
(1997) 04 AHC CK 0026
In the Allahabad High Court
Case No : C.M.W.P. No. 3481 of 1988

Badi Bahu

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-04-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 13, 4A

Citation : (1997) AWC 200 Supp : (1997) RD 385

Hon'ble Judges : Shitla Pd. Srivastava, J

Bench : Single Bench

Advocate : Nawal Kishore Saxena, for the Appellant;

Final Decision : Allowed

Judgement

Shitla Pd. Srivastava, J.—This petition under Article 226 of the Constitution of India has been filed by the Petitioner, against an order dated 3.2.1988 passed by the Additional Commissioner. Jhansi Division, Jhansi in Appeal Nos. 133/85 and 95/85-86 u/s 13 of the U.P. Imposition of Ceiling on Land Holdings Act which was filed against the judgment dated 29.3.1985 passed by the Prescribed Authority. The Petitioner has prayed for quashing the orders passed by the Prescribed Authority as well as by the appellate authority.

2. The brief facts leading to the present writ petition are that after service of notice u/s 10 (2) of the U.P. Imposition of Ceiling on Land Holdings Act, hereinafter referred to as the Act only, the Petitioner filed objection that entire holding is unirrigated, two crops were never grown by the Petitioner. There is no Schedule I or B canal in the village. The land of the Petitioner does not fall in the command area of the tube-well and the Petitioner executed a gift-deed dated 21.9.71 for an area of 67.03 acre to her four daughters who are in possession and their names have been mutated. That land should be excluded from the Petitioner's holding. Before the Prescribed Authority, the State produced Lekhpal

as a witness to prove the availability of irrigation facility. The Petitioner examined witnesses.

3. The Prescribed Authority dismissed the objection of the Petitioner. The Petitioner filed appeal which was also dismissed. The Petitioner has now challenged those orders in the present writ petition.

4. The main ground of attack of the Petitioner is that onus lies on the State to establish that the land which is mentioned in the notice is irrigated land and further that the land which was transferred by the Petitioner in favour of the daughters was not Petitioner's land. The Prescribed Authority as well as the appellate authority have not considered the ingredients of Section 4A of the Act while determining the availability of the irrigation facilities. His further contention is that the gift-deed was executed on 21.9.71, therefore, the relevant date for consideration would be 8.6.73 and not 24.2.71 as the notice itself was given to the Petitioner in the year 1982, i.e., after the amendment was made in the Act. This further contention is that in view of the statement made by the Lekhpal that some of the plots were not within the command area of the State tube-well. The finding of the Prescribed Authority as well as the appellate authority is against the law. The learned standing counsel has urged that the findings recorded by the Respondents are finding of fact and moreover, as it has been held that the land was capable of yielding two crops, therefore, that shall be stated to be agricultural land and for the purposes of the gift-deed it is 24.1.71 which shall be the relevant date and not 8.6.73.

5. I have heard learned Counsel for the Petitioner and the learned standing counsel and have also perused the judgments of the Respondents. The Prescribed Authority has held that no evidence was filed by the Petitioner to prove that the land was unirrigated one, rather the Lekhpal has stated on oath that it was in effective command area of the State tube-well. Therefore, he has held that the land was irrigated one. On issue No. 3, it has been held that as transfer was made after 24.1.71 therefore, the land shall be treated to be the land of the tenure-holder. The appellate authority has also affirmed the same finding. From the record, it appears that both the courts have not correctly appreciated the law on the point and they have not appreciated that the notice was given to the Petitioner after the amendment was enforced in the Act. Therefore, for the purpose of considering the transfer made by the tenure-holder, it was 8.6.73 which would be relevant date and not 24.1.71. Therefore, the judgments of the Respondents are set-aside on this point. So far as consideration of the agricultural character of the land, it is also significant to note that the notice was issued in 1982 then it was the duty of the competent authority to see as to whether the irrigation facilities were available in the relevant year as provided u/s 4 A, Moreover, as the Lekhpal has himself stated on oath that some of the plots were not in effective command area of the State tube-well, then atleast those plots should have not been taken to be irrigated one but as none of the two authorities have taken into consideration this aspect of the case, the

orders passed by them are not to be maintained and they are being quashed.

6. Accordingly, the writ petition is allowed. The matter is being sent back to the appellate authority to reconsider the evidence on the point of availability of irrigation facilities as provided u/s 4A of the Act and re-determine the ceiling area or the tenure-holder taking into consideration that the gift-deed executed by the tenure-holder was being and after transfer she did not remain the owner of the land. The appellate authority may permit the Petitioner to lead evidence on the point of availability of irrigation facilities.

7. There will be no order as to costs.