

(1993) 01 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9193 of 1986

Maresh Prasad Awasthi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-01-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 29, 38B, 4

Citation : (1993) 1 AWC 666 : (1993) RD 258

Hon'ble Judges : R.K. Gulati, J

Bench : Single Bench

Advocate : N.K. Saxena, for the Appellant;

Final Decision : Allowed

Judgement

R.K. Gulati, J.—This is a petition under Article 226 of the Constitution of India. The parties have exchanged their affidavits at the admission stage and the petition is ripe for hearing. With the consent of the parties the petition is being disposed of finally at the admission stage.

2. Briefly the facts are these. The Petitioner is a tenure holder. As a result of an order passed by the Prescribed Authority under the U.P. Imposition of Ceiling on Land Holding Act, 1960 (for short the Act) certain land held by the Petitioner was declared as surplus. In appeal the area of surplus land was reduced to some extent. Feeling still aggrieved, the Petitioner preferred a writ petition in this Court against the appellate order being Writ Petition No. 2280 of 1977 which came to be decided by a learned single Judge of this Court by order dated 4-2-1979. In that petition two contentions were urged and one of them found favour with the Court as a result of which the appellate order was set aside in part and the matter was remanded to the appellate Court with certain directions to decide the matter afresh which was being restored by the order passed by this Court. It seems that before the matter could be taken up for reconsideration by the appellate Court on the basis of the remand order passed by this Court, the

consolidation proceedings took place in the village where the Petitioner held his holdings. According to the Petitioner as a result of the consolidation proceedings his holdings were reduced by 4.04 acres. When the appeal came to be heard in pursuance of the remand, the Petitioner put forward a plea that in determining the total area of the land of the Petitioner or purposes of the Act, the area as reduced as a result of the consolidation proceedings was liable to be taken into account. The appellate authority repelled this contention on the ground, inter alia, that consolidation operations had taken place in 1360-F (In 1952) and the Petitioner has failed to place the order of the consolidation authorities before the prescribed Authority which was deliberately suppressed and thus he was not entitled to raise such a plea at this belated stage. In passing the Appellate Authority observed that consolidation proceedings made, no difference in the holdings of the Petitioner and the plea was being taken only to delay the matter and for seeking to reopen an issue which the Petitioner was not entitled to raise under the law, inasmuch as the High Court had remanded the matter for decision of a specific controversy. In the ultimate result, the Appellate Authority dismissed the appeal. It is in this background that the Petitioner has come to this Court challenging the order dated 20-3-1985 passed by II Additional District and Sessions Judge, Hamirpur, by which Appeal No. 328 of 1976 was dismissed.

3. Learned Counsel for the Petitioner and the learned Standing Counsel for the Respondents have been heard. It is wholly incorrect to suggest that the consolidation operations commenced and concluded before the order of the Prescribed Authority came to be made which was passed on 5-6-1976. In fact consolidation operations had not commenced till the matter came to be remanded by this Court by its order dated 14-2-1979. In paragraph 5 of the counter affidavit it is admitted that the Notification about consolidation operations in village Kulpahar with which we are concerned was published on 4th August 1979 u/s 4 of U.P. Consolidation of Holdings Act. It is thus evident that consolidation operations commenced after the matter was remanded by this Court by its order dated 14-2-1979.

4. The observation of the Appellate Authority that as the matter was remanded for a limited purpose, the Petitioner was not entitled to raise any other plea, has also no substance. In *Ramakant Rao v. State of U.P.* 1986 RJ 237 in a similar circumstances such an objection was repelled by this Court. Thus as this ground the impugned order cannot be sustained.

5. In *Satya Pal Singh v. State of U.P.* 1979 ALJ 1259, this Court had an occasion to consider the question whether reduction in area brought about by the consolidation proceedings in the holding of a tenure-holder after June 8, 1973 can be taken into account while determining ceiling area applicable to him on the said date? While answering the question in the affirmative, it was pointed out that the burden of the Ceiling Act is that after June 8, 1973, no tenure-holder should continue to possess more than the ceiling area. It was implicit from Section 29 of the Act that because of the operation of law if a tenure holder's

holdings get reduced that should also be taken into account provided the reduction is one which is valid in law.

6. The Bench observed:

Section 38B implies that findings or decisions given in any proceeding in any Court, tribunal or authority will be binding upon the authorities under the Ceiling Act, if they are given after October 10, 1975. This clearly leads to the conclusion that the decisions of the authorities under the U.P. consolidation of holdings act are valid and are to be recognized in proceedings under the ceiling Act, subject of course, to the effect of Section 38B as explained above. In this view, it is evident that the Prescribed Authority under the Ceiling Act while determining the ceiling area of a tenure-holder cannot shut its eye or ignore the decisions given in proceedings under the Consolidation of Holdings Act.

In view of the decision of this Court the authorities under the Ceiling Act cannot legally refuse to take notice of the decision rendered in consolidation proceedings. The proceedings by way of an appeal against an order of the Prescribed Authority are only in continuation of the initial order passed by the Prescribed Authority. In the given case if a case for relief in calculating surplus land is made out on the strength of the decision under the U.P. Consolidation of Holdings Act, the Appellate Authority will not be justified in withholding the appropriate relief in consonance with the order passed by the authorities under U.P. Consolidation of Holdings Act. The observation of the Appellate Authority that the additional plea taken by the Petitioner before it was motivated to delay the proceedings and to reopen a dead issue, is without any basis which cannot be upheld. The Petitioner had taken the plea at the earliest available opportunity and this plea could not have been taken at any earlier stage before the matter was remanded as that plea was not available to the Petitioner at the relevant time.

7. Likewise the observation of the Appellate Authority that as a result of the consolidation proceedings no difference has been made in the holdings of the Petitioner, is not supported by any material on record. It has made a blank observation without application of mind. In paragraph 6 of the writ petition it is specifically averred that the holdings of the Petitioner had been reduced as a result of consolidation operation by 4.04 acres, on account of three factors. One, that during consolidation operations his land was reduced by 3.67 acres in measurement. Second, on account of valuation of the land held by the Petitioner in the consolidation proceedings the total holding of the Petitioner was determined as 32.33 acres and third, it was reduced due to compulsory contribution of land for public purposes. In the counter affidavit filed by the Respondents these amendments have not been denied. If the case taken by the Petitioner is true, it was liable to be considered seriously on merits at the hands of the Appellate Authority and an appropriate relief should have been granted to the Petitioner if he was found entitled. As the Appellate Authority failed to consider these matters on merits and chose to dismiss the Appeal of the

Petitioner cursorily on technicalities, the order of the Appellate Authority to that extent cannot be sustained and is accordingly set aside.

8. The petition succeeds and is allowed. The Appellate Authority is directed to restore the appeal giving rise to this petition to its original number and to decide the controversy afresh on merits in accordance with law and in the light of the observations made above. The Petitioner is entitled to costs which are assessed at Rs. 500/-.