

(2010) 08 AHC CK 0451
In the Allahabad High Court
Case No : C.M.W.P. No. 8054 of 1988

Hausila Singh

APPELLANT

Vs

Additional Commissioner (Administration) and Another

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 13, 4A

Citation : (2010) 6 AWC 6299

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : S.N. Singh, A.K. Rai, R.N. Singh, Satyendra Narain Singh, R.K. Saxena and Vishnu Kumar Singh, for the Appellant;

Final Decision : Allowed

Judgement

Arun Tandon, J.—Proceedings were initiated u/s 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1961 (hereinafter referred to as "the Act 1960"), against the recorded tenure holder Lallan Singh resulting in an order of the Prescribed Authority dated 27.4.1977, wherein a total area of 11.52 acres in terms of un-irrigated land was declared as surplus. Not being satisfied with the orders passed by the Prescribed Authority, the State of U.P. filed Ceiling Appeal No. 552 of 1977, u/s 13 of the Act, 1960.

2. On behalf of the State it was contended in the appeal that the Prescribed Authority has wrongly treated the holdings of the Petitioner as un-irrigated. As a matter of fact, the source of irrigation was available and that the land was capable of two crops being grown. During the pendency of the appeal Lallan Singh expired and the present Petitioner his son was substituted. The appeal filed by the State was allowed under the order of the Additional District Judge-III. Varanasi dated 6.3.1981 on the ground that the Prescribed Authority has not ensured the compliance of Section 4A of the Act 1960 before determining the issue as to whether the land was irrigated or not. Directions were issued that the

Khasra for the years 1378, 1379 and 1380 Fasli be considered and if necessary, spot inspection may also be made by the Court concerned.

3. On remand the Prescribed Authority is stated to have made spot inspection of the holdings of the Petitioner on 29.5.1982 and on the basis of the inspection a memo was got prepared by the Prescribed Authority. The matter was decided under order dated 31.5.1982 and it was held that the land was irrigated and corresponding 9.45 acres of land in terms of un-irrigated was declared as surplus.

4. Not being satisfied with the order so passed, the Petitioner filed an appeal and it was contended that the spot inspection was done without notice or information to the Petitioner and even otherwise subsequent to the passing of the order dated 12.2.1982 which provided that spot inspection shall be done by the Prescribed Authority on 24.2.1982. No further orders were recorded on any subsequent date thereafter. It was further submitted that the order passed by the Prescribed Authority was based on mere surmise and conjecture. No spot inspection was actually done.

5. The Commissioner under the impugned order dated 12.4.1988 has dismissed the appeal filed by the Petitioner after recording that although there is no order on the order-sheet subsequent to 12.2.1982 yet the said irregularity cannot be said to be so serious so as to upset the order of the Prescribed Authority. Further the Prescribed Authority has made spot inspection and found that there was a source of irrigation available for the land in question and two crops were being grown thereon. Hence this petition.

6. This Court on 6.1.2004 passed an order requiring the Petitioner to file a supplementary-affidavit annexing therewith the copies of the Khasra of 1378 to 1380 Fasli as well as to inform the Court whether any prior notice about the inspection by the Prescribed Authority done on 29.5.1982, was given to the Petitioner or not. Lastly as to whether they had raised any objection in respect of such spot inspection in the memo of appeal or not.

7. Two supplementary-affidavits have been filed by the Petitioner. In the first supplementary-affidavit it has been stated that the Khasra entries of the year 1378 to 1380 Fasli are not available. In respect of other two queries, it has been stated that no information was given to the Petitioner in respect of spot inspection done on 29.5.1982 and that a specific objection in that regard was raised vide ground No. 4 of the memo of appeal filed before the District Judge. Copy of the memo of appeal has also been brought on record.

8. Sri R.N. Singh, learned senior advocate for the Petitioner submitted before this Court that no notice of the spot inspection to be done by the Prescribed Authority on 29.5.1982 was given to the Petitioner and the said fact is reflected from the order sheet of the proceedings itself. Even after the spot Inspection was done by the Prescribed Authority no opportunity was afforded to the Petitioner to controvert the facts recorded or to lead the evidence which could demonstrate that the facts noticed qua the land being capable of two crops was not correct.

