

(2009) 12 AHC CK 0118
In the Allahabad High Court

Ganga Devi & 6 Ors.

APPELLANT

Vs

State of U.P. Thru Secy. Revenue & 2 Ors.

RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:

Citation : (2009) 12 AHC CK 0118

Hon'ble Judges : Rakesh Sharma, J

Judgement

Rakesh Sharma, J.

Heard learned counsel for the parties.

1. Through the present writ petition, the petitioners have assailed the orders dated 11.5.2000 passed by the Prescribed Authority(Ceiling)/Upper Collector, Kheri under Ceiling Act and the order dated 23.10.2002 passed by the Addl. Commissioner(Administration), Lucknow Division, Lucknow dismissing the appeal preferred by the petitioners. Both the authorities had declared 49.082 acres of land as surplus land held by the petitioners. After the implementation of the aforesaid Act on 22.11.1974 a notice under section 10 (2) of the Ceiling Act was served on the original tenure holder, that is, late Sri Chhotey Lal, husband of petitioner No.1 and father of petitioner No.2 to 7. In the said notice the total holding of the tenure holder and his family of six grown up sons, wife etc. was shown as 113.658 acres. Out of this 20.948 acres of land was shown as irrigated. 98.74 was treated to be unirrigated. 2.97 acres of land was shown as grove land and the total irrigated land was taken to be 81.94 acres. The tenure holder Chhotey Lal had filed a detailed reply to the notice dated 19.4.74. It was contended that in the said notice, the land of Smt. Ganga Devi was wrongly clubbed with his land. As per record Smt. Ganga Devi was a separate tenure holder and she had no concern with the said tenure holder. She should have been sent a separate notice and a composite notice was illegal. The petitioner has drawn attention of the Prescribed Authority to a judgment rendered in P.A.Case No.136 on 20.4.68. In this case a judicial order has been passed after recording a finding and conclusion that Smt. Ganga Devi was a separate tenure holder. For

convenience, judgement and order passed by the Prescribed Authority, Kheri in case No.136 State Vs. Ganga Devi is quoted below:

"In response to notice issued u/s 10(2) of the U.P. Imposition of Ceiling & Land Holdings Act; Smt. Ganga Devi w/o Chhotey Lal Bajpai, r/o Lakhimpur has filed an objection claiming that her family consists of 9 members, as such, she is entitled to 64 acres of fair quality land as ceiling area and that area u/s 6 of the Act on account of threshing, composite pits, Farm road, residential and groves etc. should be granted.

In support of her claims the (sic.) has examined her son Sri Chandra (sic.) and Sri Rameshwar Dayal (sic.) Office with reference to (sic.) 829 Ward No.3 of Mohalla Sankata Devi has filed two invitation cards as documentary evidence.

I have gone through the entire evidence on file and have heard the parties. From the statement of witnesses, it is evident that there are 9 members in her family and therefore, she is entitled to 64 acres of fair quality land as ceiling area. The ceiling area of her holdings is equal to 44.60 acres of fair quality land. Thus, she does not (sic.) land beyond the limit of the ceiling area. The notice issued u/s 10(2) of the Act is, therefore, (sic.). Let all concerned be informed accordingly

(R.S.Nigam)

P.C.S.

Prescribed Authority

Tehsil Lakhimpur

20.4.68"

2. It was contended that the tenure holder was having less than 7.300 hectare of land. The entire land was unirrigated. Apart from it no public tube well was available on the land. Chhotey Lal was entitled to retain land to the extent of 13.300 Hectares only for his family. The tubewells were available on plots No.1414/1.07, 1413/0.143 which was abadi land (not agricultural land), the rebate for abadi land should have been given to the tenure holder. It was further contended that the plot numbers shown in the notice were under consolidation proceedings and no notification under section 52 of C.H.Act finalising the consolidation proceedings was published. The ceiling proceeding ought to have been abated. Smt. Ganga Devi's land was also in consolidation proceedings and no notification under the said section was ever issued, the consolidation proceedings ought not to have been initiated in the petitioner's case.

3. There existed an old grove on various plots, details of which was given in the reply to the notice. It was shown in statutory form No.23 issued by the consolidation authorities in respect of land in Fazal Nagar that the whole area was unirrigated. In village Fazal Nagar 90.61 acres of land was recorded. A chak of 23.67 acres was carved out and remaining 67.71 was shown out of consolidation.

