

---

**(2012) 07 AHC CK 0206**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 50556 of 2007

Hari Shankar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

---

**Date of Decision :** 31-07-2012

**Acts Referred:**

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 17, 22

**Citation :** (2012) 07 AHC CK 0206

**Hon'ble Judges :** S.P.Mehrotra, J

**Final Decision :** Dismissed

---

## Judgement

S.P. MEHROTRA, J.—Counter Affidavit on behalf of the respondents has been filed. The petitioner as filed Rejoinder Affidavit in reply to the said Counter Affidavit.

2. The Writ Petition is being disposed of at this stage with the consent of the learned Counsel for the parties.

3. The present Writ Petition under Articles 226/227 of the Constitution of India has been filed, inter alia, praying for quashin<sup>8</sup> the Judgment and Order dated 28.1.2005 (Annexure<sup>9</sup> to the Writ Petition) passed by the Additional Collector (Finance and Revenue)/Prescribed Authority (Ceiling), Mirzapur (respondent No. 4) in Case No. 1/Compensation, Year 200203, and the Judgment and Order dated 4.8.2007 (Annexure<sup>10</sup> to the Writ Petition) passed by the Additional Commissioner, Vindhyachal Mandal, Mirzapur (respondent No. 2).

4. It is, inter alia, averred in the Writ Petition that the petitioner was the owner and in possession of Khata No. 23, Plot Nos. 204kha, 205kha, area 0.345 hectare; Khata No. 29, Plot Nos. 65, 266, 192, 275, 276kha, 277, 371, 373, 375, 376, 377, 388, area 6.290 hectare; Khata No 71, Plot Nos 445 97, 334, 131, 337, 191, 342, 198, 340, 199, 358, 203, 359, 335, 360, 336, 361, 362, 364, 365 situated in Village Lahaura, PareanaSakteshgarh, TehsilChunar, DistrictMirzapur.

5. It is, interalia, further averred in the Writ Petition that Plot Nos. 276kha, 277, 373, 374, 375M, 388" area 2184 hectare, (8150 Bigha) of the petitioner was declared as surplus land in the proceeding under the U. P. Imposition of ceiling On Land Holdings Act, 1960 (in short "The Ceiling Act, 1960"); and that 7 trees of Mango, 9 trees of Mahua, 4 trees of Neem were standing over the surplus land at the time of taking possession thereof on 24.2.1975, and also the crops of the petitioner, namely, Chana and Arhar were standing at the time of taking possession of the surplus land on 24.2.1975.

6. Copy of C.L.H. Form No. 8 showing particulars of surplus land prepared under Rule 21 (i) of the U.P. Imposition of Ceiling on Land Holdings Rules, 1961 (in short "The Ceiling Rules, 1961") has been filed as Annexure 1 to the Writ Petition.

7. It is, interalia, further averred in the Writ Petition that no compensation for the acquired land, trees and crops was paid to the petitioner since the date of taking possession, i.e., 24.2.1975; and that the respondent No. 4 sent a Letter dated 14.1.1999, alongwith the original file pertaining to compensation in respect of the petitioner, to the Tehsildar, Chunar, DistrictMirzapur giving reference of an earlier Letter dated 24.12.1998 sent to the said Tehsildar, and requiring the said Tehsildar to correct the said original file and send back the same after correcting the same. Copy of the said Letter dated 14.1.1999 has been filed as Annexure2 to the Writ Petition.

8. It is, interalia, further averred in the Writ Petition that after all the papers relating to the petitioner sent by the TehsildarChunar to the respondent No. 4 were received, a case, namely, Case No. 1/Compensation of 200203 was registered; and that after receiving the notice, the petitioner filed an Application before the Chief Revenue Officer, Mirzapur dated 16.4.2002, interalia, praying that compensation in regard to the surplus land be awarded at the rate of Rs. 25,000/ per Bigha, and further, interest at the rate of 15% per annum be also awarded, and further, compensation in respect of the trees existing on the surplus land and the damage to the crops standing at the time of taking possession of the surplus land be also awarded. It is averred that on the said Application, the Chief Revenue Officer, Mirzapur passed an Order dated 16.4.2002 directing the Nayab Tehsildar to submit his report. Copy of the said Application dated 16.4.2002 has been filed as Annexure3 to the Writ Petition.

