
(2011) 12 AHC CK 0378
In the Allahabad High Court
Case No : CM.W.P. No. 72448 of 2011

Mahbullah and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 14-12-2011

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 26, 26A, 27, 27(4), 3(13)

Citation : (2012) 3 AWC 2895 : (2012) 115 RD 215

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri Deepak Verma learned Counsel for the petitioners and the learned Standing Counsel for the State.

2. The petitioners claim that they had been allotted land after it was declared surplus under the U.P. Imposition of Ceiling on Land Holdings Act, 1960. This allotment according to the petitioners themselves were proceeded with under the U.P. Zamindari Abolition & Land Reforms Act, 1950. The said allotment is alleged to have been approved on 31st March, 1992 by the Sub Divisional Officer of the area concerned.

3. The same land appears to have been re-allotted to the contesting respondents herein, whereafter the petitioners filed an application for cancellation of the said allotments under the provisions of sub-section (4) of section 27 of the 1960 Act. The Commissioner, thereafter proceeded to hear the matter and by the impugned order has remanded the matter to the Sub Divisional Officer concerned.

4. Learned Counsel for the petitioners submits that this exercise of power by the learned Additional Commissioner is absolutely contrary to the provisions of the 1960 Act, inasmuch as, the Sub Divisional Officer has no jurisdiction to cancel the lease granted under the provisions of section 27 of the 1960 Act.

5. The contention of Sri Deepak Verma is correct, inasmuch as, the power to

make allotment of land declared surplus under the 1960 Act vests with the Collector of the district in view of the provisions of section 26 of the 1960 Act quoted hereinbelow:--

Section 26. Settlement or letting out of surplus land by Collector.--All settlement of surplus land vested in the State shall be made on behalf of the State Government by the Collector in accordance with the provisions of sections 26-A and 27.

6. This has to be read in accordance with the Rule 59 of the Ceiling Rules.

7. The power to cancel an allotment vests in the Commissioner of the Division, under sub-section (4) of section 27 of the 1960 Act.

8. In the instant case, the Commissioner has remitted the matter to the Sub Divisional Officer who at one point of time was the Prescribed Authority. The Prescribed Authority is defined u/s 3(13) of the 1960 Act, quoted hereinbelow:--

Section 3(13).-- "Prescribed authority" means such officer not below the rank of an Assistant Collector of the first class as may be empowered by the State Government, by notification in the Gazette, to perform the functions of prescribed authority under this Act for such area or areas as may be specified in that behalf.

9. It provides that no person below the rank of Assistant Collector, First Class shall be notified as the Prescribed Authority.

10. It appears that the learned Commissioner was labouring under some misconception, inasmuch as, there is a distinction between the definition of the word "Prescribed Authority" and the word "Collector", used under the Act, inasmuch as, these are two different authorities, defined at two different places. The legislature, therefore, clearly intended that the Prescribed Authority can be a person not below the rank of Assistant Collector, First Class to decide objections, but when it came to matters of allotment of surplus land, the legislature clearly intended that this power has to be exercised by the Collector of the district u/s 26 of the Act. In view of this, the Collector is empowered to proceed to make allotment. The claim of allotment by the petitioners through the Sub Divisional Officer therefore cannot be sustained. There is no delegation of the power u/s 26 of the Act on a Sub Divisional Officer or Assistant Collector 1st Class.

11. Accordingly, the allotment made in favour of the petitioners was not in accordance with the 1960 Act, as such the Commissioner has committed an error by remitting the matter back to the Sub Divisional Officer who even otherwise did not have any jurisdiction in the matter. Apart from this, it is the Commissioner himself who has to exercise powers u/s 27(4) and for this reason also there was no occasion for relegating the dispute by a remand order to the Sub Divisional Officer. The Commissioner, therefore, in my opinion, has adopted a totally wrong procedure.

12. However, since the allotment of the petitioners are not sustainable in law then the relief in relation to their allotments also cannot be granted.

13. So far as the allotment of contesting respondents is concerned/ the same also appears to have been approved by the Sub Divisional Officer on 8.3.1995. This according to the petitioner is also an order which can be described as co-ram non judic. This part of "the matter therefore requires to be examined by the Commissioner himself keeping in view the provisions referred to hereinabove. The writ petition is therefore disposed of with liberty to the Commissioner to exercise his powers under the provisions of section 27 of the Act keeping in view the said contention raised on behalf of the petitioners that the Sub Divisional Officer had no authority to proceed to make allotments in relation to land which has been declared surplus under the 1960 Act. The impugned order dated 20.10.2011 stands modified to the aforesaid extent.

14. Needless to say that no orders will be passed without putting the affected parties to notice.

15. With the aforesaid observations the writ petition stands disposed of.