

(1978) 09 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2101 of 1976

Avadh Bihari Lal

APPELLANT

Vs

Addl. Civil Judge, Bulandshahar and another

RESPONDENT

Date of Decision : 25-09-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 —
Section 30(2), 9

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 13,
4A

Citation : (1978) 09 AHC CK 0031

Hon'ble Judges : Gopi Nath, J

Final Decision : Dismissed

Judgement

Gopi Nath, J.

This is a petition under Article 226 of the Constitution, arising out of proceedings under U.P. Imposition of Ceiling on Land Holdings Act (hereinafter referred to as the Act).

The Prescribed Authority, on a consideration of the objections filed by the petitioner, found that no land was surplus with him, and discharged the notice under section 10 (2) of the Act. One of the objections related to the unirrigated nature of plots numbers 35, 275 and 444 of the petitioner's land. The other objection was that plots numbers 57, 6, 20 and 4 were Usar. The Prescribed Authority found plots numbers 35, 276 and 444 to be unirrigated land and plots numbers 52, 6, 20 and 4 to be Usar. The total area of the holding of the petitioner was found to be less than the ceiling area, and hence he held no land as surplus. This order was passed by the Prescribed Authority on 8/11/1974. The State went up in appeal against that order. The appellate authority found that the land of plots numbers 35, 276 and 444 was irrigated land within the meaning of section 4A of the Act. He also held that plots numbers 52, 6, 20 and 4 were not Usar. He accordingly, found that an area of 7 Bighas and 15 Biswas was surplus

with the petitioner. That area was, accordingly, declared as surplus land. The appeal was decided on 26/11/1976.

Aggrieved by the order of the appellate authority the petitioner has filed this petition. The main point argued by the learned counsel for the petitioner was that the appeal should have been abated under section 20 (2) of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Ordinance, 1976 (U. P. Ordinance No. 11 of 1976). Section 30(2) of the said Ordinance reads:

"Where an order determining the surplus land in relation to a tenureholder has been made under the principal Act before January 17, 1975, and the Prescribed Authority is required to redetermine the surplus land under S. 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974 (U. P. Act No. II of 1975), then notwithstanding anything contained in subsection (2) of section 19 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 (U. P. Act No. XVII of 1973), every appeal under S. 13 of the principal Act or other proceedings in relation to such appeal, preferred against the said order, and pending immediately before the date of commencement of this Ordinance shall abate."

Learned counsel for the petitioner contended that since the provisions relating to the irrigated nature of land, which were contained in Rule 3 of the Rules framed under the Act, underwent a change by the incorporation of section 4A in the Act, which dealt with the question of determination of irrigated land, the case of the petitioner fall under section 30 (2) of the Ordinance, and the appeal should have been abated under that provision, and the appellate authority was in error in deciding the appeal on merits and declaring an area of 7 Bighas and 15 Biswas as surplus land with the petitioner on the ground that plots numbers 35, 276 and 446 were irrigated land within the meaning of Section 4A of the Act.

The question which falls for determination is whether the disposal of appeal on merits was bad in law, and whether the appeal should have been abated under section 30 (2) of the Uttar Pradesh Ordinance No. 11 of 1976. In *Baij Nath Pathak v. The District Judge, Jaunpur and others* (1978 (4) A.L.R. 835 = 1978 A. L. J. 826. 118), it was held that an appeal under section 13 would abate only when the appellate authority had something before it to suggest that the Prescribed Authority had decided to proceed to redetermine the surplus land under section 9 of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act (Act No. II of 1975). Hon"ble Mehrotara, J. in that case observed that since no proceedings were taken by the Prescribed Authority for redetermining the surplus land within the period of two years prescribed for that purpose, it could be assumed that the Prescribed Authority was not required to redetermine the surplus land in accordance with the principal Act as amended by U. P. Act No. II of 1975. Learned Judge observed;

"It should be emphasised that the abatement which was provided for in subsection (2) of S. 30 of the said Ordinance No. 11 of 1976, had its justification

and rational in the fact that the Prescribed Authority was redetermining the surplus land and such redetermination would have enabled the tenureholder to file his objections and to contest the Prescribed Authority and again, if necessary, before the lower appellate court by filing an appeal against the order of the Prescribed Authority redetermining the surplus land. It was not contemplated that the appeal would be abated under the said provision without any redetermination by the Prescribed Authority."

In the instant case also, no proceeding for redetermination of the surplus land has yet been taken by the Prescribed Authority, and the period of two years fixed for that purpose has expired. Thus no redetermination can now be made by the Prescribed Authority under the provisions of section 9 of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1974 (U.P. Act No. II of 1975), Learned counsel for the petitioner urged that because of the change in law as regards the determination of irrigated land, redetermination could have been made by the Prescribed Authority, and hence the appeal should have been abated. This argument is based on the introduction of Section 4A in the Act which deals with the determination of surplus land. The object and reason for the introduction of Section 4A in the Act was contained in the Bill as follows:

"The ceiling area is to be determined on the basis of irrigated land, which had been defined in the Rules. In order to avoid complications, the criteria for determining irrigated land are proposed to be laid down in the Act itself by adding a new section 4A."

It appears that there was some controversy whether the provisions of Rule 3 of the Act, which dealt with the question of determination of irrigated land, could be given effect to, and hence section 4A was introduced in the Act with a view to giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution. Section 4A of the Act was given a retrospective effect from 861973. Thus the principles contained in Section 4A were deemed to have come into effect from 861973. Further, learned counsel for the respondent submitted that there was no material change in Rule 3 and Section 4A, and that is why the legislature gave section 4A a retrospective effect. The Prescribed Authority had decided the case on 18111974. Since section 4A was deemed to have come into effect with effect from 861973, and the principles regarding determination of irrigated land in Rule 3 and Section 4A were substantially the same, the Prescribed Authority would not have found it necessary to issue a fresh notice for redetermination of the surplus of the petitioner under section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974 (U.P. Act No. II of 1975). Learned Standing Counsel has stated that no such proceedings have, till so far, been taken by the Prescribed Authority. The period of two years prescribed for taking of such proceedings had expired and no proceedings for redetermination can now be taken. In view of the circumstances of the case and the discussion made above, we find no force in the contention of the learned counsel that the appeal should

have been abated and the order of the appellate authority needs to be quashed.

No other point was pressed.

The petition, accordingly, fails and is dismissed. In the circumstances of the case, we make no order as to costs.