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**(2010) 04 AHC CK 0110**  
**In the Allahabad High Court**

Gyas Ahmad and Others

APPELLANT

Vs

Additional Commissioner (Judicial), Lucknow Division and  
Others

RESPONDENT

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**Date of Decision :** 30-04-2010

**Acts Referred:**

Limitation Act, 1963 — Section 5

**Citation :** (2010) 04 AHC CK 0110

**Hon'ble Judges :** Rakesh Sharma, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Rakesh Sharma, J.—Heard Sri Kapil Misra, learned Counsel for the petitioners and learned Standing Counsel, who has put in appearance on behalf of respondent Nos. 1 to 3. Legal Heirs and Legal representatives of Respondent No. 4, deceased, have been represented by Sri M.E. Khan.

2. Through this writ petition, the petitioners have assailed the order dated 30.11.1993 passed by the Additional Commissioner (Judicial), Lucknow Division, Lucknow and the order dated 23.8.1984, passed by the Prescribed Authority under the U.P. Imposition of Ceiling on Land Holdings Act (hereinafter referred to as the Ceiling Act), who has dismissed the petitioners/tenureholders' objections filed u/s 11(2) of the Ceiling Act. The land in dispute is agricultural land situate in Village Barithana, District Unnao.

3. As per learned Counsel for the petitioners, on 3.1.1981, the petitioner No. 1, namely, Gyas Ahmad, the petitioner No. 1 had filed objections u/s 12 of the Ceiling Act, responding to the notice received by him from the office of the Prescribed Authority under the Ceiling Act. He has submitted in his objections that he was pursuing his studies in Aligarh University and in the year 1981, after completing his studies, he came back to his native town. While he was looking for a suitable job at Kanpur, the petitioner No. 1 learnt that his agricultural land has been clubbed with the holdings of his mother in furtherance of Ceiling

proceedings as a result of which a substantial amount of land has been declared as surplus land, although the petitioner No. 1 being a major was holding his own land separately. He was living separately from his mother and other family members. The petitioner No. 1 was never served with any notice issued from the Ceiling Authorities. He was not afforded opportunity of hearing before clubbing his land with that of his mother, Smt. Shakila Khatoon. The holding of his mother, Smt. Shakila Khatoon has also not been calculated correctly. The details of land, Khasra plots and its area etc. have been indicated in Paragraph 2 of this writ petition. There were old groves covering several plots. Several Khasra plots, as indicated in Paragraph-3 of the writ petition, recorded in the name of Smt. Shakila Khatoon, situate in the Village Barithana, District Unnao. At the time of commencement of Ceiling proceedings, the Mango groves were 40 years old. The other fruit bearing trees were also available on the other plots which were also in the nature of grove lands. Some plots of land were sold, through registered sale deeds to Smt. Lakshmi, widow of Bhawani and Tekai, Son of Ram Lal. These persons have been impleaded as respondent Nos. 4 and 5 in the present writ petition, and mutation has also taken place in their favour. The plots sold to these persons, who are respondent Nos. 4 and 5 herein, could not have been clubbed with that of the petitioners' holdings.

4. It was further pointed out by the learned Counsel for the petitioners that a long drawn litigation took place in the past with the petitioners' step brother, Qayamuddin, who has been declared holder of 1/5th share in the family property including the agricultural land. Qayamuddin has filed a separate objection, being an independent landholder. His land cannot be clubbed with that of the petitioners' holdings. The petitioners' objections were arbitrarily dismissed on 31.7.1982. An Appeal has been preferred u/s 13 of the Ceiling Act before the District Judge, Unnao, which was registered as C.M. Appeal No. 43 of 1982. The learned Appellate Authority, that is, Civil Judge, Unnao has held that on one hand, the Prescribed Authority had not afforded opportunity of hearing and to adduce evidence to the petitioners and on the other hand, the said Authority had held that no evidence had been adduced by the appellant. The findings was self-contradictory and material irregularity had been committed by the Prescribed Authority. The Appellate court had further held that since the mother of the appellant, Smt. Shakila Khatoon had not disclosed any right or interest of the petitioner in respect of the land held by her, then it would not take away the right of her son, that is, the petitioner No. 1. It was also held that on the basis of some presumption and conjunctures it could not be said that the objections preferred by the petitioners were time barred. The matter was remanded back to the Prescribed Authority to decide the case afresh after affording opportunity of hearing and also to adduce evidence in accordance with law. The matter again came up before the Prescribed Authority. The application seeking spot inspection was made by the petitioners to the Prescribed Authority. The Prescribed Authority himself went on the site for spot inspection, although several dates were fixed by him on which dates he did not visit the site. Lateron, the Prescribed Authority

had fixed 24.3.1984 for carrying out spot inspection, but instead of 24.3.1984, he had carried out spot inspection ex parte in the absence of the petitioners on 10.3.1984, that is, two weeks earlier to the date fixed by him.