4. There was 56.86 acres of land in the name of Smt. Ganga Devi which was covered by Shakhua and Sheesham trees (timber trees). The Forest department of Govt. of U.P. had claimed that it was a forest and proceedings under section 38 H of the Forest Act were already pending in the competent court. This land should not have been clubbed with the land held by Smt. Ganga Devi for the purpose of covering it under the C.H.Act. This fact has been admitted by the State of U.P. in the counter affidavit filed in this Court.

5. Smt. Ganga Devi had sought benefit in respect of six major sons and other family members . 13.30 hectares of land was to be given to the objector, six major sons of petitioner Ganga Devi . It was further submitted before the Prescribed Authority that for managing such a big agricultural system two acres of land was used as Khalihan which was to be treated as Abadi (not covered by C.H.Act). In addition to this the tenure holder had required 1 acre of land for residential purposes, two acres of land for keeping bullocks and animal(cattle shed), two acres of land was required for producing Gur (Jaggery).3 Bighas of land was a pond which was also used for agricultural purpose and for the use of cattles. The concession/benefit had to be given by ceiling authority for abadi, grove forest, cattle yard, barn and spare land for management of agricultural activities relating to agriculture, horticulture and animal husbandry.

6. Specific plea was taken before the consolidation authorities that the unchallenged and uncontroverted, final binding judgement rendered on 20.4.68 in case No.136 would operate as resjudicata. In this judgement, it was specifically held by the Prescribed Authority under the Ceiling Act that family of Smt. Ganga Devi was separate from Sri Chhotey Lal. In view of this unchallenged judicial finding, there was no question of clubbing her land with Sri Chhotey Lal. The cases were consolidated. The Prescribed Authority had framed 16 issues while disposing of the cases. Five witness, that is, Lekhpal of the concerned village, ARK. Tehsildar etc. were produced by the State on behalf of the petitioner . Late Chhotey Lal appeared as a witness. Various documents, copy of the above judgement was filed. In the meantime Chhotey Lal had died and legal heirs were substituted. By producing High School Certificate it was demonstrated that Krishna Mohan, Shashi Mohan, Chandra Mohan were major. Khatauni of basic year 1359 CH 45, CH 23, CH 41 prepared under consolidation proceedings were filed before the court. The revenue entries, Khatauni of the concerned villages were also produced before the consolidation authorities and in this Court also.

7. Advocate Commissioner's report was sought who had submitted a report that there existed forest and grove on large number of plots.

8. The Prescribed Authority had declared 49.082 acres of land of original tenure holder Chhotey Lal as surplus land by the order dated 11.5.2000. The said authority had declined to stay the proceedings despite consolidation proceedings were going on. Smt. Ganga Devi's land was clubbed with the land of Sri Chhotey Lal and the land excluding from consideration the judgement and

order rendered on 20.4.68 in ceiling case No.136. The plea of estoppel and res judicata taken by the petitioner was rejected without recording a finding and giving reasons. The submission regarding there being a large abadi land and existence of tubewell and Kothari was rejected. The submissions regarding there being a big land with tubewell and Kothari was rejected. No benefit on this account was given to the tenure holder. The existence of old grove and forest was completely excluded from consideration. No reasons and findings have been recorded. There stood 46 trees on the plot. The calculation of irrigated and unirrigated land was wrongly made.

9. An important plea was taken before the Prescribed Authority that Sri Krishna Mohan, Shashi Mohan and Chandra Mohan being old Zamindars were having their own Sir and Khudkasta. It was recorded as such on abolition of Zamindari in 1951. These persons had already born prior to abolition of Zamindari and as such their Sir and Khudkasta land could not have been clubbed in the land of their father's land and mother Smt. Ganga Devi. In fact separate notices should have been given to them. The relevant entries in the revenue record were not taken into account. Such a material point cannot be ignored where there were several tenure holders having their own shares. The other issues were wrongly decided without taking note of individual share, the details of which was given before the Prescribed Authority and the Commissioner.

10. The order passed by the Prescribed Authority was challenged before the appellate court, that is, Addl. Commissioner (Administration), Lucknow Division, Lucknow. The appeal was dismissed on 23.10.2002. The Commissioner had without application of mind affirmed the order passed by the Prescribed Authority reiterating the finding of the Prescribed Authority. Sweeping and vague findings have been recorded while dismissing the appeal. The record was not properly considered. Learned counsel for the petitioner has placed reliance on the following judgements in support of his submission:

1. 1978 ALJ 1431 Chhattar Singh Vs. State;
2. 1978 ALJ 436 Smt. Rani Prem Kunwar Vs. District Judge;
3. 1978 ALJ 1341 Rajendra Singh Vs. State;
4. 1977 LLJ 321 Chetanya Raj Singh Vs. II Addl..

