order can impose certain conditions taking into account all the circumstances and if such amount is fixed on guess as to what would be the amount of compensation, may not be strictly in accordance with Rule 18A. But if such condition is not complied with, the petitioner shall not be entitled to continue in possession. The State Government can take possession in accordance with law. The petitioner continued to remain in possession in pursuance of the order of the Court and subsequently, he cannot turn and say that the amount fixed by the Court was not in accordance with Rule 18A. The amount deposited by the petitioner cannot be refunded for the period he remained in possession in pursuance of the order of the Court.

5. Learned counsel for the petitioner then urged that the Prescribed Authority is demanding from the petitioner the amount of damages for the same period again under Rule 18A. It is not clear from the order that the Prescribed Authority is claiming the amount for the same period he remained in possession in pursuance of the order of the Court for which he had deposited the amount. It is clarified that the petitioner shall not be liable to pay further any amount of damages in respect of which he has already deposited the amount in pursuance of the order of the Court.

6. The last submission of learned counsel for the petitioner is that he is entitled for compensation as his land was acquired on determination of surplus land. There is no reason that the amount of compensation shall not be paid to the

petitioner.

7. The writ petition is dismissed with the observations made above.

8. The parties shall, however, bear their own costs.