5. Sri Kapil Misra, learned Counsel for the petitioners has drawn attention of the Court to the extracts of the relevant ordersheets of 14.1.1984, 17.2.1984, 7.3.1984 and 24.3.1984. It was incorrectly mentioned in the order that the spot inspection was carried out in the presence of the parties. No notice was served on the petitioners as to on which date and at what time, the spot inspection was to be carried out on the site. The petitioners filed written objections in respect of this fact. If the petitioners would have been present on the site, he could have pointed out the nature of groves, existence of an old family grave yard and other places to display that several plots were not to be covered under Ceiling proceedings. The objections were filed to the Commissioner's report. These objections were rejected by the Prescribed Authority and were not considered. The amendments sought in the objections were also not allowed. The Prescribed Authority had rendered its judgment on 23.8.1984 against which an appeal was preferred by the petitioners in the Court of the learned District Judge, Unnao, which was lateron transferred to the Commissioner, Lucknow Division, Lucknow due to amendment brought in through U.P. Act No. 3 of 1986. The Additional Commissioner (Judicial), Lucknow Division, Lucknow had dealt with the appeal. The Appellate authority has also acted arbitrarily and illegally and dismissed the Appeal without considering the submissions put-forth by the petitioners. The Additional Commissioner (Judicial), Lucknow Division, Lucknow had ignored the pleadings of the petitioners as well as oral and documentary evidence, the observations made by the learned Civil Judge, Unno, who had heard the first Appeal. He has ignored the fact that the spot inspection was not carried out in the presence of the petitioners and they were not afforded opportunity of filing objection to the spot inspection report. The petitioners land was wrongly clubbed with that of his mother's holding and his step brother, that is, Qayamuddin. The gift deed/Hibbanama, which was a material document by which a portion of the land was gifted by the mother of the petitioners has been ignored. Wrong entry in the name of Smt. Shakila Khatoon continued on the basis of which wrong notices were issued to the petitioners u/s 4(2) of the Ceiling Act.

6. Learned Counsel for the petitioners has submitted that the Ceiling Authorities have ignored that the Sub Divisional Officer had already taken notice of the Gift/ Hibbanama and has also made mutation in favour of the beneficiary. The Sub Divisional Officer's order passed on 15.10.1961 was excluded from consideration by the Ceiling Authorities. The gifted land was separated from the holdings of Smt. Shakila Khatoon, petitioners and his brothers.

7. Learned Counsel for the petitioners has further submitted that the Prescribed Authority and the Appellate Authority, in their entire judgments, have no where cared to record a finding as to how the name of Smt. Shakila Khatoon was to be in the land held by her when the appellants had filed the relevant judgment of

the Authorities. The basic question of title of Smt. Shakila Khatoon was evaded by the Prescribed Authority. Since from the judgment it was clear that the gift deed executed by Sri Nizamuddin in favour of Smt. Shakila Khatoon was not accepted and 1/5th share of Qayumuddin was held, the land in question could not be held to be the land of Smt. Shakila Khatoon. Thus, the judgments of the Prescribed Authority as well as that of the Appellate Authority are bad in law and on merits also.

8. It is also submitted that while determining the nature of the grove it was incumbent on the part of the Prescribed Authority not only to make a spot inspection, but relevant Khasras of 1378, 1379 and 1380 Fasali should have been brought on record and on failure it was the duty of the Appellate Authority to strike down the illegal and arbitrary finding and should have sent back the record for disposal in accordance with law. The learned Additional Commissioner has also failed to consider that in view of the Full Bench decision passed in Baldeo Singh's case reported in 1990 A.L.J. Page 31 and in view of Shantanu Kumar's case i.e. also a Full Bench decision reported in 1979 A.L.J. 1174, the objection of the petitioners cannot be held to be barred by time and an interested person may file objection as and when a grievance accrued to him. As no notice was ever issued to the petitioners thus no question for moving an application for condonation of delay u/s 5 of the Limitation Act arose.

9. The learned Counsel for the petitioners has submitted that the petitioners were major sons and were having their own and independent land holding. They were dependent on the agricultural land, which came in their share as a result of family arrangement and as such the land in their share cannot be clubbed with that of their mother's holdings and other major brothers. He has placed reliance on a recent judgment of this Court rendered on 25.2.2010 in Writ-C No. 30391 of 1991, Ram Kripal and Ors. v. State of U.P. and Ors.