9. It is pertinent to note that alongwith the Counter Affidavit filed on behalf of the respondents, copy of C.L.H. Form No. 9 prepared under Rule 21 (ii) of the Ceiling Rules, 1961 has been filed as Annexure CA1 to the Counter Affidavit.

10. A perusal of the said C.L.H. Form No. 9 shows that in regard to the "particulars of buildings, masonry wells, tubewells, channels and trees existing on surplus land", it is mentioned "Nadarad", i.e., not existing.

11. Further, alongwith the Counter Affidavit, C.L.H. Form No. 11 prepared under Rule 23 of the Ceiling Rules, 1961 has been filed as Annexure CA2 to the Counter Affidavit.

12. A perusal of the said C.L.H. Form No. 11 shows that in Column 6 thereof, the "area of surplus land" has been mentioned as 5.47 acres, i.e., 8150 Bighas. The said C.L.H. Form No. 11 further shows that in Column 7 thereof, which deals with the "aggregate of land revenue at hereditary rate in Column 12 of C.L.H. Form No. 8", the said aggregate as per C.L.H. Form No. 8 (Annexure1 to the Writ Petition) has been mentioned as 18.15. Again, in Column No. 8 of C.L.H. Form No. 11 regarding "aggregate of land revenue payable as in Column 13 of C.L.H. Form 8", the said aggregate per C.L.H. Form No. 8 (Annexure 1 to the Writ Petition) has been mentioned as 18.15. Accordingly, in Column No. 10 of C.L.H. Form No. 11 regarding "40 times the amount in Column 7", the said figure has been computed as 40 times of 18.15 (mentioned In Column No. 7), that is, Rs. 726.00.

13. Copy of C.L.H. Form No. 12. that is, Draft Assessment Roll prepared under Rule 24 of the Ceiling Rules, 1961 with the help of the statement in C.L.H. Form No. 11, has been filed as Annexure4 to the Writ Petition.

14. A perusal of the said C.L.H. Form No. 12, dated 30.9.2003 shows that in Column No. 5 thereof, the "area of surplus land" has been mentioned as 5.47 acres, that is, 3150 Bighas. Again, the said C.L.H. Form No. 12 further shows that in Column No. 6 thereof, the "amount payable in respect of" the surplus land has been shown as Rs. 726.00. The said C.L.H. Form No. 12 further shows that an amount of Rs. 72.60 was to be adjusted towards damages, and the balance Rs. 653.40 was thus payable to the petitioner.

15. The Additional District Magistrate (Finance and Revenue)/Prescribed Authority (Ceiling)/Chief Revenue Officer, Mirzapur (respondent/No. 4) by the Judgment and Order dated 28.1.2005 (Annexure9 to the Writ Petition), inter alia, held that at present, there was no tree on the spot; and that the petitioner failed to prove the existence of trees on the surplus land during the relevant period; and that in the circumstances, payment of compensation in respect of the trees was not justified. It was, inter alia, further held that the compensation in respect of the acquired surplus land was payable to the petitioner at the rate prescribed in section 17 of the Ceiling Act, 1960 read with Part I of the Schedule to the Ceiling Act, 1960; and that on the basis of C.L.H. Form Nos. 8,9,10 and 49, the amount of compensation in respect of 81500 Bighas of surplus land had been rightly computed in C.L.H. Form Nos. 11 and 12 as amounting to 40 times of Rs. 18.15 (i.e., land revenue), which amounted to Rs. 726.00; and that after adjusting Rs. 72.60 in respect of damages, the compensation payable was Rs. 653.40; and that in view of the provisions of section 22 of the Ceiling Act, 1960, as amended, interest at the rate of 3 1/2% per annum was payable on the amount of compensation with effect from the date of taking possession of the surplus land.

