

(1978) 07 AHC CK 0009
In the Allahabad High Court
Case No : Writ Petition No. 178 of 1978

Jai Ram Singh

APPELLANT

Vs

The State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 11-07-1978

Acts Referred:

Imposition of Ceiling on Land Holdings Rules — Rule 6, 7
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10, 10(2), 3(1), 4A, 5
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143

Citation : (1978) AWC 624

Hon'ble Judges : M.P. Mehrotra, J

Bench : Single Bench

Advocate : Girdhar Malviya, for the Appellant;

Final Decision : Dismissed

Judgement

M.P. Mehrotra, J.—This petition arises out of the proceedings under the Imposition of Ceiling on Land Holdings Act. The Petitioner was issued the usual notice u/s 10(2) of the said Act. He filed his objections and the Prescribed Authority rejected the objections. In the lower appellate court, however, the Petitioner partly succeeded and the surplus area was reduced from 2.72 acres of irrigated land to 1.69 acres of such land. The Petitioner has now come up in the instant petition and his learned Counsel, Sri Girdhar Malviya, has pressed before me two contentions. Firstly, he contended that the statement in the lower appellate court's order that the point about irrigation was not pressed in the said court is not correct. The lower appellate court in its order observed:

The next point about irrigation was not pressed and it is conceded that the plots are recorded as irrigated in the Khasras.

In the face of this categorical statement in the order of the lower appellate court, I am not inclined to accept the contention of the learned Counsel for the Petitioner that in reality the objection about irrigation was pressed in the said

court. It has to be seen that the court did accept the other contention raised on behalf of the Petitioner and there was no reason why the said court would not have considered the objection about irrigation if the same had really been pressed. No Khasra entries have been placed by the Petitioner before this Court to suggest that the said statement in the lower appellate court's order is in any manner erroneous. The first contention is, therefore, rejected.

2. The second contention of the learned Counsel for the Petitioner is that the lower appellate court was wrong in granting relief in respect of plot No. 32 only to the extent of 1.13 biswas. He says that in fact the declaration u/s 143 of the U.P. Zamindari Abolition and Land Reforms Act was for the areas of two bighas and thirteen biswas and, therefore, the lower appellate court should have excluded two bighas 13 biswas from plot No. 32 and not only 1.13 biswas or 103 acres. Learned Counsel's contention is that the declaration was binding on the Prescribed Authority and even though it was granted on 20th August, 1974, still, it was in subsistence at the relevant period when the question of surplus was considered by the Prescribed Authority. In this connection Section 6(1)(a) has been relied on. The said provision lays down as under:

(1) Exemption of certain land from the imposition of ceiling-

(i) Notwithstanding anything contained in this Act, land falling in any of the categories mentioned below shall not be taken into consideration, for the purposes of determining the ceiling area applicable to, and the surplus land of a tenure-holder, namely-

(a) land used for an industrial purpose (that is to say, for purposes of manufacture, Preservation, storage or processing of goods), and in respect of which a declaration u/s 143 of the Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 subsists. Shri Malviya contended that the declaration u/s 143 need not necessarily be prior to the commencement of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 and it can also be of a date sub-sequent to the date of the commencement of the said Amendment Act, The learned Standing Counsel, on the other hand, has contended that the said interpretation of Section 6(1)(a) is not correct. It has to be seen that Section 5(1) of the said Act, which can almost be considered to be analogous to the charging section in a taxing Act, lays down as follows:

Imposition of ceiling, (1) On and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no tenure-holder shall be entitled to hold in the aggregate, throughout Uttar Pradesh, any land in excess of ceiling area applicable to him.

Therefore, the relevant date is laid down as the date when the aforesaid Amendment Act commenced. The said date was 8th June, 1973. The exemptions which are mentioned in Section 6, in my view, have to be determined with reference to the date which is given in Section 5(1). In this connection Section 9 may also be looked into. Sub-section (1) clearly lays down that upon general

notice published in the official Gazette, every tenure-holder holding land in excess of the ceiling area applicable to him on the date of the enforcement of this Act, is to submit the return. Section 9(2) lays down:

As soon as may be after the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, the Prescribed Authority shall, by like general notice, call upon every tenure-holder holding land in excess of the ceiling area applicable to him on the enforcement of the said Act to submit to him within 30 days of publication of such notice, a statement referred to in Sub-section (1).

