

(2013) 07 AHC CK 0102

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16296 of 2013

DCM Shriram Industries Limited

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Citation : (2013) 9 ADJ 427

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : Anjani Kumar Mishra, Vatsal Srivastava and A.K. Mishra, for the Appellant; Rajesh Mishra, for the Respondent

Final Decision : Allowed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri A.K. Mishra and Sri Vatsal Srivastava, for the petitioner and Standing Counsel and Sri Rajesh Mishra, for the respondents. The writ petition has been filed for quashing the order of Prescribed Authority (respondent-3) dated 14.3.2013, rejecting the application of the petitioner u/s 12A of U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Act) and for mandamus directing the respondents to accept choice of surplus land as given in the application of the petitioner u/s 12A of the Act.

2. The notice u/s 10(2) of the Act was issued to DCM Shriram Industries Limited (the petitioner) showing an area of 94 bigha 2 biswa 14 biswansi as surplus land with the petitioner. The petitioner filed an objection to the aforesaid notice, on which Case No. 144 was registered. The Prescribed Authority by order dated 6.4.1979 held an area of 76 bigha 16 biswa and 11 biswansi as surplus land with the petitioner. The petitioner filed an appeal (registered as Ceiling Appeal No. 98 of 1986-87) from the aforesaid order, which has been dismissed by Additional Commissioner, Meerut Division, Meerut, by order dated 30.7.1987 but surplus land has been enhanced to 79 bigha 12 biswa 5.2/3 biswansi. The petitioner filed a writ petition (registered as Writ-C No. 14929 of 1987) in which initially an interim order staying dispossession of the petitioner from the land in dispute has

been passed on 12.8.1987.

3. It has been stated that inspite of the interim order dated 29.1.1986 from the appellate Court, the Sub-Divisional Officer (respondent-4) without taking possession over the surplus land, according to the provisions of the Act, executed various pattas of the land in dispute to the villagers on 26.3.1986, 27.4.1986 and 28.4.1986. The petitioner filed an application (registered as Case No. 94/1987-88) u/s 27(4) of the Act, for cancellation of the pattas, which was dismissed by the Additional Commissioner (Judicial) Meerut by order dated 24.3.1988. Then the petitioner filed another writ petition (registered as Writ-C No. 6387 of 1988) in which operation of the order of Prescribed Authority dated 26.3.1986, 27.4.1986 and 28.4.1986 and order of Additional Commissioner dated 24.3.1988 have been stayed.

4. Writ-C No. 14929 of 1987 was partly allowed by this Court by judgment dated 17.4.2002, and order of appellate authority, enhancing the surplus land has been quashed and order of Prescribed Authority has been maintained. Writ-C No. 6387 of 1988 has been dismissed by this Court by order dated 16.1.2012.

5. The petitioner then filed an application dated 14.2.2012 giving choice of the surplus land. The application was heard by the Prescribed Authority who by his order dated 14.3.2013 held that the application for giving choice is highly belated as such is not liable to be accepted. On this finding the application has been rejected and the petitioner has been directed to hand over possession over the surplus land within 15 days. Hence this writ petition has been filed.

6. The counsel for the petitioner submits that Section 12A of the Act provides that the Prescribed Authority shall, as far as possible, accept the choice indicated by the tenure-holder. No limitation has been prescribed for giving choice This Court has consistently held that choice can be revised by the tenure-holder till his right is extinguished u/s 14 of the Act i.e. acquisition of the surplus land by taking actual possession over it. Supreme Court in State of U.P. Vs. Hari Ram, , held that possession means actual physical possession taken in accordance with the provisions of law. By the impugned order, the petitioner has been directed to hand over possession over the surplus land within 15 days as such it is admitted that possession has not been taken. Otherwise also possession over surplus land has not been taken according to the provisions of law. In such circumstances, the choice given by the petitioner was liable to be accepted. The order of respondent-3 is illegal.

7. In reply to the aforesaid arguments, the counsel for the respondents submits that the petitioner in Writ-C No. 6387 of 1988 has specifically argued before this Court that inspite of stay order, the surplus land has been allotted to the villagers and possession was handed over to them. Writ-C No. 6387 of 1988 has been dismissed by order dated 16.1.2012 and the pattas granted on 26.3.1986, 27.4.1986 and 28.4.1986 to the villagers of the surplus land has been upheld by this Court. The judgment dated 16.1.2012 passed in Writ-C No. 6387 of 1988 is

binding upon the petitioner. He cannot be permitted to raise contradictory plea that possession has not been taken over the surplus land.

8. I have considered the arguments of the parties and examined the record. Section 14 of the Act provides for acquisition of surplus land by the Collector at any time (i) in case where the order passed under Sub-Section (1) of Section 11 has become final, or (ii) in case where no appeal has been filed u/s 13, the date of expiry of the period of limitation provided therefore or (iii) in case, where an appeal has been preferred u/s 13, the date of its decision. The petitioner has not only filed an appeal from the order of Prescribed Authority dated 6.4.1979 but also obtained stay order from the appellate Court on 29.1.1996. The appeal was dismissed on 30.8.1987 and thereafter stay order has been granted by this Court on 12.8.1987. There has been no occasion for the Collector for taking possession over the surplus land. In the Counter-affidavit filed on behalf of State of U.P. no date of taking possession over the surplus land has been given. In paragraph-13 of the Counter-affidavit, a vague allegation has been made that possession over the surplus land had been taken by the patta holders. On the other hand the Prescribed Authority by the impugned order has directed the petitioner to hand over possession over the surplus land.

9. So far as arguments of the counsel for the respondents that the petitioner has specifically argued before this Court in Writ-C No. 6387 of 1988 that inspite of stay order, the surplus land has been allotted to the villagers and possession was handed over to them and Writ-C No. 6387 of 1988 has been dismissed by order dated 16.1.2012 and the pattas granted on 26.3.1986, 27.4.1986 and 28.4.1986 to the villagers of the surplus land has been upheld by this Court as such the petitioner cannot be permitted to raise contradictory plea that possession has not been taken over the surplus land, is concerned, in that case also the petitioner has raised the plea that possession was not taken by the Collector in accordance with law. Possession taken by allottee in highhanded manner does not debar the petitioner from revising his choice of the surplus land. Thus it is proved that possession was never taken by the Collector over the surplus land.

10. It has been consistently held by this Court in *Bharat alias Bharat Singh Vs. State of U.P. and Others*, , *Bhagwan Swaroop v. State*, 1979 AWC 70, *Balesar v. State*, 1980 ALR 68, *Smt. Ram Kali v. State of U.P.*, 1982 ALJ 134, that tenure-holder can revise his choice till his right is extinguished u/s 14 of the Act. The Prescribed Authority in the impugned order has rejected the choice of the petitioner only for the reason that it has been given at the highly belated stage. In view of law laid down by this Court, the order of Prescribed Authority is illegal and liable to be set aside. In the result, the writ petition succeeds and is allowed. The order of Prescribed Authority dated 14.3.2013 is set aside. The Prescribed Authority is directed to pass a fresh order on application of the petitioner giving choice of the surplus land, according to the provisions of Section 12A of the Act.