16. Copy of the said Judgment and Order dated 28.1.2005, as noted above, has been filed as Annexure9 to the Writ Petition.

17. Against the said Judgment and Order dated 28.1.2005, the petitioner filed an Appeal being Appeal No. 112/166 of 2005.

18. By the Judgment and Order dated 4.8.2007, the Additional Commissioner, Vindhyachal Mandal, Mirzapur (respondent No. 2) dismissed the said Appeal filed by the petitioner.

19. It was, inter alia, held by the respondent No. 2 that a perusal of C.L.H. Form No. 9 showed that no tree was available on the spot at the time of taking possession of the surplus land; and that at present, no tree was available on the spot; and that the petitioner had failed to establish the existence of trees on the surplus land during the relevant period; and that in the circumstances, the Additional Collector (Finance and Revenue)/Prescribed Authority (Ceiling)/Chief Revenue Officer, Mirzapur (respondent No. 4) concluded that payment of compensation in respect of the trees was not justified; and that there was no legal infirmity in the Order dated 28.1.2005 passed by the Additional Collector (Finance and Revenue)/Prescribed Authority (Ceiling)/Chief Revenue Officer, Mirzapur (respondent No. 4).

20. Copy of the said Judgment and Order dated 4.8.2007, as noted earlier, has been filed as Annexure 10 to the Writ Petition.

21. Thereafter, the petitioner has filed the present Writ Petition seeking the reliefs as mentioned above.

22. I have heard Sri S.C. Verma, learned Counsel for the petitioner and the learned Standing Counsel appearing for the respondents, and perused the record.

23. Sri S.C. Verma, learned Counsel for the petitioner has made the following submissions:

(I) The respondents were bound to pay compensation to the petitioner in respect of the surplus land at the market value of such land. Reference, is made to Namuna 11 Husularaji (Annexure 5 to the Writ Petition), and it is submitted that as per the said document, the circle rate was Rs. 28,750/ per bigha, and accordingly, the amount of compensation came to Rs. 2,47,750/. Reference is also made to a document designated as @ Hindi @ (Annexure 6 to the Writ Petition) wherein the amount of compensation payable to the petitioner was shown as Rs. 2,53,570/ in respect of the acquired surplus land and Rs. 36,000/ in respect of the trees on such land. It is submitted that compensation awarded to the petitioner as per the impugned Orders was, thus, wholly inadequate.

(II) The compensation ought to have been awarded in respect of the trees which were existing on the acquired surplus land. Ever, though at present the trees were not existing on the spot, but at the time of taking possession of the surplus land, the trees were existing on the such land. The findings to the contrary recorded in the impugned Orders are perverse. Reliance is placed on the Statements (Annexure 7 to the Writ Petition) recorded before the respondent No. 4 in the aforementioned Case No. 1/Compensation of 200203. Reference is also

made to the Reports (Annexure8 to the Writ Petition). It is submitted that in view of the said Statements and the said Reports, it was established that the trees were existing on the surplus land at the time of taking possession thereof, and the said trees were subsequently cut by the allottees of the surplus land for doing cultivation. Therefore, the compensation ought to have been awarded in respect of the trees also.

(III) In view of the considerable delay in the payment of compensation to the petitioner in respect of the acquired surplus land, the petitioner ought to have been awarded interest at the rate of 15% per annum from the date of taking possession, namely, 24.2.1975 or at the interest rate prevailing at present in the market.

24. In reply, the learned Standing Counsel appearing for the respondents has made following submissions :

(I) The petitioner was not entitled to compensation at the market value of the acquired surplus land. The "amount" payable to the petitioner in respect of the acquired surplus land was to be determined as per the provisions of subsection (1) of section 17 of the Ceiling Act, 1960 read with Clause (a) of PartI of the Schedule to the Ceiling Act, 1960. According to the said provisions, the "amount" payable to the petitioner was 40 times of the land revenue which came to Rs. 726.00, and after deducting Rs. 72.60 towards damages, the "amount" payable to the petitioner was Rs. 653.40.

