

(2004) 08 AHC CK 0068

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4190 of 1985

Indra Pal Mishra alias Raju

APPELLANT

Vs

Special Judge (E.C. Act), Prescribed Authority/S.D.O. and
U.P. State

RESPONDENT

Date of Decision : 10-08-2004

Acts Referred:

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

Citation : (2005) 3 AWC 2565 : (2005) 98 RD 699 : (2005) 1 RD 699

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Advocate : W.H. Khan, for the Appellant;

Final Decision : Allowed

Judgement

Krishna Murari, J.—Heard Sri W.H. Khan learned counsel for the petitioner and learned Standing Counsel appearing for the respondents.

2. This petition arises out of proceedings under U.P. Imposition of Ceiling on Land Holdings Act 1961, (hereinafter referred to as the Act).

3. The facts in brief are that the petitioner was served with a notice dated 5.3.1984 u/s 29 read with Section 30 of the Act stating that he holds 32.84 Acre of irrigated land and as such 3.79 acres of irrigated land is surplus with him. The petitioner filed objection to the said notice. The Prescribed Authority vide order dated 31.1.1985 declared 3.64 acres in terms of irrigated land as surplus in the hands of the petitioner. The appeal filed by the petitioner was partly allowed by the appellate authority and instead 3.64 acres an area of 2.14 acres in terms of irrigated land was declared surplus.

4. It has been urged by the learned counsel for the petitioner that notice u/s 29 of the Act can only be issued in the circumstances, enumerated in the said Section. Section 29 of the Act reads as under.

29. Subsequent declaration of further land as surplus land.- Where after the date of enforcement of the Uttar Pradesh Imposition of Ceiling of Land Holdings (Amendment) Act, 1972,-

a) any land has come to be held by a tenure-holder under decree or order of any court, or as a result of succession or transfer, or by prescription in consequence of adverse possession, and such land together with the land already held by him exceeds the ceiling area applicable to him; or

b) any unirrigated land becomes irrigated land as a result of irrigation from a State irrigation work or any grove land loses its character as grove land or any land exempted under this Act ceases to fall under any of the categories exempted,

the ceiling area shall be liable to be re-determined * (and accordingly the provisions of this Act, except Section 16, shall mutatis mutandis apply.

5. The aforesaid provision makes it clear that ceiling urea of the tenure-holders is liable to be re-determined only if he comes to hold some land either under a decree or order of a court, or as a result of succession or transfer, or by prescription in consequence of adverse possession after 8.6.1973 and the land so acquired together with the land held by him exceeds ceiling limit.

6. I have gone through the contents of the writ petition, counter affidavit and also impugned judgment of the Prescribed Authority as well as Appellate Authority. It has been categorically stated in paragraph No. 1 of the writ petition that the petitioner was served with a notice dated 5.3.1984 u/s 29/30 of the U.P. Imposition of Ceiling on Land Holdings Act. The reply to this paragraph is contained in paragraph No. 3 of the counter affidavit wherein it has been stated that the contents of paragraph No. 1 of the writ petition needs no reply. Further, in paragraph No. 9 of the counter affidavit it has been stated that notice was given to the petitioner after considering of the Pros and Cons of the provisions of Section 29/30 of the Act. A perusal of the judgment of the Prescribed Authority as well as Appellate Authority goes to show that no finding has been recorded that any unirrigated land has becomes irrigated from the State irrigation work or the petitioner has acquired any land either through decree or by a court, or as a result of succession or by prescription. On the contrary, judgments go to show that the Prescribed Authority as well as Appellate Authority have proceeded to decide the case as if the proceedings were in pursuance of the notice u/s 10(2) of the Act. The Appellate Authority in its judgment has even recorded that the petitioner was issued notice u/s 10(2) of the Act. On the contrary the judgment of the Prescribed Authority goes to show that the case was u/s 4-A, 29, 30 of the Act. This shows total non application of mind by the Prescribed Authority as well as Appellate Authority.

7. In the absence of any finding with regard to any of the ingredients and circumstances enumerated in Section 29 of the Act the impugned judgment cannot be sustained.

8. Learned Single Judge, in the case of Sri Chandra v. State of U.P. and Anr. 1980 ALJ 705 has taken same view that unless conditions and circumstances specified u/s 29 of the Act exist proceedings for re-determination of Ceiling area of a tenure holder under the said Section would be illegal.

9. In view of the aforesaid discussions, the writ petition deserves to be allowed. The judgment and order dated 18.2.1985 passed by Appellate Authority and 31.1.1985 passed by Prescribed Authority are hereby quashed.

10. In the facts and circumstances of the case, there shall be no order as to costs.