

(2001) 07 AHC CK 0075

In the Allahabad High Court

Case No : Writ Petition No.1031 of 1988 (Ceiling)

Brijendra Pratap Bahadur Singh and Others

APPELLANT

Vs

Prescribed Authority (Ceiling)/ Addl. Collector (Executive)
Lucknow and Others

RESPONDENT

Date of Decision : 26-07-2001

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 13, 14

Citation : (2001) 07 AHC CK 0075

Hon'ble Judges : U.K.Dhaon, J

Final Decision : Allowed

Judgement

U.K. Dhaon, J.—The petitioners have approached to this Court with the following reliefs:

(A) issue a writ or direction in the nature of mandamus commanding the opposite parties no.1 and 2 to restitute within given time the land declared surplus by the Prescribed Authority vide order dated 7.10.1976 contained in Annexure4 to the writ petition.

(B) Issue order or direction in the nature of mandamus to command the opposite parties to pay damages to the petitioners at the rate of Rs.1000/ per bigha per annum.

(C) Issue writ or order in the nature of certiorari to quash the order dated 1.3.1984 and 6.3.1987 passed by the Prescribed Authority contained in Annexures Nos.5 and 8 to this writ petition.

2. A notice under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act (hereinafter referred to as the Act) was served upon the petitioner No.1 on 29.5.1974. In the said notice 12 Bighas, 15 Biswas and 6 Biswansi land of the petitioner No.1 was proposed as surplus. The petitioner No.1, filed his objection to the Prescribed Authority who by the judgment and order dated 21.12.1974 rejected the objection of the petitioner No.1 and declared 12 Bighas 15 Biswas

and 6 Biswansi land as surplus. The Prescribed Authority, thereafter taken the possession of the aforesaid surplus land from the petitioner No.1. The Prescribed Authority thereafter issued a second notice under Section 10(2) of the Act which was served upon the petitioner No.1 on 13.4.1974 and the land of petitioners No.2 and 3 total area 21 Bighas 1 Biswa and 9 Biswansi was also clubbed in the land of the petitioner No.1 and 29 Bighas, 1 Biswa and 18 Biswansi land was proposed as surplus land. The petitioner No.1 filed an objection before the Prescribed Authority stating interalia that the land of petitioners No.2 and 3 has wrongly been clubbed in his holding. It was also stated that petitioners No.2 and 3 are married daughters and they do not fall within the definition of family of the petitioner No.1. the petitioners No.2 and 3 also filed their objections stating that they are in possession in their own rights over 21 Bighas, 1 Biswa and 9 Bishwansi of land. The parties filed the oral and documentary evidence before the Prescribed Authority and the Prescribed Authority by the order dated 7.10.1976 rejected the objections and confirmed the area given in the notice as surplus. The said order of the Prescribed Authority dated 7.10.1976 was challenged by the petitioners No.2 and 3 by way of appeal under Section 13 of the Act before the District Judge, Lucknow. The District Judge, Lucknow, by the judgment and order dated 2.5.1978 allowed the appeal and discharged the notice. The Prescribed Authority on the basis of its judgment and order dated 7.10.1976 during the pendency of the appeal preferred by the petitioners No.2 and 3 taken the possession of 29 Bighas 1 Biswas and 18 Biswansi land and also executed the leases of the surplus land. The petitioner No.1 thereafter moved an application on 28.1.1983 before the Prescribed Authority for the restoration of the land measuring 29 Bigha, 1 Biswa and 18 Biswansi. The Prescribed Authority by the order dated 1.3.1984 rejected the application of the petitioner. The petitioner thereafter filed review petition before the Prescribed Authority which too was dismissed by the order dated 6.3.1987. Being aggrieved by the aforesaid orders the petitioners have approached this Court.

3. The learned counsel for the petitioners submits that during the pendency of the appeal the possession was taken over by the Prescribed Authority in pursuance of its order dated 7.10.1976 in an illegal manner. He further submits that the judgment and order passed by the District Judge, Lucknow, dated 2.5.1978 was not challenged by the State Government in writ jurisdiction or before any other authority, even then the possession of surplus land has not been restored to the petitioner. He further submits that the petitioners made representation before the Prescribed Authority but the same was rejected by the order dated 1.3.1984. The petitioner thereafter filed a review petition before the Prescribed authority and the prescribed authority by the order dated 6.3.1987 also rejected the review petition.

