

(1956) 10 AHC CK 0025
In the Allahabad High Court
Case No : Civil Misc. Writ No. 275 of 1956

Ajab Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-10-1956

Acts Referred:

Constitution of India, 1950 — Article 31, 31A, 31A(2)
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 14, 14(1)

Citation : AIR 1957 All 153 : (1956) 26 AWR 864

Hon'ble Judges : M.L. Chaturvedi, J; Agarwala, J

Bench : Division Bench

Advocate : J.P. Goval, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Agarwala, J.—This is a petition under Articles 226 and 227 of the Constitution. The applicant is a tenure holder in village Mundait in the district of Muzaffarnagar, Proceedings under the Consolidation of Holdings Act, 1953 were taking place in the village as also in certain other neighbouring villages. The Assistant Consolidation Officer formulated a statement of proposals u/s 19 of the aforesaid Act. The petitioner and certain other persons filed objections against the proposals. The consolidation officer heard those objections and decided them by his order dated 23rd July, 1955. Against the order of the Consolidation Officer there was an appeal before the Settlement Officer who dismissed the appeal by his order dated 20th August, 1955. Against the order of the Settlement Officer there was a revision which was dismissed by the Assistant Director of Consolidation by an order dated 9th November, 1955.

2. In the statement of proposals made by the Assistant Consolidation Officer certain lands belonging to the applicant and other tenure holders were set apart for public purposes as provided for under Clause (ee) of Section 14(1) of the Act and Chaks were allotted to the petitioner and other tenure-holders on the basis of the proposals as confirmed by the higher authorities whose orders we have

mentioned above.

3. The applicant was admittedly deprived of certain land under Clause (ee) of Section 14. The petitioner came to this Court on the ground that the Consolidation of Holdings Act was ultra vires as it violated the fundamental right of property of the petitioner and on the ground that the allotment orders passed by the authorities under the Consolidation of Holdings Act were against law. In the Writ Petn. of Mukhtar Singh v. Consolidation Officer, Civil Miscs. Writ No. 252 of 1956 (All) (A), a Bench of this Court has held that in so far as the Act and the Rules made under it authorise the taking away from the tenure-holders of land for purposes of common utility or public purposes without payment of compensation, it contravenes the provisions of Article 31 as it stood when Clause (ee) was enacted. As in the present case the petitioner has been deprived of certain portion of his land without payment of compensation, the orders by means of which he has been so deprived must be quashed.

4. On behalf of the State it was urged by the learned Junior Standing Counsel that only that portion of the statement of proposals by which certain land or rental value was set apart for purposes of common utility under Clause (ee) of Section 14 of the Act, out of the holdings of the petitioner may be set aside or quashed and the rest of the proposals be allowed to stand.

5. We think that the statement of proposals being based upon the assumption that land could be taken away from the tenure-holders for purposes of common utility under Clause (ee) of Section 14 must be set aside as a whole, because it is possible that if such land were not taken out of the share of a tenure-holder, he might have been allotted some other chak instead of the one he had actually been allotted. The whole of the scheme has, therefore, to be considered de novo keeping in view that no land be taken away from any tenure-holder for purposes of common utility as provided for by Clause (ee) of Section 14.

6. On behalf of the opposite party No. 6 and some other opposite parties who are tenure-holders in the village two points were urged: firstly, that as the proposals of the Assistant Consolidation Officer as confirmed by the higher authorities affected not only the tenure-holders who were impleaded in the petition but also the other tenure-holder who are not parties to the case, the application should be dismissed, and secondly that Clause (ee) of Section 14 of the Act and the rules made thereunder are saved by the provisions of Sub-clause (a) of Clause (1) of Article 31A of the Constitution.

7. As regards the first point, we may state that this was not pointed out in the counter affidavit filed on behalf of the opposite parties. There is nothing on the record to show that by the orders in question the rights of any party other than those who are impleaded are affected. No party who has not been impleaded in this case can be affected by an order we pass in the present case.