11. It was highlighted before the Court that the petitioners are still in possession . This Court while admitting the writ petition on 18.11.2002 had passed an interim order for maintaining status quo. The opposite parties were restrained from dispossessing the petitioners. It was also provided that the land shall not be allotted to any body.

12. Learned Standing Counsel opposed the writ petition on the basis of the counter affidavit. He has submitted that the entire land of Sri Chhotey Lal, after his death came into possession of Smt. Ganga Devi and her family. The land was clubbed. No separate notice under section 10(2) was required to be given to the

major sons of Sri Chhotey Lal. The Prescribed Authority had rightly rejected the application submitted by the persons claiming joint tenureholdership on 24.1.71. The version of Chandra Mohan and others, sons of Chhotey Lal was taken into account by the Prescribed Authority and the Appellate Authority into account and was dealt with. He has submitted that the fact regarding existence of grove and forest land was not proved. The Advocate Commissioner's report dated 20.2.75 was not written in presence of Halka Lekhpal. The report was imaginary. In view of this, the Prescribed Authority did not make any comment or discussed the Advocate Commissioner's report.

13. Learned Standing Counsel has further submitted that Smt. Ganga Devi was the wife of late tenure holder Chhotey Lal and the earlier proceedings were held in the old Ceiling Act which was decided on 20.4.68. After that new Ceiling Act came into force on 8.6.73. The petitioner's case was rightly dealt with under the provisions contained in the new Ceiling Act. The tenure holder's wife is treated as the family member of the tenure holder. The land possessed by Chhotey Lal and his wife was rightly clubbed together and single notice under section 10 (2) was rightly issued by the Prescribed Authority to the tenure holder. After taking into account the evidence on record and hearing the parties, the Prescribed Authority had rightly declared 49.082 acres of land of Chhotey Lal as surplus land. As far as submissions regarding there being a grove and abadi land is concerned, Lekhpal's report was relied upon by the Prescribed Authority. The existence of 46 trees do not prove that there existed a grove on some plots. On the basis of the report of Lekh Pal, Gata No.1414 was not treated as abadi. The Prescribed Authority has not erred in recording his finding. It was stressed before the Court that under the Ceiling Act, title of the parties like father, wife and major sons cannot be declared or defined.

14. A contradiction has been made in para 11 of the counter affidavit. The respondent State of U.P. has submitted that Smt. Ganga Devi's trees were standing on the land measuring 56.86 acres. The petitioner has specifically pleaded before the ceiling authority that there existed an old forest having timber trees like Sheesham, Shakhua and other varieties of trees. A reply has been given in para 11 that a case was pending between Smt. Ganga Devi and the Forest Department and as such the land could be treated as covered under the Ceiling Act. It is only after disposal of the forest case that Smt. Ganga Devi and six members of his family can get the benefit of land covered under the forest.

15. Interestingly, here the case of the petitioner is that no concession or benefit in respect of old forest covering hundreds of trees was allowed to the tenure holder. Admittedly, a case under Forest Act was pending in a competent court. The above noted land cannot be covered under the ceiling proceedings till the disposal of the case pending in the court of law, a forest dispute.

16. Learned Standing Counsel for the State of U.P. has strenuously argued that the Prescribed Authority was right in holding that the original tenure holder

Chhotey Lal 's land and his wife and the other family members can be clubbed together . The land was shown in C.H.Act form 45 as the land in the name of original tenure holder and his wife. It was in possession of these persons. Thus the orders passed by the Prescribed Authority and the appellate court were legal, just and proper and no interference is required. It was open for the petitioner to file objections before the Chakbandi authority. The two proceedings are different. The court has noted that no specific reply has been given regarding Sir and Khudkasta land held by the petitioner's major sons who were born much before the enforcement of U.P.Z.A.&L.R.Act . The consolidation authorities have rightly ignored the claim of the petitioner for allowing the benefit of Khalihan, Abadi, tubewell and other land. The appeal was rightly rejected by writing a reasoned and speaking order.

17. Sri Arun Kumar Shukla appearing for respondents No.4 to 11 entered this litigation by filing an impleadment application on 5.12.08. This application was allowed on 20.8.09. As per the statement of Sri Arun Kumar Shukla recorded on 17.12.09, he was putting appearance on behalf of the land allottees (patta holders). They were allotted land after passing of the order by the Prescribed Authority. A quarry was put to Sri Arun Kumar Shukla as to when they were allotted Patta. Learned Standing Counsel and learned counsel for the petitioner has informed the Court that it was given on 14.7.2000. Admittedly, they were only given allotment order, a piece of paper but no possession of land was handed over to them.

