

(1978) 12 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2697 of 1977

Bhura

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 18-12-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 11(2),
12A(d)(i)

Citation : (1978) 12 AHC CK 0029

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

Final Decision : Allowed

Judgement

K.N. Goyal, J.

Notice of the proposed proceedings under the U.P. Imposition of Ceiling on Land Holdings Act was issued to the recorded tenureholder, oppositeparty no. 4, and with his consent certain land was declared as surplus. The petitioner made a belated objection before the Prescribed Authority contending that he had no knowledge of the earlier proceedings. He had a right to explain the cause for delay in preferring his objection. Without considering the sufficiency of the cause attempted to be shown by the petitioner, the Prescribed Authority and also the appellate authority have rejected his prayer with the observations that the petitioner shall not be put to any loss inasmuch as he would be able to get back the sale consideration from the oppositeparty no. 4 under clause (d) (i) of the proviso to section 12A.

This was not a correct approach to the case. If a transferee is entitled to retain his land, it is no answer to his claim that he can instead get back his money which he had paid for acquiring the land. Section 11 (2) lays down that "the Prescribed Authority shall, on application made within thirty days from the date of the order under subsection (I) by a tenureholder aggrieved by such order passed in his absence and on sufficient cause being shown for his absence, set

aside the order and allow such tenureholder to file objection against the statement prepared under section 10 and proceed to decide the same in accordance with the provisions of section 12". Section 42 provides that sections 4, 5 and 12 of the Limitation Act, 1963, shall apply to all proceedings under this Act. Thus, although the objection was undoubtedly belated, it was open to the petitioner to show that there was sufficient cause for the delay, neither of the two authorities has considered this question. It is true that the petitioner was not a recorded tenureholder on 24/11/1971, inasmuch as he acquired the property after the date. As held in *Dilbagh Singh v. State of U.P.* (1978 R.D. 230 = 1978 A.W.C. 393), by a Division Bench of this Court even a tenureholder, whose name is not recorded, can file an objection under section 11 (2). He can ask for his claim to be considered for whatever it is worth. Even when his claim is entertained, the onus to show that the transfer was bona fide for adequate consideration, will of course lie on him. Moreover, it will at least be open to him to contend that the land other than the land covered by the sale deed in his favour should, as far as possible, be declared as surplus land as laid down in clause (d) of the said proviso to section 12A.

In the result, the writ petition is allowed. The order of the Prescribed Authority dated 16/10/76 and that of the appellate authority dated 24/5/77 (annexures 1 and 4 to this writ petition, are hereby quashed. The Prescribed Authority shall consider the petitioner's application afresh in accordance with law and in the light of the observations made in this judgment. No order is made as to costs.