
(1978) 05 AHC CK 0076

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1576 of 1976

Gayadin

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 11-05-1978

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2),
3(2), 4A, 5(1)

Citation : (1978) 05 AHC CK 0076

Hon'ble Judges : B.N.Sapru, J

Final Decision : Partly Allowed

Judgement

B.N. Sapru, J.

This writ petition arises out of proceedings under the U.P. Ceiling on Land Holdings Act. The petitioner was a tenureholder of certain lands. A notice was served on him under section 10 (2) of the Act. The petitioner filed objections raising various grounds. The Prescribed Authority determined that the petitioner held 3.90 acres of land in excess of the ceiling area. The petitioner preferred an appeal. In the appeal it was inter alia contended that plot nos. 264, area 1.04 acres, plot no. 240 area 14.26 acres, plot no. 237 area 1.49 acres and plot no. 320 area 1.93 acres had been wrongly held to be irrigated land. This plea was rejected by the Appellate Authority. The appeal of the petitioner was, however, partly allowed.

Aggrieved against the order of the Appellate Authority the petitioner has preferred the instant writ petition.

The only question argued before me was that the Prescribed Authority and the appellate authority committed a manifest error of law in holding that the aforesaid plots were irrigated land.

The objection regarding the nature of the land was taken before the Prescribed Authority. Before the authority the petitioner produced an extract from the

Khasra 1380F. The Khasra showed that plot no. 264 area 1.04 acres had sugarcane crop standing on it. It has been found that all the plots save no. 320 are irrigated from a tubewell situate in plot no 279, whereas plot no. 320 is irrigated from a tubewell situate in plot no. 325 belonging to one Sri Misri Lal. The petitioner had denied that any irrigation facility was available to him, but this has not been accepted. The finding is based on evidence and has to be accepted for the purposes of the present case.

The petitioner's case further was the Prescribed Authority wrongly held that plot no. 237 belonged to the petitioner. No finding as regards the ownership of plot no. 279 has been given.

Another argument advanced on behalf of the petitioner was that the Prescribed Authority examined only the Khasra for 1380 F., whereas under section 4A of the U.P. Imposition of Ceiling on Land Holdings Act he was bound to examine the relevant Khasra for the years 1378, 1379 and 1380F., specially the latest village map and such other record as he might consider necessary. It was submitted that because of the nonexamination of the Khasra for the years 1378 and 1379F. the order was vitiated. The Khasras are examined under section 4A of the Act only to determine whether a particular land is irrigated or not and if it is found to be irrigated in any one of the year 1378, 1379 and 1380F. The land had to be held to be irrigated. As mentioned earlier the land has been found to be irrigated in 1380F. As such the failure on the part of the Prescribed Authority will not affect the validity of his order. This objection was not taken before the Appellate Authority, viz., the Third Additional District Judge, Shahjahanpur. In this writ petition also the objection has not been specifically taken though the argument was advanced in court. In the circumstances, the petitioner cannot be permitted to urge this ground in support of the writ petition.

The Appellate Authority has observed in its order as follows: "Plot no. 237 of Nahloria Buzurg has irrigation facility from tubewell in plot no. 279. According to Khasra extract of 1380F. plot no. 240 of the same village also has the same irrigation facility and it has produced sugarcane and wheat in both seasons in 1380F. Plot no. 264 of the same village also has the same irrigation facility and it has produced sugarcane crop in 1380F. Plot no. 320 of the same village has irrigation facility from tube well in plot no 325 belonging to Misri Lal as deposed by Naib Tahsildar examined by the U.P. State. Thus plot nos. 237, 240, 264 and 320 of village Nahloria Buzurg have irrigation facility. The statement of Naib Tahsildar that these plots have capability of producing two crops in one year has been rightly believe by the Prescribed Authority. I, therefore, find that these plots come within the mischief of the term "irrigated" land."

The papers filed show that plot, no 264 area 1.04 acres was recorded as having irrigation facility and has been shown with sugarcane in the Kharif crop over the whole area. The columns for the Rabi and Zaid crop are silent. As regards the plot no. 240 area 14.26 acres Khasra extract for 1380F shows that sugarcane crop was sown over three acres. There is no entry as regards any crops having

been sown over the rest of the area. Even in the Rabi crop wheat is shown as having been sown over eight and odd acres. There is no entry regarding the Zaid crop.

As regards plot no. 237, there is no entry in the Kharif crop whereas 1.40 acres is shown as having been sown under wheat in the rabi crop.