Reference to the documents annexed as Annexure5 to the Writ Petition (Namuna 11 Husularaji) and Annexure6 to the Writ Petition (designated as @ Hindi @ wherein the quantum of compensation was shown on the basis of circle rate, was not relevant as the "amount" payable in respect of the acquired surplus land was to be determined in accordance with the aforesaid provisions of the Ceiling Act, 1960.

(II) The Authorities below on a consideration of the evidence on record" have held that at present, no trees were available on the spot, and the petitioner failed to establish the existence of trees during the relevant period, and in view of the said findings, it was concluded that no compensation was to be paid to the petitioner in respect of the trees. The findings recorded by the Authorities below are based on a consideration of the material on record, and there, is no illegality or perversity in the said findings. No interference is, therefore, called for by this Court in exercise of its Writ Jurisdiction under Articles 226/227 of the Constitution of India

(III)The rate of interest to be awarded has been laiddown in subsection (2) of section 22 of the Ceiling Act, 1960 as 31/2% per annum from the date of taking possession of the surplus land. The impugned Orders have accordingly, awarded interest to the petitioner at 31/2% from the date of taking possession of the surplus land, and no illegality has, thus, been committed by the Authorities below in this regard. 25. I have considered the submissions made by the learned

Counsel for the parties.

Taking up the First Submission made by the learned Counsel for the petitioner, namely, that the compensation ought to have been awarded to the petitioner in respect of the acquired surplus land at the market value of such land, it is pertinent to refer to the provisions of section 17 of the Ceiling Act, 1960 which is reproduced below :

"17.Manner of calculation of [amount].(1) Subject to the provisions of subsection (2), every tenureholder, whose surplus land has vested in the State under the provisions of this Act, shall be entitled to receive and be paid [amount] as laid down in the Schedule and as determined in the matter provided hereinafter.

[(2) The subtenant or asami of the tenureholder, not being an asami mentioned in section 11 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, shall be entitled to receive and be paid a portion out of the amount payable to the tenureholder. The proportion of amount payable to the subtenant or the asami shall be the aggregate of the land revenue for the unexpired period of his subordinate interest computed at hereditary rates, so however, that the subtenant or the asami shall not in any case, be entitled to more than one-fourth of the amount payable to the tenureholder. The amount shall be apportioned between the tenureholder and the subtenant or the asami by the Prescribed Authority].

(3) Nothing in this Act shall prevent any person, not being a person referred to in subsections (1) and (2), having any right, title or interest in the surplus land, or any person having claim to [amount] against the person entitled thereto under the provisions of this Act, from claiming any right, title or interest in such [amount] in any Court of competent jurisdiction."

Reference may also be made to the relevant portion of the Schedule to the Ceiling Act, 1960, which is as under:

"Schedule

(Section 17)

Part I

(Areas where the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 applied)

(a) Bhumindar (b)....

Forty times of the land revenue determined at hereditary rates applicable [\*\*\*]; and where the land revenue payable is less than that determined at hereditary rates applicable, an additional amount equal to twenty times of difference between the two.

Part II

(Areas where Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950" does not apply)

### Part III

Government Lessee

### Part IV

(a) Buildings.....

(b) .....

(c) Trees

(1) Fruit bearing trees

Note[\*\*\*\*]

(2) For young fruit trees which have not yet borne fruits.

(3) Trees whose value lies mainly in the timber thereof.

Eight times the annual fair average value of fruit crops.

Cost of the plant and expenditure on labour and planting.

[Eight times the annual fair average value of such trees.]

Explanation. For the purposes of item (c) the expression "average value", in relation to a tree, means the arithmetic means of twenty years' profits accruing from such tree."

