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**(2010) 10 AHC CK 0204**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 1057 of 1991

Dhanwant Singh

APPELLANT

Vs

Addl.Commissioner (Judicial), Moradabad Division,  
Moradabad and others

RESPONDENT

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**Date of Decision :** 22-10-2010

**Acts Referred:**

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

**Citation :** (2010) 10 AHC CK 0204

**Hon'ble Judges :** Arun Tandon, J

**Final Decision :** Allowed

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**Judgement**

Arun Tandon, J.—Proceedings under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act were initiated against the petitioner. It is not necessary for the Court to notice in detail, the proceedings taken in that regard, suffice is to refer to the order of the Writ Court dated 23.4.1985 passed in Writ Petition No. 633 of 1982 filed by the State of Uttar Pradesh, against the order of the Appellate Authority passed in favour of the present petitioner(recorded tenure holder). The operative portion of the judgement and order read as follows:

The writ petition is allowed and the impugned judgements and orders dated 12.12.1980 and 21.10.1981 are quashed. The Prescribed Authority shall determine afresh if the Plot No. 67/5 is irrigated or unirrigated in the light of the observations made above, and shall then decide the surplus land, if any, of the respondent no. 3. In the special circumstances, the parties are directed to bear their own costs.

2. The proceedings were therefore initiated by the Prescribed Authority for the purposes determining as to whether Plot No. 67/5 was irrigated or not.

3. The Prescribed Authority under order dated 12.3.1990 held that Plot No. 67/5 total area 23.06 acres was irrigated and the ceiling limit of the petitioner were accordingly determined. It was specifically recorded that despite notice being

issued with an opportunity to lead evidence in support of his claim, the tenure holder did not respond. No evidence was led by him in support of his claim that Plot No. 67/6 was unirrigated. The Prescribed Authority after considering the evidence led by the State Government found that Plot No. 67/5 was irrigated by a tube well and that in 1380 phasli two crops had been cultivated over the plot in question.

4. Against the aforesaid order, the tenure holder filed a review application on 10.5.1990. It appears that review application was not pressed as in the mean time. Appeal under section 13 of the Ceiling Act was preferred before Appellate Authority namely the Commissioner. The appeal was presented on 5.7.1990 since the appeal was beyond time the petitioner also made an application under Section 5 of the Limitation Act explaining the reasons for delay in filing the appeal. This application under Section 5 of the Limitation Act has been rejected under the impugned order of the Appellate Authority dated 28.8.1990 as a consequent thereto the appeal has been dismissed as barred by the limitation.

5. In order to keep the records it may be noted that the State of Uttar Pradesh filed an appeal against the order of the Prescribed Authority dated 12.3.1990 with the allegation that there has been wrong calculation of the surplus area after Plot No. 67/5 has been found to be irrigated. This appeal was contested by the petitioner. The appeal has been allowed by the Appellate Authority holding therein that there is an apparent error in the order of the Prescribed Authority qua, the total area of Plot No. 67/5 which was 23.06 acres. The ceiling limit of the petitioner has been determined accordingly and it has been found that the petitioner has 7.17 acres of irrigated land as surplus.

6. The orders of the Prescribed Authority and that of the Appellate Authority dated 6.12.1990 have been challenged by means of the present writ petition.

7. Learned counsel for the petitioner challenging the order of the prescribed authority contended that he was under the impression that a fresh notice in the matter shall be issued and therefore he did not lead any evidence as was directed under the order of the Writ Court, referred to above. the allegation made by the petitioner in that regard is flimsy and cannot be accepted by this Court. There is no denial of the fact that the Prescribed Authority had issued notice to the petitioner to lead evidence and that despite service of notice, the petitioner did not respond and no evidence was led by him in support of his case. In these circumstances, this Court finds that there has been no procedural defect in the making of the order by the Prescribed Authority.

8. So far as the merits of the order of the Prescribed Authority are concerned, this Court may record that the petitioner had filed an appeal against the said order which was beyond limitation. Application for condoning the delay has been rejected under order dated 28.8.1990 and, therefore, the merits of the appeal have not been touched.

9. So far as the order dated 28.8.1990 is concerned, this Court finds that the

Appellate Authority has adopted an hypertechnical attitude in the matter. In the facts of the case, it cannot be said that the petitioner was not pursuing his remedy after the order of the Prescribed Authority dated 12.3.1990 with due diligence. Under wrong advise, he had filed the review application and it was only on 26.6.1990 that he was informed of the proper remedy of appeal before the Appellate Authority accordingly preferred the appeal on 5.7.1990.

10. It is settled law that where technicalities and substantial justice are pitted against each other, cause of substantial justice must prevail. An order on merits is always preferably to an order deciding the appeal on technical grounds.

11. In the totality of the circumstances on record, this Court finds that the order of the Appellate Authority rejecting Section 5 application made by the petitioner dated 28.8.1990 is legally not justified. The delay in filing the appeal was bona fide and is to the satisfaction of this Court. Consequently, the order of the Appellate Authority dated 28.8.1990 is hereby set aside. The appeal filed by the petitioner is treated to be within time and restored to its original number.

12. Let the appeal filed by the petitioner be decide on merits preferably within four months from the date a certified copy of this order is produced before the Appellate Authority. This order will not entitle the petitioner to lead any fresh evidence at the appellate stage and he is at liberty to challenge the order of the Prescribed Authority on the basis of the material, as it exists on record.

13. So far as the order of the Appellate Authority dated 6.12.1990 passed on the appeal of the State Government is concerned, this Court finds that the order is dependent upon the issue as to whether Plot No. 67/5 was irrigated or not. Therefore, if the appeal filed by the petitioner is decided against him, the order of the Appellate Authority on the appeal of the State Government will need no interference and the ceiling limits so determined shall stand affirmed. However, if the appeal of the petitioner is allowed, all necessary action shall be taken for redetermination of the ceiling limits of the petitioner without being influenced by the order dated 6.12.1990.

14. Writ petition is allowed subject to the aforesaid observation.