As regards plot no. 320 area 1.93 acres, "93 acres has been shown as under Jwar and arhar and the rest has been shown as sown with chana. The arhar crop has been shown as a Kharif crop, whereas Chana (gram) has been shown as sown in the Rabi season.

In view of the fact that irrigation facilities from private tube wells were available, it is not to be determined whether all the plots can be treated as irrigated land.

Section 4A deals with the manner in which it shall be determined whether a land is irrigated. According to the learned Standing Counsel the matter will have to be decided on the basis that the case falls within the third part of section 4A. The relevant part of that section 4A is reproduced below:

"Determination of Irrigated landThe Prescribed Authority shall examine the relevant Khasras for the years 1378F 1379F. and 1380F., the latest village map and such other records as it may consider necessary, and may also make local inspection where it considers necessary, and thereupon if the prescribed authority is of opinion:

Firstly,.....

Secondly,.....

Thirdly, (a) that any land is situated within the effective command area of a lift irrigation canal or a State tubewell or a private irrigation work; and

(b) that the class and composition of its soil is such that it is capable of growing at least two crops in an agricultural year; then the Prescribed Authority shall determine such land to be irrigated land for the purposes of this Act.

Explanation IFor the purposes of this section the expression "effective command area" means an area, the farthest field whereof in any direction was irrigated

(a) in any of the years 1378F. and 1379F. and 1380F.; or

(b) in any agricultural year referred to in the clause "secondly". Explanation IIThe ownership and location of a private irrigation work shall not be relevant for the purpose of this section.

Explanation IIIWhere sugarcane crop was grown on any land in any of the years 1378F., 1379F. and 1380F., it shall be deemed that two crops were grown on it in any of these years, and that the land is capable of growing two crops in an agricultural year."

It will be seen that clauses (a) and (b) are conjunctive. In other words, a land must fall within both clauses (a) and (b) before it can be determined as irrigated.

As far as plot no. 264 is concerned, it has been shown as having sugarcane sown over it in the Kharif crop over its entire area in 1380F. In view of Explanation III it has to be held that two crops were grown on it and that the land is capable of growing two crops in an agricultural year. Hence, the Prescribed Authority and the Appellate Authority rightly determined it to be irrigated land.

As far as the other plots are concerned, they have not been found to be irrigated throughout the year in any of the three Fasli years, viz 1378Z, 1379 and 1380F. From the record it appears that the aforesaid "three plots were irrigated in only in a part of the year 1380F.

As far as plot no. 240 is concerned, only three acres have been shown as under sugarcane crop in Kharif and there is no entry about sugarcane in either the Rabi or the Zaid crop. However, wheat has been sown in the Rabi crop over eight and odd acres.

There would have been normally no difficulty in applying Explanation III to the three acres of this plot where sugarcane was sown as having been grown. However, before a particular piece of land can be determined to be irrigated land it has to be identified. There are no subdivisions in plot no. 240. Hence, on the findings recorded by the prescribed authority and or the Appellate Authority, it is not possible to determine which part of plot no. 240 would fall within Explanation IK. Therefore, no part of plot no. 240 can be classified as irrigated land.

In this connection it must be emphasised that under section 5 (1) of the Act it is provided that on and from the commencement of the amending Act no tenureholder shall be entitled to hold in the aggregate throughout Uttar Pradesh, any land in excess of the ceiling area applicable to him. The ceiling area in its term is defined in section 3 (2) which is as follows:

" "ceiling area" means the area of land not being land exempted under this Act, determined as such in accordance with the provisions of sec 5 "

Section 4 deals with the determination of the ceiling area for purposes of ceiling and exemption. Section 4A provided that in the conditions specified in firstly, secondly and thirdly, if the land meets the criterion laid down in these conditions, the Prescribed Authority shall determine such land to be irrigated land. Therefore, it is evident that the identity of the land must necessarily be determined before it can be classified as irrigated land. For the purposes of determining the ceiling area applicable to a particular tenureholder.

In the result, the writ petition succeeds in part. The order of the Appellate Authority as far as it determines plot no. 264 to be irrigated land is maintained, but as far as it determines the other plots to be irrigated, is quashed. The appellate authority will now again determine the ceiling area applicable to the petitioner in accordance with law and in the light of the observations made in this

judgment. Any amount of money deposited by the petitioner with the prescribed authority under the interim order of this court dated 1C41976, shall be refunded to him on a proper application being filed by the petitioner. There will be no order as to costs.