3. In tills sub-section also the relevant date is the date of the enforcement of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972. Section 10 directs individual notice to be issued to the tenure-holders who fail to submit a statement or submit incorrect or incomplete statement u/s 9. The Prescribed Authority is also required to prepare or cause to be prepared a statement containing such particulars as may be prescribed. The statement as required by Rule 7 of the Imposition of Ceiling on Land Holdings Rules has to be in C.L.H. form No. 3 and a reference to this form will show that the statement of total area of land held by a tenure-holder is prepared with reference to June 8, 1973. A copy of this statement is sent to the tenure-holder along with the notice u/s 10(2) of the said Act and he is called upon to show cause against the said statement within a prescribed period. C.L.H. form No. 1 is prepared under Rule 6 read with Section 9(2) of the Act. In this form also the material date prescribed is 8th June, 1973. Therefore, it is obvious that when the ceiling area has to be calculated and the surplus determined, the entire exercise has to be done with reference to the material date, namely, 8th June, 1973. If the exemptions granted u/s 6 are to be calculated with reference to a date which falls subsequent to 8th June, 1973, then the determination of the ceiling or the surplus cannot be said to be with reference to 8th June, 1973, apart from a fiction of law.

4. Shri Girdhar Malviya, learned Counsel for the Petitioner, however, emphasised that there are provisions in the Act which clearly show that there is no rigid adherence to the said date in making the aforesaid calculations. He drew my attention to Clauses (e), (f) and (g) of Sub-section (1) of Section 6, It is true that in Clause (e) and similarly in Clause (f), dates different from 8th June, 1973 have been laid down for the purposes of determining the applicability of the said clauses. It should, however, be seen that the said clauses have a particular purpose, namely, that exemptions only in genuine cases should be given. The aim is that recent innovations effected in the user of the land in anticipation of the provisions of the ceiling statute should not get such benefit. Similarly, Clause (f) also has been enacted with a view to prevent trusts and endowments acquiring land from tenure holders from getting the benefit of exemption if such acquisitions are of a date subsequent to 1st May, 1959. It seems that the tenure-holders were aware of the fact that public, religious or charitable wakfs, trusts

and endowments etc. were likely to be exempt from the operation of the Ceiling Act. In such a situation, a temptation can well be visualised where transfers would be made by individual tenure-holders with a view to take advantage of such a contemplated exemption. The same can be said about Clause (g) also. Shri Malviya then referred to Sub-section (3). In my opinion, the argument which the learned Counsel has advanced loses sight of the fact that even though the Act fixes the material date for determining the ceiling and the surplus as on 8th June, 1973, still, certain provisions have been inserted in the statute seeking to nullify the attempts which were made prior to the said date by way of anticipatory exercise to forestall the provisions in the Ceiling Act which were in the offing. For example, in Section 5 itself in Sub-sections (6) and (7), the relevant date specified is 24th January, 1971. According to Sub-section (6) any transfer of land made after the said date has to be ignored. Similarly, according to Sub-section (7) any partition of land made after 24th day of January, 1971 has to be ignored and the transferred land and the operative areas have to be taken into consideration in determining the ceiling and the surplus land in respect of a tenure-holder. These provisions are in the nature of safety measures which the Legislature enacted with a view to defeat the efforts which were made by the tenure-holder who sought to take advantage some time ago which was bound to take place in giving final shape to the statutory provisions relating to the ceiling law. Such legislative precautions are a familiar device in every expropriatory measure. It in no way affects the controversy at hand and, in my view, the determination of the ceiling area, which can be done only in the light of the provisions contained in Section 5, Section 6 read with other provisions in the Act, has to be done with reference to the basic date, namely, 8th June, 1973.

5. I wish to make it clear that I do not suggest that it is not open to the Legislature to lay down that despite the material date as laid down in Section 3(1) as being the date of the commencement of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, certain specified developments which may take place after the said date will be taken into consideration for determining the ceiling area and the surplus at the time when such determination is done by the Prescribed Authority. In this connection attention may be drawn to the second paragraph of Section 4-A of the Act which deals with the determination of irrigated land. The said para is as follows:

Secondly, that irrigation facility became available to any land by a State Irrigation work coming into operation subsequent to the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, and at least two crops were grown in such land in any agricultural year between the date of such work coming into operation and the date of issue of notice u/s 10.

But the said provision is by way of an exception and the specific provision is made for the said exception. There is no such exception laid down in Section 6(1) (a) which would suggest that a declaration u/s 143 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 even if made subsequent to the material

date laid down in Section 5(1), namely, 8th June, 1973, shall be given effect to while determining the ceiling area u/s 5 of the said Act.

6. In my view, therefore, the contention of the learned Counsel for the Petitioner is untenable and the lower appellate court was justified in not granting any relief in respect of plot No. 32 apart from the exemption of 1.13 biswas covered by Abadi which benefit was granted to the Petitioner by the said court.

7. This petition accordingly fails and is dismissed but in the circumstances there will be no order as to costs.