4. Sri Nirmal Tewari, learned counsel for the petitioners submits that the petitioners are entitled for the restoration of their land and are also entitled for damages at the rate of Rs.1000/per Bigha per annum due to the illegal action of the State.

5. The learned standing counsel submits that there is no illegality in the impugned orders and the surplus land has already been allotted in favour of different persons who are not before this Court as the petitioner has not impleaded them as party.

6. I have considered the arguments of the learned counsel for the parties and gone through the entire records. It is a case of great hardship where in spite of the fact that the appeal preferred by the petitioners was allowed by the District Judge, Unnao and the said order was not challenged in any forum by the State but in spite of that the possession of the land was not restored to the petitioners. In the instant case the petitioners were dispossessed from the land soon after the decision of the Prescribed Authority although an appeal was pending before the District Judge, Lucknow.

7. Section 14(1) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 is as under:

14. Acquisitions of surplus land: (1) The Prescribed Authority shall

(i) in case, where the order passed under subsection (1) of Section 11 has become final: or

(ii) in case, where no appeal has been preferred under Section 13, after the expiry of the period of limitation provided therefore: or

(iii) in case, where an appeal has been preferred under Section 13, after its decision;

notify in the official Gazette the surplus land determined under Sections 11,12 or 13, as the case may be.

8. Section 14 of the Act provides that the land will be surplus only after the decision in appeal under Section 13. The action of the Prescribed Authority in taking the possession of the surplus land was wholly illegal and against the provisions of the U.P. Imposition of Ceiling on Land Holdings Act. The Prescribed Authority even after the decision of the appeal failed to restore the possession of the land to the petitioners and rejected the application of the petitioners dated 28.1.1983 for restoration of possession in a most illegal manner by its order dated 1.3.1984 and again committed error while rejecting the review petition by order dated 6.3.1987. The petitioners have been deprived by the State in a most arbitrary manner. The arguments of the learned counsel appearing on behalf of the State that the land has been allotted to the different persons and they are not party in the instant petition can not be accepted. It is the State who has taken over the possession of the land during the pendency of the appeal although the land was not declared as surplus in view of Section 14 of the Act. If any lease has been granted/issued by the Collector on behalf of State Government of the land in dispute that is null and void and lease holders have no title or interest over the land. The Board of Revenue has also issued Government Order dated 6.3.1981, a copy of which has been annexed alongwith the writ

petition also provides that the Prescribed Authority is competent to dispossess the lease holders and restore the possession to the original tenure holders whenever the order of the Prescribed Authority has been modified by any competent court. In the instant case, the application was moved by the petitioners before the Prescribed Authority for restoration of the possession but the Prescribed Authority has failed to discharge his duty.

9. In the result, the writ petition succeeds and a writ in the nature of mandamus is issued directing the State Government to restore the possession of 21 Bighas 1 Biswa, 9 Biswansi of land to the petitioners No.2 and 3 which was recorded in their names when the notice under Section 10(2) of the Act was issued to the petitioner No.1, the possession of which was taken by the Prescribed Authority from the petitioners on 2.11.1977 within four weeks from the date the certified copy of this order is produced. The District Magistrate, Lucknow, will ensure that the possession of the land is restored to the petitioners within the time prescribed by this Court. The petitioners no.2 and 3 were illegally deprived of their property and as possession was not restored after the decision of appeal which was allowed by the judgment and order dated 2.5.1978 and the same was not challenged by the State Government, the petitioners are entitled for damages. For more than 21 years the petitioners No.2 and 3 have been deprived from 21 Bighas, 1 Biswa and 9 Biswansi of land, a sum of Rs.25,000/ is awarded as damages to the petitioners No.2 and 3. The State will also pay Rs.25,000/ as damages to the petitioners within three months.

(Petition allowed)