

(1978) 01 AHC CK 0005
In the Allahabad High Court
Case No : Writ Petition No. 8022 of 1975

Gajraj Pal Upadhya

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-01-1978

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 29, 3(8), 4, 4A

Citation : (1978) AWC 197 : (1978) RD 139

Hon'ble Judges : N.D. Ojha, J

Bench : Single Bench

Advocate : Sudhir Narain Agarwal, for the Appellant;

Final Decision : Allowed

Judgement

N.D. Ojha, J.—Having been served with a notice u/s 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Act) the Petitioner filed an objection inter alia asserting that plot Nos. 31, 296, 315, 15 and 157 were grove plots and should be treated as such in determining the ceiling area. The Prescribed Authority by its order dated 31st October, 1974 repelled the aforesaid plea raised by the Petitioner. In regard to Plot Nos. 296, 315, 15 and 157 the Prescribed Authority took the view that even though these plots were recorded as groves it was apparent from the report of the Naib Tehsildar dated 12th October, 1974, that there were no trees on the spot and the land was under cultivation. Subsequently an application was made by the Petitioner for review in respect of these four plots which was allowed by the Prescribed Authority on 9th December, 1974. In this order the Prescribed Authority took the view that since the report of the Naib Tehsildar was contrary to the entries in the village records it could not be accepted. Still an appeal was filed by the Petitioner before the District Judge. A cross-objection was filed by the State in respect of plot Nos. 296, 315, 15 and 157 on the ground that no case for review had been made out and the order dated 9th December, 1974, was liable

to be set aside. The appeal was heard by the Additional Civil Judge, Bulandshahar, and was dismissed on 10th May, 1975. By the same order the cross-objection filed by the State of Uttar Pradesh was, however, allowed and on the view that no case for review had been (sic) the order of the Prescribed Authority dated 9th December, 1974, was set aside and its order dated 31st October, 1974, was restored. Aggrieved the Petitioner has instituted this writ petition.

2. It was urged by counsel for the Petitioner that the Prescribed Authority in its earlier order dated 31st October, 1974, had committed an apparent mistake in placing reliance on the report of the Naib Tehsildar dated 12th October, 1974, and ignoring the entries in village records and on this mistake being brought to its notice the said authority had rightly corrected the apparent mistake by its order dated 9th December, 1974. On the other hand it was urged by the learned Standing Counsel that if the aforesaid plots have lost their character as grove land as contemplated by Section 29 of the Act, even if a declaration had earlier been made it was incumbent on the Prescribed Authority to redetermine the ceiling area and since in view of the report of the Naib Tehsildar it was apparent that these plots had lost their character as groves the order of review was illegal and had rightly been set aside by the Additional Civil Judge.

3. Having heard counsel for the parties I am of opinion that the writ petition deserves to be allowed. Section 5 of the Act inter alia provides that on and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no tenure-holder shall be entitled to hold in the aggregate throughout Uttar Pradesh, any land in excess of ceiling area applicable to him. The date of commencement of the aforesaid Act (U.P. Act 18 of 1973) is 8th June, 1973. Section 4 of the Act inter alia provides that for purposes of determining the ceiling area u/s 5 or any exemption u/s 6 subject to the provisions of Clause (ii), two and one-half hectares of grove land shall count as one hectare of irrigated land. Sections 4 and 5 read together, therefore, contemplated that if on 8th June, 1973, certain plots constituted grove land 2 1/2 hectare of such grove land shall count as one hectare of irrigated land. The relevant date for determination as to whether the four plots aforesaid constituted grove land or not was, therefore, 8th June, 1973. It may be that these plots may have constituted grove land on that date but may have lost its character as grove land in between 8th June 1973 and 12th October, 1974, when the Naib Tehsildar made local inspection either because the trees may have been cut away or for any other reason. But for Section 29, of the Act the report of the Naib Tehsildar dated 12th October, 1974, would consequently have been irrelevant for determination of the crucial question as to whether these plots constituted grove land or not for purposes of determining the ceiling area. Since, however, in view of Section 29 a redetermination has to be made by the Prescribed Authority in case these plots have lost their character of grove, I am of opinion that the interests of justice require that this question may also be determined in these very proceedings. It is settled principle of law that as far as possible recourse to

such action should be avoided which may result in unnecessary multiplicity of proceedings. Incase the authorities below are required only to determine as to whether these plots constituted grove land on 8th June, 1973, or not and to determine the ceiling area accordingly and the authorities come to the conclusion that it was grove land on that date, fresh determination of ceiling area will have to be made u/s 29 if it is correct that these plots have lost the character of grove after 8th June, 1973. In that event the determination made earlier would be of no consequence and would ultimately, result in not only unnecessary waste of time sad money but also in multiplicity of proceedings. It is for this reasons that I am of the view that this fact having been brought to the notice of the Prescribed Authority by the Naib Tehsildar that the plots aforesaid are no longer groves on the spot it is desirable that not only the question as to whether these plots constituted grove land on 8th June, 1973, but also the question as to whether "they have lost the character as grove land deserves to be decided in these very proceedings. I may point out for the guidance of the authorities below that the question as to whether or not these plots constituted grove land on 8th of June, 1973, as also the question as to whether they have lost their character as grove after that date will have to be decided with reference to the definition of grove land as contained in Section 3(8) of the Act. The report of the Naib Tehsildar %cannot be treated as conclusive. The question whether certain plots constituted grove land or not is not to be decided by the Naib Tehsildar or any authority other than the Prescribed Authority or the appellate authority. Indeed when a local inspection is made the person making the local inspection should in his report give .the facts which are relevant for determination of the question as to whether a plot constitutes grove land or not. The inference as to whether on those facts a plot can be said to be grove land is ultimately to be drawn not by the person making the local inspection but by the Prescribed Authority or the appellate authority. To make the point more specific, I may point out that if a local inspection is made the facts which are to be stated in the report are : the area of the land, the number, nature and location of the trees and such factors which may throw light in regard to the ages to the trees. After this material is furnished by the person making the local inspection in his report it is for the Prescribed Authority or the appellate authority as the case may be to determine as to whether in view of the facts stated in the report the plot can be said to constitute grove land or not within the definition of the term contained in Section 3(8) of the Act. From a perusal of the orders passed by the authorities below it does not appear whether the Naib Tehsildar had given his report on these lines or not if he had just given a report containing his own opinion that these plots do not constitute grove that would not be of much evidentiary value. In this view of the matter I am of opinion that the questions as to whether the aforesaid four plots constituted grove land or not on 8th June, 1973, and whether they have lost their character as grove land thereafter, deserve to be decided afresh in accordance with law. In case it is held that either these four plots did not constitute grove land on 8th June, 1973, or that they have lost their character as grove land thereafter the question as to whether these plots are to be treated as

irrigated plots or not within the meaning of Section 4A of the Act will also have to be decided.

4. Since the matter is an old one I am further of opinion that it would meet the ends of justice if in place of quashing the orders of the Prescribed Authority as well as of the Additional Civil Judge, the order of Additional Civil Judge alone is quashed and he is directed to decide the appeal afresh after giving the parties an opportunity to produce additional evidence and getting a local inspection made.

5. In view of the foregoing discussion the writ petition succeeds and is allowed. The order of the Additional Civil Judge dated 10th May, 1975, is quashed and he is directed to decide the appeal afresh in accordance with law keeping in mind the observations made above. In the circumstances of the case the parties will bear their own costs, The order of stay is vacated.