
(1979) 04 AHC CK 0039

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4860 of 1977

Genda Singh

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 19-04-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 4A

Citation : (1979) 04 AHC CK 0039

Hon'ble Judges : V.K.Mehrotra, J

Final Decision : Allowed

Judgement

V. K. Mehrotra, J.

In proceedings under U. P. Imposition of Ceiling on Land Holdings Act, 1960, an area of 23.143 acres out of the holding of the petitioner was declared to be surplus by the Prescribed Authority by an order dated August 26, 1976. This area was from a number of plots situate in village Padampur district Bijnor which were mentioned In Schedule "a" to the objection filed by the petitioner after receipt of the notice under Section 10 of the Act. The petitioner assailed the decision of the Prescribed authority in an appeal under Section 13 of the Act. The Appellate Authority only reduced the surplus area by 3.66 acres. Aggrieved, the petitioner has come upto this Court.

Section 4A of the Act, which deals with the determination of the irrigated land, inter alia, requires that after examining the relevant kbasras for the years 1378F, 1379F and 180F and other documents mentioned in the provision, the Prescribed Authority has to form an opinion as to whether the particular plot of land had irrigation facility in respect of any crop in any one of the aforesaid year through one of the sources mentioned in subclause (a.) and whether at least two crops were grown in such land in anyone of the aforesaid year as provided in clause "firstly" of that section. The burden thus is upon the Prescribed Authority to be satisfied about the existence of the two factors aforesaid before holding that the

plot of the land could be treated to be irrigated land.

A perusal of the order of the Prescribed Authority in the present case shows that the existence or otherwise of either of the two factors has not been found by it specifically with regard to any of the plots out of which he chose to declare certain area as irrigated land, therefore, surplus. Likewise the Appellate Authority also has not found as a fact that in any of the plots portions whereof have been declared as irrigated land, was there irrigation facility as contemplated by subclause (a) or two crops were grown as contemplated by subclause (b) of clause "firstly" of Section 4A in any of those years. In the absence of a clear finding in that regard, the declaration of any area as surplus on the footing that these plots were irrigated land cannot be upheld. The matter, in the interest of justice; requires reconsideration by the Prescribed Authority.

On behalf of the respondents it has strenuously been contended by Sri B. N. Katiyar, learned Standing Counsel, that concession having been made by the learned counsel for the petitioner before the Appellate Authority about an area of 38 bighas 18 biswas and 8 biswanis being irrigated land, the petitioner cannot be permitted to turn round and challenge the finding recorded on the basis of that concession. The submission cannot, however, be accepted. Where the Act itself lays down in Section 4A a finding about the existence of certain facts to be a precedent for declaration of any area as irrigated land, the existence of those conditions must be found as a fact and no amount of concession will enable the authorities under the Act to proceed to consider any land to be irrigated on that basis. It has been seen in the instant case that facts which are conditions precedent for exercise of jurisdiction for declaring the petitioner's land as irrigated land have not been found to exist as a fact. Unless they are so found to exist, it is clear that any declaration about the plots in question being irrigated land cannot be sustained.

In the result the petition succeeds and is allowed. The decision of the Prescribed Authority as also that of the Appellate Authority is as far as it relates to the plots mentioned in Schedule "A" to the petitioner's objection is set aside. The matter is remanded back to the Prescribed Authority for determination of the question afresh in accordance with law. The petitioner is entitled to his costs.