26. It is pertinent to note that prior to its repeal by the Constitution (44th Amendment) Act, 1978, Article 31 of the Constitution of India dealt with the compulsory acquisition of property. Prior to the Constitution (25th Amendment) Act, 1971, Clause (2) of Article 31 provided for payment of "compensation" in case of acquisition of property of a person. By the Constitution (25th Amendment) Act, 1971, Clause (2) of Article 31 was substituted, and the word "compensation" occurring earlier in Clause (2) of Article 31 was replaced by the word "amount".

27. The validity of the Constitution (25th Amendment) Act, 1971 was questioned in *Keshwanand Bharti v. The State of Kerala* (1973) Supp. SCR 1 = AIR 1973 SC 1461. The Supreme Court upheld the above amendment made in Clause (2) of Article 31 of the Constitution of India. It was held that for acquisition of any property of a person, it was not necessary to pay the market value of such property. The person may be paid an "amount" lower than the market value of the property acquired.

28. Keeping in view the amendment made in Clause (2) of Article 31 of the Constitution of India, subsection (1) of section 17 of the Ceiling Act, 1960 was also amended, and it provides for the payment of "amount" to the tenure holder

for the acquired surplus land, and such amount is to be determined as per the provisions of the Ceiling Act, 1960 including Schedule thereto. Therefore, the tenureholder whose surplus land is acquired is not entitled to claim marketvalue of such land. He is only entitled to get "amount" as per the provisions of the Ceiling Act, 1960 including Schedule thereto.

29. Clause (a) of Part I of the Schedule to the Ceiling Act, 1960 provides for determination of the "amount" payable to a Bhumidhar for the acquired surplus land. As per the said Clause (a), such "amount" is 40 times of the land revenue. As is evident from a perusal of C.L.H. Form No. 11 (Annexure CA2 to the Counter Affidavit), C.L.H. Form No. 12 (Annexure4 to the Writ Petition) and the impugned Orders passed by the Authorities below, the amount payable to the petitioner in respect of the acquired surplus land has been determined by applying the above formula, namely, 40 times of the land revenue. Thus, the amount payable, in my view, has been rightly computed in accordance with the provisions of the Ceiling Act, 1960 including Schedule thereto, and no interference is called for with the impugned Orders on the said ground.

30. As regards the reference made by the learned Counsel for the petitioner to the documents annexed as Annexure5 to the Writ Petition (Namuna 11 Husularaji) and Annexure6 to the Writ Petition (designated as wherein the quantum of compensation was shown on the basis of circle rate, the same are not relevant as the "amount" payable in respect of the acquired surplus land was to be determined in accordance with the provisions of the Ceiling Act, 1960 including Schedule thereto, as mentioned above.

31. Coming now to the Second Submission made by the learned Counsel for the petitioner, namely, that the compensation ought to have been awarded in respect of the trees which were existing on the acquired surplus land, it is relevant to refer to Rule 21 of the Ceiling Rules, 1961 which is as under :

"[21. As soon as possession of the surplus land has been taken by the Collector under subsection (8) of section 14, he shall cause the following statements to be prepared in respect of the tenureholder concerned and send to the prescribed authority having jurisdiction to assess and pay amount for the surplus land

- (i) statement in C.L.H. Form 8, showing particulars of surplus land;
- (ii) statement in C.L.H. Form 9, showing particulars of buildings, masonry wells, tubewells, pucca irrigational channels and trees existing on the surplus land;
- (iii) statement in C.L.H. Form 10, in respect of arrears of land revenue or other dues recoverable under section 41 of the Act by adjustment from amount.]"

Clause (ii) of the abovequoted Rule 21, thus, requires preparation of statement in C.L.H. Form No. 9, "showing particulars of buildings, masonry wells, tubewells, pucca irrigational channels and trees existing on the surplus land".

32. A perusal of Clause (c) of Part IV of the Schedule to the Ceiling Act, 1960



shows that the existence of the trees on the surplus land including their age and utility is to be established for claiming compensation in respect of the trees.

33. In view of the above, it is a relevant question of fact as to whether the trees were existing on the surplus land or not.

