

(1997) 07 AHC CK 0091
In the Allahabad High Court
Case No : C.M.W.P. No. 16027 of 1997

Jugal Kishore and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 11-07-1997

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 11, 11(1), 11(2), 12, 13

Citation : (1998) 1 AWC 86 : (1997) RD 577

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : H.S.N. Tripathi, P.S. Tripathi and S.K. Pandey, for the Appellant;

Judgement

R.H. Zaidi, J.—Heard learned counsel for the petitioner and learned standing counsel and also perused the record of the case.

2. By means of this petition, petitioners pray for a writ order or direction in the nature of mandamus commanding the respondents not to dispossess them from plot No. 103 (area .29 acre) plot No. 501 (old) area .29 acre, situated in village Chhahun Tappa Jhankaul, Pargana Sidhuwa Jobna. Tahsil Kasia, district Padrauna, till the objection filed by them u/s 11 (2) of the U. P. Imposition of Ceiling on Land Holdings Act, for short the Act is decided.

3. It appears that petitioners filed objections u/s 11 (2) of the Act in the ceiling proceedings initiated against them before the Prescribed Authority. They have also applied for interim relief, but no orders were passed by the Prescribed Authority on the said application for interim relief. Consequently, petitioners have approached this Court and filed the present petition.

4. Time was granted to the learned standing counsel to file counter-affidavit by this Court, but till date no counter-affidavit has been filed. I do not consider it necessary to wait for the counter and as prayed by the learned counsel for the parties, I dispose of this petition finally at this stage.

5. Learned counsel for the petitioner has urged that in view of the provision of Section 11 (2) read with Section 12 and Section 14, the petitioners could not be dispossessed from the land in dispute, till the objection filed by them is decided by the Prescribed Authority.

6. Sub-section (2) of Section 11 and Sections 12 and 14 of the Act provide as under:

"11 (2). The Prescribed Authority shall, on application made within thirty days from the date of the order under sub-section (1) by a tenure-holder aggrieved by such order passed in his absence and on sufficient cause being shown for his absence set aside the order and allow such tenure-holder to file objection against the statement prepared u/s 10 and proceed to decide the same in accordance with the provisions of Section 12.

12. Determination of the surplus (and by the Prescribed Authority where an objection is filed.--(1) Where an objection has been filed under subsection (2) of Section 10 or under sub-section (2) of Section 11, or because of any appellate order u/s 13 the Prescribed Authority shall, after affording the parties reasonable opportunity of being heard and of producing evidence, decide the objections after recording his reasons and determine the surplus land.

14. Acquisition of surplus land.--(1) The Collector shall at any time after-

(a) in case, where the order passed under sub-section (1) of Section 11 has become final, the date of its so becoming final; or

(b) in case, where no appeal has been preferred u/s 13, the date of expiry of the period of limitation provided therefore ; or

(c) in case, where an appeal has been preferred u/s 13, the date of its decision ; take possession of the surplus land determined u/s 11, Section 12 or 13 and also of any ungathered crop or fruits of trees not being crops or fruits to which sub-section (1) of Section 15 applies, after evicting any person found in occupation of such land crops or fruits and may for that purpose use or cause to be used such force as may be necessary.

7. From the joint reading of the aforesaid sections, it is apparent that the tenure-holder against whom the proceedings are pending under the Act and whose land has been declared as surplus, cannot be dispossessed from the land in dispute till the matters are decided finally. The Prescribed Authority should have granted the interim relief in favour of the petitioners. Reliance has also been placed by the learned counsel for the petitioners in support of his submission, upon the decision in case of Ajodhya Vs. Deputy Director of Consolidation and Others, wherein it was observed by this Court as under-

"The learned standing counsel has urged that as the application u/s 11 (2) is pending before the Prescribed Authority, then he will take proper decision in the matter, but I am of the view that in view of Section 14 (1) (a) to (c) the

petitioner cannot be dispossessed on the basis of the order passed by the Prescribed Authority against the original tenure-holder, because of pendency of the application u/s 11 (2)."

8. In view of the aforesaid discussions, the writ petition deserves to be allowed.

9. The writ petition succeeds and is allowed. The respondents are directed not to take steps to dispossess the petitioners from the land in dispute till disposal of objection u/s 11 (2) of the Act. It is, however, observed that the application/objection filed u/s 11 (2) of the Act shall be decided expeditiously, preferably within a period of two months from the date a certified copy of this order is produced before the Prescribed Authority.