
(1978) 11 AHC CK 0039
In the Allahabad High Court
Case No : Civil Misc. Writ No. 575 of 1978

Kaushal Kishore and Another	Vs	APPELLANT
Civil Judge, Jhansi and Others		RESPONDENT

Date of Decision : 09-11-1978

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 4, 5

Citation : AIR 1979 All 92 : (1979) RD 2

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

Bench : Single Bench

Advocate : N.B. Nigam, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

M.P. Mehrotra, J.—This petition arises out of the proceedings under the U. P. Imposition of Ceiling on Land Holdings Act.

2. The facts, in brief, are these: The usual notice u/s 10 (2) of the Act was issued to one Shri Bhaiyya Lal and he filed objections through his Mukhtar-e-am Sri Narvada Prasad. The objections were dealt with and disposed of by the Prescribed Authority. The said tenure-holder died on 19th July, 1976 and his heirs and legal representatives filed the appeal before the appellate court below. The appeal was partly allowed. The petitioners have come up in the instant petition and the learned counsel for the petitioners has raised three contentions before me. His first contention is that the appellate court below has due to an inadvertence failed to notice the contention which was raised before the said court in respect of the effect of consolidation proceedings on the ceiling proceedings. Counsel has drawn my attention to the affidavit of the petitioner No. 2 himself who is an advocate and who has stated in the affidavit that he argued the appeal before the appellate court below and that he definitely raised the point about the effect of the decision in the consolidation proceedings and he also stated that he brought to the notice of the appellate court below the ruling reported in 1977 All WC 318: AIR 1977 Noc 354 (Jhandoo v. State). Learned

counsel has also drawn my attention to the fact that Issue No. 18 was framed in respect of the said controversy before the Prescribed Authority and in the grounds of appeal to the appellate court below, there is ground No. 11 where the Prescribed Authority's order was attacked on the aforesaid ground relating to the effect of the decision of the consolidation authorities on the ceiling proceedings. Taking all these aspects of the matter, I am satisfied that due to some inadvertence the appellate court below did not advert to the said question and I think that in view of the law laid down in the aforesaid case, the petitioner is entitled to claim that so far as plot No. 1130, area 1.51 acres is concerned (as stated in the supplementary affidavit of the petitioner No. 2 himself), the same should be excluded from the total holding of the deceased tenure-holder. The said plot is stated in the said affidavit to have gone to the chak of Sri Halkoo by the order of the Assistant Consolidation Officer dated 4-12-1974.

3. Counsel next contended that plot No. 1346 and plot No. 1347 are partly recorded as abadi and, therefore, they should have been exempted. Before the Prescribed Authority the issue framed was whether parts of the said plots had residential houses built on them and the issue has been decided against the tenure-holder. The appellate court below also affirmed the finding of the Prescribed Authority. In my opinion in view of the nature of the issue framed before the Prescribed Authority, it is not permissible for the petitioner to raise other aspects of the matter. The finding recorded is a pure finding of fact and cannot be assailed in writ jurisdiction.

4. A third contention has been raised by the learned counsel that the Prescribed Authority and the appellate court below were not justified in treating certain land as single crop in view of the fact that the canal which has its source in the tank of Garhmau could not be treated as assured irrigation from any State irrigation work or private irrigation work. In this connection learned counsel drew my attention to the statement of the witness Sri Kripa Shanker which has been referred to by the appellate court below in its judgment. He has also placed before me certain paragraphs of the writ petition. It seems to me that expression "assured irrigation" cannot be treated as equivalent to guaranteed continuous supply of water from an irrigation work. Sri Kripa Shanker emphasised that whenever rain fall is less in a year then the supply is not full to cope with the demand. In my view the mere fact that as a result of the paucity of rain fall, the supply of water cannot fully meet with the demand will not justify treating the canal as otherwise than an assured irrigation work. It is well-known that sometimes due to paucity of rain fall in the Rihand catchment area, the Rihand lake itself does not have a requisite level of water to ensure continuous supply of electric energy to the different districts in the State and drastic cuts in the supply of electric current have to be resorted to; yet it cannot be suggested, that Rihand lake is not the source of assured supply of electric current. Moreover, these are questions of fact and in the writ jurisdiction it is not possible to go into these matters.

5. This writ petition accordingly succeeds in part. The aforesaid plot 1130 should be excluded from the total holding of the deceased tenure-holder Bhaiyya Lal and the surplus should be calculated after excluding the said plot from the total holding of the said deceased tenure-holder. The order of the Prescribed Authority has merged in the order of the judgment of the appellate court below, therefore, I direct that the judgment of the appellate court below shall stand quashed to the extent as aforesaid, namely, plot No, 1130 which travelled out of the hand of the petitioner as a result of the consolidation proceedings, shall be excluded from, the total holding of the deceased tenure-holder and the necessary correction shall be made on the basis of the said direction. In the circumstances of the case I make no order as to costs.