34. In the present case, the respondent No. 4 (Prescribed Authority) as well as the respondent No. 2 (Appellate Authority) considered the material on record and held that at present, no trees were available on the spot, and the petitioner had failed to establish the existence of trees on the surplus land during the relevant period. The Authorities below took note of the fact that the petitioner had not produced any documentary evidence in regard to the existence of the trees on the surplus land, and the existence of the trees could not be taken to be established merely on the basis of oral evidence as at present, no trees were in existence on the spot.

35. The above findings recorded by the Authorities below are based on a consideration of the material on record including the oral statements (Annexure 7 to the Writ Petition) and the Reports (Annexure 8 to the Writ Petition) as also various C.L.H. Forms referred to hereinbefore. No illegality or perversity has been shown in the above findings recorded by the Authorities below.

36. In view of the said findings, there was no occasion to award any compensation to the petitioner in regard to the trees allegedly existing on the surplus land.

37. Coming now to the Third Submission made by the learned Counsel for the petitioner, namely, that the interest at the rate of 15% per annum from the date of taking possession, namely, 24.2.1975 or at the interest rate prevailing at present in the market, be awarded to the petitioner, it is pertinent to refer to the provisions of section 22 of the Ceiling Act, 1960, which is reproduced below :

"22. Manner of payment of amount.(1) The amount entered in assessment roll shall be deemed to have become due on the date on which possession of the land is taken under section 14, and where possession of different lands of the person entitled to the amount is taken on different dates, on the last of such dates.

(2) There shall be paid by the State Government on the amount entered in the assessment roll, interest at the rate of 3 1/2 per cent per annum from the date it becomes due under subsection (1) to the date of its final determination under section 20 or section 21, as the case may be.

(3) Subject to the provisions of section 23, the amount with interest referred to in subsection (2) shall be paid

(i) if it does not exceed rupees one thousand, in cash in one lumpsum;

(ii) in any other case, in five annual instalments of which the first instalment shall be of rupees one thousand, and the remainder shall be payable in four

years in annual equal instalments:

Provided that the State Government may, in its discretion, make full payment of the amount outstanding at any time:

Provided also that in case of four annual instalments referred to in clause (ii), further interest on the amount outstanding shall be paid at the rate of 31/2 per cent per annum from the date of final determination of the amount under section 20 or section 21, as the case may be, till the date when each such instalment falls due.

(4) The payment of the said amount in accordance with the provisions of this Act, shall be full discharge of all liability of the State Government in respect of the surplus land, but shall not prejudice the right of any other persons against the person to whom such payment is so made in respect of the said amount."

38. In the present case, as noted earlier, the date of taking possession of the surplus land from the petitioner was 24.2.1975.

Therefore, in view of the provisions of subsection (1) of section 22 of the Ceiling Act, 1960, the amount payable in respect of the acquired surplus land would be deemed to have become due on 24.2.1975.

39. In view of the provisions of subsection (2) of section 22 of the Ceiling Act, 1960, the petitioner was entitled to interest at the rate of 31/2% per annum on the amount payable in respect of the acquired surplus land from the date it became due, namely, 24.2.1975. The respondent No. 4 (Prescribed Authority) has accordingly awarded interest to the petitioner at the rate of 3.5% per annum with effect from the date of taking possession, namely, 24.2.1975.

40. In view of the specific provisions contained in section 22 of the Ceiling Act, 1960, there is no occasion to award interest to the petitioner at the rate of 15% per annum or at the interest rate prevailing in the market, and the claim of the petitioner in this regard is misconceived.

41. In view of the above, no illegality has been committed by the Authorities below in awarding interest to the petitioner at the rate of 3.5% per annum with effect from the date of taking possession, namely, 24.2.1975.

42. In view of the above discussion, I am of the opinion that the Writ Petition lacks merits, and the same is liable to be dismissed.

43. The Writ Petition is accordingly, dismissed.

44. However, on the facts and in the circumstances of the case, there will be no order as to costs.