18. Learned counsel for the petitioner as well as learned Standing Counsel have admitted that the Prescribed Authority had passed the order under C.H.Act on 11.5.2000. There was 30 days statutory period available to tenure holder to file an appeal. Accordingly an appeal was filed on 9.6.2000. Learned Addl. Commissioner had passed the stay order on 9.6.2000. Admittedly the Patta was granted on 14.7.2000 despite there being an interim order passed by the appellate authority, i.e., on 9.6.2000. In this view of the matter, the patta holder, that is, respondents No. 4 to 11 who had formally entered the litigation for the first time on 20.8.09, at this stage had no right created in their favour to claim the land in dispute unless this litigation is finally decided and the land is declared surplus. However, Sri Arun Kumar Shukla's submissions were taken note of on 17.12.09.

19. I have heard learned counsel for the parties and perused the impugned judgement and the materials brought on record. I have also gone through the objections and memo of appeal filed by the tenure holders before the prescribed authority and the appellate court. Specific plea was taken by the petitioner that ceiling case no.136 was finally disposed of on 20.4.68. The Prescribed Authority while exercising his judicial power had held that there are 9 members in the family of Smt. Ganga Devi and she was entitled to 64 acres of fair quality land and she did not have the land beyond the limits of ceiling area. She was accepted as an independent tenure holder having no concern with the land held

by Sri Chhotey Lal. The judgment and order is still in vogue . It was not challenged by the State of U.P. in any appropriate forum or before this Court. No fresh material was available with the successor Prescribed Authority to form a different opinion and club the land of Smt. Ganga Devi with Sri Chhotey Lal tenure holder's land . There is force in the submissions of learned counsel for the petitioner and principles of resjudicata and estoppel will apply in the present case. This fact cannot be ignored that Smt. Ganga Devi and Chhotey Lal had six major sons when the new consolidation Act came into force, the tenure holders were entitled to claim benefits as per provisions contained in C.H.Act, carving out the shares of major sons who were having their own families to sustain on the land. The Prescribed Authority had ignored this material fact while making assessment of surplus land available with the petitioner. It was specifically pleaded before the ceiling authority that the major sons were born before the U.P.Z.A.&L.R. Act came into force. Being family members of erstwhile Zamindar, they had their own well defined "Sir" and "Khudkasta". It was well defined as per shares of the sons . Despite pleading of the petitioner before the Prescribed Authority and the Appellate Authority this issue was not appreciated and taken note of. This Court has dealt with the pleadings of the parties and found that the Sir and Khudkast land of family members of Zamindar were well defined in their name and they cannot be clubbed with other's land. The details of the family members have been given in various paras of the petition wherein it was pleaded that Krishna Mohan Chandra Mohan and Shasi Mohan were having their own Sir and Khudkasta land which was part of their ancestral holdings. The share of the sons was well defined and carved out. The sons' Sir and Khudkasta land ought not to have been clubbed in the land of their father late Sri Chhotey Lal. Separate notices ought to have been given to afford them opportunity of putting forth their version . Moreover, the documents submitted by the parties in this regard were not considered. Thus on the basis of material on record it is held that Krishna Mohan, Chandra Mohan and Shashi Mohan will be treated to have their own separate land which was their Sir and Khudkasta at the time of abolition of Zamindari and it ought not to have been clubbed with their father Chhotey Lal or mother Ganga Devi . The petitioner's case is supported by the judgements cited by him before the ceiling courts and this Court.

20. The benefit of grove land was not allowed to the petitioners. It was found that 46 trees were available on the plots indicated by the tenure holder. The total area of the grove was 56.86 acres but no benefit of the grove was allowed to the tenure holders. The Prescribed Authority had ignored that the consolidation proceedings had commenced and the proceedings should have been ordered to be abated on the application submitted by the tenure holder. After determination of title over the plot and defining the nature and status of the land, it is natural after deciding the title in respect of the land and considering the nature and status of the land by the consolidation authorities, the ceiling authorities would have stepped in. Legal submissions placed by the petitioners have been brushed aside and the issue was not dealt with properly.

