
(1978) 10 AHC CK 0028

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4475 of 1976

Anand Prakash and another

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 04-10-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 5(3)

Citation : (1978) 10 AHC CK 0028

Hon'ble Judges : K.P.Singh, J

Final Decision : Allowed

Judgement

K. P. Singh, J.

This writ petition is directed against the judgment of the IV Additional District and Sessions Judge, Saharanpur, dated 4.10.76 in Ceiling Appeal No. 764 of 1976 Jasbir Singh v. State.

The appellate authority by its impugned judgment has declared 8 Bighas 3 Biswansi as surplus area of the petitioner.

The learned counsel for the petitioner has contended before me that in ground no. 3 before the appellate authority a point was raised that a son of the petitioner no. 2 Jasbir Singh, namely Dhan Prakash was adult on 8.6.73 and he has left behind him his widow and an unmarried minor daughter and on that score the petitioner no. 2 was entitled to additional two hectares of the land.

The learned counsel for the State has tried to refute contention raised on behalf of the petitioner and he has tried to justify the findings recorded by the appellate authority.

I have gone through the impugned judgment. I find that the appellate authority has not categorically dealt with the point raised in ground no. 3. In annexure 2 attached to the writ petition vide paragraph 3 it is evident that the petitioner had

raised the plea even before the prescribed authority. The appellate authority has dealt with the question in the following words :

".....However, since two of his sons were minor, half of the land gifted away to the minor sons would include in the holding of the appellant. Thus the total area with the appellant would come to 43 bighas 11 Biswas and 19 Biswansis and not 71 Bighas 18 Biswas and 7 Biswansis. The appellant would be given ceiling area to the extent of 35 bighas 11 Biswas and 17 Biswansis as one of his sons Anand is possessed of land by means of aforesaid gift deed to the extent of more than two hectares. Appellant's other major son is now dead."

It appears that the appellate authority has not considered the question as to whether the petitioner no. 2 Jasbir Singh was entitled to two additional hectares of the land on the ground that his son Dhan Prakash was adult on 8.6.73 and he had left his minor daughters.

Section 5 (3) (a) of the U. P. Imposition of Ceiling on Land Holdings Act reads thus :

"Subject to the provision of subsections (4) (5) (6) and (7) the ceiling area for purposes of subsection (1) shall be

(a) In the case of a tenureholder having a family of not more than five members, 7.30 hectares of irrigated land (including land held by other members of this family) plus two additional hectares of irrigated land or such additional land which together with the land held by him aggregates to two hectares, for each of his adult sons, who are either not themselves tenureholders or who hold less than two hectares of irrigated land, subject to a maximum of six hectares of such additional land."

(b)???????..

ExplanationThe expression "adult sons" in clauses (a) and (b) includes an adult son who is dead and has left surviving behind him minor sons or minor daughters (other than married daughters) who are not themselves tenureholders or who hold land less than two hectares of irrigated land."

In view of the Explanation. In my opinion, it is to be seen as to whether minor sons or minor daughters were not themselves tenureholder or they held land less than two hectares of irrigated land. In the present case the appellate authority has not examined the question as to whether petitioner no. 2 Jasbir Singh could be given two additional hectares land in view of the circumstance that his granddaughter was minor nor the appellate authority has examined the fact as to whether the alleged granddaughter of petitioner no. was minor or not. In view of the aforesaid circumstances there is no option but to quash the impugned judgment of the appellate authority and ask the appellate authority to decide the petitioners' claim of additional two hectares land on the ground of his minor grand daughter.

For the reasons given above, the writ petition succeeds and it is accordingly allowed and the appellate authority is directed to decide the petitioners' claim in the light of the observations made above and the provisions of section 5 (3) of the Ceiling Act. No order as to costs.