
(1978) 04 AHC CK 0068
In the Allahabad High Court
Case No : Writ Petition No. 3938 of 1976

Kedar	Vs	APPELLANT
District Judge and Others		RESPONDENT

Date of Decision : 28-04-1978

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 4A
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 154, 163, 164

Citation : (1978) AWC 570 : (1978) RD 307

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

Advocate : R.R.K. Trivedi, for the Appellant; S.C. and S.N. Verma, for the Respondent

Final Decision : Allowed

Judgement

C.S.P. Singh, J.—The Petitioner was served with a notice u/s 10(2) of the Ceiling Act. Amongst the various objections that he took up, only two are relevant for the purposes of the present petition. One was that there has been an incorrect classification of certain plot of land as irrigated land, while in fact they were not so; and secondly that in 1967 he had entered into an agreement for sale of certain plots of land, and subsequently those plots of land were transferred to various persons in pursuance of a decree passed by the Civil Court on 17-8-1974. These objections did not find favour with the Prescribed Authority. It held that the agreement for sale was fictitious, and that the sale was not affected for adequate consideration. As regards the objection regarding the classification of some plots as irrigated land, it was repelled on the ground that the Lekhpal appearing on behalf of the State had deposed that the classification of land as shown in the notice was correct. An appeal was filed against this order. The appellate authority held that an agreement for sale would not come within the purview of Section 164 of the U.P. Z.A. & L.R. Act, the land which was subsequently transferred could not be excluded for the purposes of finding out

the surplus area of the Petitioner. The issue regarding demarcation of land also appears to have been raised before the appellate authority, because it has given a direction to the Prescribed Authority to demarcate surplus land after giving an opportunity to the Petitioner, Counsel for the Petitioner contended that as the agreement to sell had been entered into before the appointed date, it was saved by Section 164 of the U.P. Zamindari Abolition & Land Reforms Act, and the land comprised in that agreement could not be taken into account for the purposes of fixation of the surplus land. I am unable to accept this contention. Section 164 of the U.P. Zamindari Abolition and Land Reforms Act runs as under:

164. Transfer with possession by a bhumidhar to be deemed a sale. Any transfer of any holding or part thereof made by a bhumidhar by which possession is transferred to the transferee for the purposes of securing any payment of money advanced or to be advanced by way of loan, and existing or future debt or the performance of an engagement which may give rise to a pecuniary liability, shall, notwithstanding anything contained in the document of transfer or any law for the time being in force, be deemed at all times and for all purposes to be a sale to the transferee and to every such sale the provisions of Sections 154 and 163 shall apply.

2. Before this provision applies, the transaction in question has to be a transfer. An Agreement to sell cannot be held to be transfer as contemplated by this section, for no title passes to another person as a result of the transaction. This apart, even assuming that such an agreement would fall within the purview of Section 164 of the Act, inasmuch as the instrument evidencing it was not a registered one, no title at all could pass under this document as the consideration in the agreement to sell was in excess of Rs. 100/-. This contention must, therefore be rejected. Counsel, however, contended that the Petitioner had led evidence by way of filing a Khasra for 1378 and 1380 F. to establish that the land was not irrigated as contemplated by Section 4-A of the Act, and both the Prescribed Authority and the Appellate Authority have omitted to look into this evidence. In paragraph 9, it has been averred that all the grounds taken in the present petition were urged before the Appellate Authority but the Appellate Authority failed to give any finding on the contention raised. Ground No. 9 of the grounds taken in the petition raises the contention that the land was not irrigated land. In paragraph 8 of the counter-affidavit, it has been averred that all the grounds taken in the present petition were urged before the Appellate Authority but the Appellate Authority failed to give any finding on the contention raised. In paragraph 8 of the counter affidavit, it has been averred that paragraph 9 is not admitted as alleged. It is further stated that the argument raised in paragraph 9 will be suitably replied at the time of hearing of the petition. Thus, there is no clear denial of the fact that the Petitioner raised the issue of land being unirrigated before the Appellate Authority. From a perusal of the order of the Appellate Authority, it does not appear that he considered this point. Inasmuch as the issue had been raised before the Appellate Authority, it was incumbent upon the Appellate Authority to have decided this point. u/s 4-A before the land

can be classified as irrigated land, the Khasra of 1378, 1379 and 1380 F. have to be scrutinised and in case irrigation facilities are available from the sources set out in that provision, land can be classified as irrigated land, provided it has been irrigated in any one of the aforesaid years and at least two crops were grown in any one of those years. Land can also be classified as irrigated land if it falls within the effective command area of an irrigation canal, or a State Tubewell or private irrigation work, provided that the classification and composition of its soil is such that it is capable of growing at least two crops in an agricultural year. In the present case, in paragraph 10 of the counter affidavit, it is alleged that the fields in question were irrigated by a canal. There is no averment that two crops were grown in any one of the Fasli years 1378, 1379 or 1380. In this view of the matter, and in view of the fact that the Appellate Authority has not gone into the question as to whether the land is irrigated land as defined in Section 4-A of the Act, the Appellate Authority is directed to go into this question, after considering the evidence already on the record.

3. The petition is accordingly allowed. The order of the Appellate Authority as regards the other points decided by him is confirmed but he is directed to decide the question as to whether some of the plots of land claimed by the Petitioner to be unirrigated come within the category of irrigated land as set out in Section 4-A of the Act. The petition is disposed of accordingly. Parties to bear their own costs. The stay order is discharged.