21. It is admitted to all the parties including the State of U.P. that there existed a forest on the site covering 56.86 acres of land . It is noteworthy that the land is situate in Tarai region of Lakhimpur Kheri district being closer to Himalayan hills, a large number of area is covered by forests including "Dudhwa forest". It is admitted in para 11 of the counter affidavit that in respect of the land covered by forest, a case under the Forest Act was pending before the competent court in district Lakhimpur Kheri dealing with forest cases. It is surprising to note that despite pendency of suit regarding ownership/title over the forest land whether it was land owned by the State Government or the petitioner, how this land has been clubbed with the petitioner's land for the purposes of covering it under the provisions of C.H. Act. How can the Prescribed Authority or the appellate authority can visualise or imagine as to the dispute in the forest court would settle against the State Government or a day will come when the land will be declared to be petitioner's land for the ceiling purposes. The benefit of this forest land ought to have been allowed to the petitioner. Advocate Commissioner's report cannot be ignored without there being a finding of the court that the report was untrustworthy. The Prescribed Authority had allowed the application for appointment of an advocate commissioner. This shows that the authorities have acted with predetermined mind.

22. The ceiling authorities must have taken into account that for a large agricultural holding of such a big family some additional land was required for storage of grains, harvesting area, jaggery plant, tubewell, cattle shed barn, storage of agricultural inputs, fertilizer seeds and implements etc. A large cattle shed is also required by such agriculturist .No concession has been given for these purposes. This Court has noted that contrary findings have been recorded regarding irrigated and unirrigated land without recording a finding that there existed a source of irrigation and what was the source of that irrigation, a bald, sweeping finding has been recorded that most of the land was irrigated. In the order dated 20.4.68, the court has recorded a judicial finding that 49.082 acres of land was irrigated having a proper source of irrigation. What has prompted the successor ceiling courts to record a different finding without recording reasons for arriving at such conclusions.

23. The court has noted that the appellate authority infact reiterated the findings and conclusions recorded by the Prescribed Authority without dealing with the submissions made in the memo of appeal and other evidence. The findings have been quoted in para 22 of the writ petition which shows that the appellate authority has merely approved the finding without recording its own reasons and dealing with the factual and legal pleas put forth by the petitioner. It appears that the record was not considered but the findings have been confirmed in verbatim. Learned counsel for the petitioner has read both the findings, that is, recorded by the Prescribed Authority and the Appellate Authority. The case law which was placed before the appellate court, the appellate authority did not care to deal with the ratio of the judgements cited by the learned counsel for the petitioner.

24. From the perusal of the impugned orders, it is amply clear that both the courts have not considered the oral as well as documentary evidence. In view of the materials placed on record, both the authorities have erred in clubbing the land of Smt. Ganga Devi petitioner with her sons Krishna Mohan, Chandra Mohan and Shashi Mohan. The major sons' holding Sir and Khudkasta must have been dealt in as a separate individual tenure holders. After adjudication of the case on 20.4.68, there was no justification to redetermine the same issues without there being any other new material to persuade the ceiling authority to give a fresh look to the matter. The main issue regarding status of the tenure holder, nature and status of the land etc. were dealt with and decided by the Prescribed Authority in its judgement dated 20.4.68. The ceiling proceedings ought to have been stayed during the pendency of the consolidation proceedings. Every one who is conversant with the revenue laws knows that after the consolidation proceedings chak number and plots number are changed and new tenure holders are allotted chaks. The nature and status of the land changes after consolidation proceedings. It appears that the Prescribed Authority and the appellate authority had acted blindly not with an open and independent mind. There is no hesitation to say that they have acted with predetermined mind and prejudging the issues that the land somehow has to be declared as surplus land. A grave mistake has been committed in ignoring the Sir and Khudkasta land of the major sons, the petitioners No.2,3&4 who had already born before the date of vesting, i.e., 1.7.1951. Under the provisions of U.P.Z.A.&L.R.Act they were equally entitled to get 1/4th share in the ancestral holding along with his father late Sri Chhotey Lal . Applying these principles contained in the U.P.Z.A.&L.R. Act, no land can be declared surplus . Even the manner of calculating the surplus land is not clear as per findings recorded by the Prescribed Authority. A bare perusal of the order passed by the Prescribed Authority which in verbatim was approved by the appellate authority shows that the issues had been dealt with hurriedly without dealing with the objections and appreciating the material on record. Here was a case where valuable ancestral land of nine family members, most of them were major having their own children and family was involved . It has been argued before the Court that a large number of persons are dependent for sustaining themselves on agricultural land. They will be deprived of their livelihood, if such a large piece of land is taken away from them without determining their case in lawful manner. Some consideration must have been allowed for abadi i.e., residence, tubewell and Kothari etc, Gur (jaggery) making unit sugar can crushing etc..

25. In view of the above discussion, the writ petition deserves to be allowed and the same is allowed. The impugned orders dated 11.5.2000 and 23.10.2002 are quashed . All the necessary consequences shall follow. The revenue and other concerned records relating to the land shall be corrected immediately. The allotment, if any made in respect of the surplus land shall be treated to be cancelled as no possession of the land was handed over to any one