(1987) 03 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Writ Petitions No''s. 1029, 1054 and 1056 of 1986

Amarjeet Kaur and Others — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 09-03-1987

Acts Referred:

Constitution of India, 1950 — Article 39

Citation : (1987) 2 WLN 833

Hon'ble Judges : Suresh Chandra Agrawal, J;Narendra Mohan Kasliwal, J

Bench : Division Bench

Judgement

1. All these three cases arise in identical circumstances, as such they are disposed of by one single order.

2. The controversy raised in the present cases is that proceedings were initiated under Chapter III-B of the Rajasthan Tenancy Act, 1955. Those proceedings were ultimately dropped by order dated 14th January, 1971 by the Sub-Divisional Officer, Baran. Thereafter the Assistant Collector, Baran started afresh proceedings under the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (here in after referred to as ''the new Ceiling Law''). The Assistant Collector, decided the case by order dated 28th February, 1976. An appeal against that order was filed before the Additional Collector, Kota. The Additional Collector, Kota by order dated 4th August, 1976 remanded the case to the Assistant Collector, Baran for determining the ceiling area afresh. The Assistant Collector after remand again decided the case. Aggrieved parties again went in appeal against these orders before the Additional Collector, Kota and the Additional Collector by order dated 4th April, 1985 remanded the case to the Assistant Collector, Shahbad for deciding the matter afresh under the new Ceiling Law. In the meantime the Deputy Secretary Revenue by different orders dated 16th June, 1978, 5th July, 1978 and 10th July, 1978 reopened the proceedings u/s 15(2) of the new Ceiling law. The effect of this order was that the proceedings were started afresh by the Additional Collector, Kota under the old Ceiling Law

i.e. under Chapter III B of the Rajasthan Tenancy Act, 1955. The Additional Collector decided the matter on 5th November, 1979. The appeals filed by the petitioners to the Board of Revenue, were dismissed by order dated 16th December, 1985 and a review petition was also dismissed on 17th March, 1986.

3. In these circumstances these writ petitions have been filed by the petitioners.

4. Mr. Mehrish, learned Counsel for the petitioners contended that the proceedings cannot be continued simultaneously under the old Ceiling Law as well as under the new Ceiling Law. It is submitted that when the proceedings which were initiated by the Assistant Collector and determined on 28th Feb., 1976, are still pending before the Asst. Collector, Shahabad in view of the remand order of the Additional Collector, Kota dated 4th April, 1985, the proceedings could not have been reopened u/s 15(2) of the new Ceiling Law by the Deputy Secretary, Revenue. On the other hand Mr. Pareek, the learned Addl. Government Advocate submitted that the case is fully covered by a judgment of this Court in State of Rajasthan Vs. Prithvi Singh and Others, It has been further submitted that in view of the above decision, the State Government is entitled to get ceiling area determined either under the old Ceiling Law or under the new Ceiling Law which ever is beneficial to the State Government. Reliance in this regard is placed on the following observation made in Prithvi Singh''s case (supra):

We may further make it clear that there is no force in the contention of learned Counsel for the land holders that even if proviso 2 to Sub-section (!) of Section 4 is applied, the authorised officer can only determine the ceiling area applicable to him according to old law, but the question of a definition of ''family,'' recognition to transfer etc., should be determined according to the provisions of the new ceiling law. In other words, the contention of the learned Counsel for the land holders is that the provision of the proviso 2 to Sub-section (1) of Section 4 of the new ceiling law is only restricted for the purpose of calculation of ceiling area according to new or old law, but all other matters like definition of family, recognition of transfers, vesting of surplus land, selection of land within ceiling area, determination of amount for acquisition, should all be governed by the provisions of the new ceiling law. We find no force in this contention. In our view so far as the provisions which have direct bearing in the calculation of the ceiling area like, who can be included in the definition of family, recognition or non-recognition of certain transfers etc. will be applied as contained in the old ceiling law if the authorised officer wants to bring the case under proviso 2 to Sub-section (1) of Section 4. If the contention of learned Counsel for land holders is accepted, this would make the provisions of the second proviso totally redundant and otiose. If their contention is accepted and the area is calculated by taking the definition of family and recognition of transfers under the new Act the question of applying the provisions of old ceiling law will be out of question. This would also result in giving unfair returns under the old ceiling law even though they had become trespassers over the excess land and in which the right of the

State Government had perfected. It is however, made clear that the authorised officer shall apply the provisions of the repealed law when it arrives at a finding that the ceiling area applicable to any person or family in accordance with Section 4 of the new ceiling law exceeds the ceiling area applicable to such person or family according to the provisions of law replaced by Section 40.

5. In our view the controversy raised by the petitioners in these cases appears to be unnecessary and unreal. It has already been held in Prithvi Singh''s case (supra) that even if proviso 2 to Sub-section (I) of Section 4 is applied under the new Ceiling Law, for the purposes of calculation of ceiling area, all other matters like definition of family, recognition of transfers, vesting of surplus land, selection of land within ceiling area, determination of amount for acquisition may be governed either by the provisions of the old or new Ceiling Law whichever may be advantageous to the State. It has already been held in Prithvi Singh''s case (supra) that ceiling law on agricultural holdings is a socio economic law. Motive behind the Act is to advance socialisation and ensure equitable distribution of agricultural land as laid down in Article 39 of the Constitution for securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Determination of ceiling area is the main back-bone of the entire ceiling law. Thus, it cannot be the intention of the legislature that those persons who were required to surrender more land under the old ceiling law, may get benefit of surrendering less and under the new ceiling law.

6. In view of these circumstances it is directed that the proceedings now pending before the Assistant Collector, Shahbad in pursuance of the remand order of the Additional Collector, Kota dated 4th April, 1985 will continue and the Assistant Collector, would be competent to determine the ceiling area under the old Ceiling Law if he choses to do so in accordance with observations made above. So far as the proceedings re-opened in pursuance to the order of the Deputy Secretary, Revenue, shall not be proceeded and will be closed. The orders of the Deputy Secretary, the Additional Collector and the Board of Revenue in so far as they relate to the re-opening of the proceedings u/s 15(2) of the new Ceiling Law are concerned, shall be quashed. It is, however, made clear that in proceedings which would now continue before the Assistant Collector, Shahbad, the Assistant Collector, would be free to decide the ceiling case in accordance with the observations made above as well as in accordance with the principles enunciated in Prithvi Singh''s case (supra). No order as to costs.