10. Learned Standing Counsel has strongly opposed the writ petition and has taken the Court to the findings recorded by the Prescribed Authority and the Appellate Authority. He has defended the orders passed by the appropriate Ceiling Authorities. The Prescribed Authority had afforded opportunity of hearing to the petitioners during the course of disposal of their objections. He was also allowed opportunity to adduce evidence. In the present case a spot inspection was carried out by the Prescribed Authority himself. The date of spot inspection could be changed at the discretion of the said Authority. The Authorities have taken note of versions of the petitioners and the orders impugned are unassailable.

11. I have heard learned Counsel for the parties and perused the record.

12. There is substance in the submissions of Sri Kapil Misra, learned Counsel for the petitioners that the Prescribed Authority has not taken into account the observations made by the learned Civil Judge, that is, the Appellate Authority in its judgment and order dated 4.12.1982 by which the matter was remanded for

reconsideration afresh by the Prescribed Authority. This Court has noted that the Prescribed Authority has not taken note of the observations made by the Appellate Authority, that is the Civil Judge, Unnao in his judgment and order dated 4.12.1982 through which the case was remanded to the Prescribed Authority. It was provided by the Appellate Authority in its order that the Prescribed Authority would decide the case afresh after affording opportunity of hearing and to adduce evidence in accordance with law. The said Court had noted that the findings of the Prescribed Authority were contradictory. A material point has been ignored by the Ceiling Authorities that Smt. Shakila Khatoon was having her independent holding, separate from that of the petitioner No. 1, a major son. She had other major sons, including step son Qayumuddin. The mother of the petitioners Smt. Shakila Khatoon had not disclosed any right or interest of the petitioners in respect of the land. This would not deprive the a major son from having his own and independent agricultural holding. Petitioners, individually, were living separately, they could sustain themselves and the family upon their agricultural income.

13. In the case in hand, an important fact regarding Gift/Hibbanama was also ignored by the Ceiling Authorities. The basic question, that is, regarding acquisition of the land by Smt. Shakila Khatoon in her name has not been taken into account for consideration by the Ceiling Authorities. It has also come on record that 1/5th share was allocated to Qayumuddin, step brother of the petitioners. The agricultural land of the major sons could not be clubbed together with their mother.

14. After perusal of the extracts of the ordersheets and other documents, this Court has noted that the Prescribed Authority has not carried out spot inspection in accordance with law. The spot inspection was carried out without sending any notice to the landholder and the petitioners. The petitioners ought to have afforded opportunity to file their objection at the time of making spot inspection and thereafter on the inspection report.

15. In the present case, there were instances of transfer of the land by sale deeds to the respondent Nos. 4 and 5, the mutation in respect of which had already been carried out. The purchasers of the land, that is, respondent Nos. 4 and 5 were also not afforded opportunity of hearing by the Prescribed Authority. The land, which was sold out, could not have been clubbed with that of the petitioners' holdings. Both the courts below have not taken into account the ratio of the Full Bench's decision as reported in All.L.J. 1974, Shantanu Kumar v. State of U.P. and Ors. The petitioners' objections were not barred by time, as they were interested persons and the persons aggrieved could file objection as their substantial agricultural land was going to be taken away. Major sons' agricultural land cannot be clubbed with the land of their mother and the other major brothers.

16. There is force in the submissions of learned Counsel for the petitioners that even the Appellate authority has committed a manifest error of law in not

considering the above submissions. He has ignored the fact that full opportunity of adducing evidence was not afforded to the petitioners. Thus, the directions contained in the earlier judgment, passed by the Civil Judge, Unnao, a judicial Authority have been ignored by the Ceiling Authorities. The Additional Commissioner (Judicial), Lucknow Division, Lucknow has also excluded from consideration that the Prescribed Authority had decided the case at the interim stage of trial itself. The case was not concluded on merits. A hyper technical view was taken that the objections were beyond time. Both the courts below have not taken note that there existed old Mango Groves and old Grave Yard on some plots. Thus, adequate benefit and concession ought to have been provided to the landholders, whose land was covered by the old Mango Trees and Old Family Grave Yard.

17. It is also noted that in view of the law propounded by the Hon"ble Apex Court in the case of Jasraj Inder Singh Vs. Hemraj Multanchand, wherein it has been observed that on remand of the case to the Trial court, the Trial court is bound by the terms of the order of remand and cannot traverse beyond that. Thus, the Prescribed Authority on remand of the case vide order dated 4.12.1982, passed by the Appellate Authority, illegally rejected the objections of the petitioners merely on the ground of limitation and the said order has wrongly been affirmed by the Additional Commissioner (Judicial), Lucknow Division, Lucknow.

18. In view of the discussions made above, the writ petition succeeds and is allowed. The impugned orders dated 23.8.1984 (Annexure-9 to the writ petition) and 30.11.1993, (Annexure-11 to the writ petition) are quashed. The Revenue records shall be corrected immediately. All the necessary consequences shall follow.

19. No order as to costs.