

(1977) 03 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 4088 of 1976

Bharat alias Bharat Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-03-1977

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 11, 12, 12A, 13

Citation : (1977) AWC 407 : (1979) RD 11

Hon'ble Judges : K.N. Seth, J

Bench : Single Bench

Advocate : N.K. Saxena, for the Appellant;

Final Decision : Allowed

Judgement

K.N. Seth, J.—Against the order of the Prescribed Authority declaring an area of 17.06 acres as surplus area the tenure-holder preferred an appeal. The only point canvassed before the appellate authority was that the Prescribed Authority failed to consider the choice indicated by the tenure-holder to the plots which he would like to retain as part of the ceiling area applicable to him. Before the appellate court the Petitioner filed an application mentioning therein the plots which may be included in the surplus area. The learned Judge, on the finding that it was a case where the land holder did not indicate his choice either after the notification u/s 9 or in his objection in response to the notice u/s 10(2) of the U.P. imposition of Ceiling on Land Holdings Act (hereinafter referred to as the Act), held that there was no question for the Prescribed Authority to have considered any such choice. As regards the choice indicated at the appellate stage the learned Judge felt that there was no justification for it at that stage.

2. In this Court it has been asserted that the Petitioner indicated his choice of plots before the Prescribed Authority but this fact has been denied in the affidavit filed on behalf of the State. The order of the learned Judge also indicates that no such choice was indicated before the Prescribed Authority at any stage.

3. The question for consideration, therefore is whether the choice could be indicated and considered at the appellate stage or even thereafter before the matter is finalised. Section 12-A of the Act provides:

In determining the surplus land u/s 11 or Section 12, the Prescribed Authority shall, as far as possible, accept the choice indicated by the tenure-holder to the plot or plots which he and other members of his family, if any, would like to retain as part of the ceiling area applicable to him or them under the provisions of this Act, whether indicated by him in his statement u/s 9 or in any subsequent proceedings;....

It was contended for the Petitioner that the law permitted the tenure holder to indicate his choice in his statement u/s 9 or in any subsequent proceedings and that would include the proceeding before the appellate authority or the proceeding that may be taken before the tenure-holder's rights are extinguished and vested in the State Government. bar the State it was urged that the expression "in any subsequent proceedings" must be confined to the proceeding relating to determination of surplus land by the Prescribed Authority u/s 11 or Section 12 and its scope could not be widened to include proceeding before the appellate authority or any subsequent proceeding prior to the vesting of the land in the State.

4. It cannot possibly be disputed that prior to the stage of vesting of the land in the stage the tenure-holder retains all rights in the land declared surplus. There is nothing in section 11 or Section 12 or in any other provision of the Act taking away the right of the tenure holder to choose his plots. He continues to enjoy the right of dominion and possession over his plots. It is a right incidental to his ownership of the plots that he may choose those which he would like to retain within the limit allowed to him by the Act. Section 12-A further provides that the choice indicated by the tenure-holder shall, as far as possible, be accepted. The principles on which this question has to be considered is indicated in the aforesaid provision. To confine the right of indicating the choice only till the stage of determination of the surplus land by the Prescribed Authority u/s 11 or Section 12 of the Act may not only cause grave hardship to the tenure-holder but may in certain cases also be impractical. A tenure-holder may contend that his holding is within the permissible limit, the Prescribed Authority may determine a certain area as surplus area and the tenure-holder, besides challenging the correctness of the determination made by the Prescribed Authority, may indicate his choice to the plot or plots which he may like to retain as a part of the ceiling area applicable to him. But if on appeal the surplus area is reduced, it will necessitate a further indication of choice. The decision by the appellate court does not put an end to the proceeding. Under the Act, as it stood prior to the amendment introduced in 1976, Section 14 provided for a notification in the Official Gazette relating to surplus land determined under Sections 11, 12 and 13 as the case may be and that from the beginning of the date of notification all surplus land shall stand transferred to and vest in the State Government free from all

encumbrances and all rights, title and interest of all persons in such land shall, with effect from such date, shall stand extinguished. Under the amended provision the Collector is empowered to take possession of the surplus land at any time after the determination of the surplus land under Sections 11, 12 and 13 and from the date of his taking possession the land shall stand transferred to and vest in the State Government and all rights, title and interest of all persons in such land shall stand extinguished. No notification is now necessary for that purpose. Till that stage is arrived the tenure-holder cannot legitimately be denied his right to indicate his choice. u/s 29 of the Act in certain circumstances the ceiling area is liable to be re-determined and by Section 30 of the Act the tenure-holder is again entitled to indicate the plot or plots which he would like to retain as a part of his ceiling area. Section 13-A also provides for re-determination of surplus land in certain circumstances. In such a situation also the tenure holder would have a right to indicate his choice. It is obvious that the law does contemplate indication of choice by the tenure-holder after the original determination u/s 11 or Section 12 of the Act.

5. The contention that it was open to the tenure-holder to indicate choice at the appellate stage even if he had failed to do so before the Prescribed Authority also appears to be sound. The order of the Prescribed Authority is subject to any appellate order u/s 13. Once an appeal is filed the declaration made by the Prescribed Authority to the extent challenged in appeal loses its finality. The Prescribed Authority is bound to give effect to the appellate decision. The appellate court exercises the same powers relating to determination of surplus land as is conferred on the Prescribed Authority under the Act. There appears to be no reason not to apply the doctrine of appeal being a continuation of the original proceeding to the proceeding under the present Act. The same view was taken in *Jagannath Marotrao Gavande and Others Vs. The State of Maharashtra and Another*, a case relating to the Maharashtra Agricultural Lands (Ceiling on Holdings) Act (Act No. 27 of 1961).

6. In the present case there appears to be no dispute that so far steps have not been taken for vesting the land of the Petitioner, which has been declared surplus, in the State. The Petitioner indicated his choice before the appellate Authority. It was competent for the appellate authority to consider the choice indicated by the tenure holder in the light of the principles laid down in the Act. The view taken by the appellate authority that it was not open to it to consider that question cannot be upheld.

7. In the result the petition is allowed. The order of the learned District Judge dated 28-8-1976 is quashed and he is directed to re-admit the appeal to its original number and decide the matter relating to the choice indicated by the tenure holder to the plots which he would like to retain as part of the ceiling area applicable to him in accordance with law. The parties shall bear their own costs.