8. As regards the second point, the relevant portion of Article 31A, as it stands after the amendment by the Constitution (Fourth Amendment) Act, 1955, is as

follows:

"Saving of laws providing for acquisition of estates etc.,

31A. (1) Notwithstanding anything contained in Article 13, no law providing for-

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights.....

(2) In this article-

(a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafi or other similar grant and in the States of Madras and Travancore-Cochin, any Janmam right;

(b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue."

9. Before the coming into force of the Zamindari Abolition and Land Reforms Act, the U. P. Land Revenue Act and the U. P. Tenancy Act were the existing laws relating to land tenure in force in this State. These Acts did not use the expression "estate". The equivalent expression used in the Land Revenue Act was the word "mahal" which meant "any local area held under a separate engagement for the payment of the land revenue". The U. P. Tenancy Act was repealed while the Land, Revenue Act was amended by the Zamindari Abolition & Land Reforms Act. Clause (8) of Section 3 of the latter Act defined the word "estate" as follows :

" "estate" means the area included under one entry in any of the registers prepared and maintained under Clause (a), (b), (c) or (d) of Section 32 of the United Provinces Land Revenue Act, 1901, or in the registers maintained under Clause (e) of the said section in so far as it relates to a permanent tenure-holder and includes share in or of an estate."

10. The word "estate" has been clearly used in the sense of an area belonging to an intermediary, that is, a person between the State and the cultivator of the soil. Normally the cultivators were tenants and the intermediary was a proprietor, or an under-proprietor or a permanent lessee of the proprietary rights. The permanent tenure-holders in this State occupy the position of an intermediary as the tenants under him were the tenants-in-chief and not sub-tenants. So he was also placed on the footing of an intermediary and the area belonging to him was also classed as an "estate". The Zamindari Abolition and Land Reforms Act has done away with the interests of intermediaries with the exception of lands which they themselves cultivated and with the exception of groves which they possessed or lands in the abadi which were in their personal occupation. The

petitioner and the other persons affected by the Consolidation of Holdings Act are not holding any "estate" within the meaning of that word in Section 3(8) of the Zamindari Abolition and Land Reforms Act or within the meaning of Article 31A of the Constitution.

The phrase "rights therein", that is, rights in the estate, has been defined in Sub-clause (b) of Clause (2) of Article 31A. The words "other intermediary" in that clause clearly point to the conclusion that the proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat mentioned in that clause are persons who are intermediaries and not tenants cultivating the land.

The word "tenure-holders" as used in that clause must be interpreted in that sense. It has no reference to tenure-holders in this State. It is not alleged that the petitioner is the tenure-holder within the meaning of that expression in Article 31A. Article 31A, therefore, does not save Clause (ee) of Section 14 of the Consolidation of Holdings Act or the rules framed thereunder, under which lands of tenure-holders are taken away for purposes of common utility without payment of compensation.

11. Learned Junior Standing Counsel pointed out that in the judgment of this Court in Civil Misc. Writ No. 252 of 1956 (All) (A), the whole Clause (ee) of Section 14 of the Consolidation of Holdings Act has been mentioned as invalid, although the first part of it under which land of a tenure-holder could be taken without payment of compensation was meant. There is no doubt that the Court did not intend to declare the second part of Clause (ee) of Section 14 namely the clause "and the extent to which vacant land may be utilised with a view to the said purpose" as invalid.

12. No other point has been urged.

For the reasons given in the judgment of this Court in Civil Misc. Writ No. 252 of 1956 (All) (A), and for the reasons we have mentioned above, we allow this petition and quash the statement of proposals made by the Assistant Consolidation Officer dated 23rd July, 1955, the order of the settlement Officer dated 20th August, 1955 and of the Assistant Director of Consolidation dated 9th Nov., 1955.

13. As the point regarding the invalidity of Clause (ee) of Section 14 of the Consolidation of Holdings Act was not expressly raised in the petition, we direct the parties to bear their own costs.