He clarifies that the inspection report should not have been brought to the knowledge of the Petitioner and an opportunity to meet the facts noticed should not have been afforded. The appellate authority has recorded that subsequent to 12.2.1982 there are no orders recorded in the order-sheet, therefore, it was established that the impugned order by the Prescribed Authority dated 31.5.1982 was based on an ex parte inspection done and within 2 days of such inspection the Prescribed Authority decided the case without any further opportunity.

9. I have heard Sri R.N. Singh, learned senior advocate assisted by Sri A.K. Rai on behalf of Petitioner, learned standing counsel on behalf of State Respondents and Sri R.K. Saxena on behalf of intervener.

10. It is not in dispute that under the order of remand passed by the Additional District Judge on an appeal filed by the State, the Prescribed Authority was required to examine the issue qua the land being un-irrigated or irrigated in the light of Section 4A of the Act, 1960.

11. Section 4A of the Act permits consideration of Khasra entries of Fasli year 1378 to 1380 and if have necessary spot inspection being done as well as consideration of such other material as may be necessary.

12. Admittedly the Khasra entries of the year 1378 to 1380 Fasli are not on record of the proceedings giving rise to the present petition. Therefore, it is on the basis of the spot inspection and other material which was brought on record before the Prescribed Authority he was to decide the issue as to whether the land was irrigated or un-irrigated.

13. Under an order dated 12.2.1982 the Prescribed Authority fixed 24.2.1982 as the date for spot inspection but no such inspection took place on the date fixed as per the record. The spot inspection in fact took place on 29.5.1982 which date apparently appears to have been fixed by Prescribed Authority on his own without there being any order in that regard recorded in the order-sheet. Therefore, the contention of the Petitioner that such inspection has been done without notice or opportunity to the Petitioner, has to be believed.

14. It is pertinent to note that after inspection on 29.5.1982 the Prescribed Authority has decided to finalize the proceedings within two days thereafter to be precise on 31.5.1992.

15. I am of the considered opinion that the Prescribed Authority was under a legal obligation to inform the Petitioner about the facts noticed doing spot inspection with an opportunity to the Petitioner to submit his evidence in reply. Petitioner could have produced other materials which on examination could establish that the land was un-irrigated. Denial of such opportunity to the Petitioner in the facts of this case vitiates the order.

16. In the facts and circumstances of the case, this Court finds that the orders passed by the Prescribed Authority dated 27.4.1977 as well that passed by Additional Commissioner dated 12.4.1988 are based on ex parte spot inspection

and without opportunity to controvert the facts noticed during spot inspection. The orders cannot be legally sustained and are hereby set-aside.

17. Let the Prescribed Authority redetermine the issue qua the land being irrigated or not in the light of the directions issued by the District Judge as per the order dated 6.3.1981 within four months from the date a certified copy of this order is filed before it after affording opportunity to the Petitioner and if need be a fresh date be fixed for spot inspection.

18. So far as the intervenors are concerned this Court may record that the total land which was declared surplus by the Prescribed Authority under the first order dated 27.4.1977 treating the land as un-irrigated, cannot be reduced ever after the matter is examined on remand inasmuch as such as it is the appeal filed by the State, and the only issue remanded is as to whether the land is irrigated or not. If the answer to the question is in affirmative, further land would be declared surplus. Such an order cannot in any way affect the rights of the allottees who are interveners in the matter provided surplus land was allotted to them before the order of remand passed by appellate authority.

19. In case surplus land has been allotted after the order of remand from the additional land declared as surplus, it will always be open to the Petitioner to make an appropriate application for cancellation of the allotment, if after remand the issue of irrigated/un-irrigated is decided in his favour. Such application of the Petitioner shall be considered in accordance with law.

Writ petition is allowed subject to the observations made.