

(1979) 01 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3220 of 1977

Mansab Ali

APPELLANT

Vs

The Addl. District Judge and Others

RESPONDENT

Date of Decision : 03-01-1979

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 3(7), 3(8), 5(3)

Citation : (1979) AWC 223

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

Bench : Single Bench

Advocate : R.P. Goyal, for the Appellant;

Final Decision : Allowed

Judgement

M.P. Mehrotra, J.—This petition arises out of proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960.

2. The facts, in brief, are these. The Petitioner was issued notice u/s 10(2) of the Act and he filed objections. The objections were decided by the Prescribed Authority. Thereafter an appeal was filed and the same was heard and decided by the Additional District Judge, Ghaziabad. Now the Petitioner has come up in the instant writ petition, and in support thereof I have heard Sri R.P. Goyal, learned Counsel for the Petitioner. Sri Goyal contended before me that the authorities below wrongly denied to his client the benefit of Section 5(3) of the Act in respect of his adult sons. Secondly, the learned Counsel contended that the controversy about certain plots being grove was not decided by the authorities below, in the correct manner. So far as the first contention is concerned, I find substance in it. The appellate court wrongly thought that the separate living of the adult sons will have significance in the instant controversy. The learned Additional District Judge did not properly read Section 3(7) of the Act. It is nowhere laid down in the said provision that if an adult son is living separately, he will constitute separate family. The Prescribed Authority held that Islam Uddin

was not the son of the Petitioner. About one son of the Petitioner it was said that he had gone to Pakistan and had acquired its nationality. But about two other sons it seems that they were minors on 8th June, 1973. Therefore, no benefit could be given to them u/s 5(3)(a) of the Act. However, in my view the authorities were wrong in denying the benefit of two hectares for the adult son who had gone to Pakistan. There is nothing in Section 5(3)(a) of the Act which disentitles the tenure-holder from getting the benefit of two hectares land for such adult son who has gone to another country and has acquired its nationality.

3. So far as the second contention of the learned Counsel is concerned, I regret my inability to accept the same. It seems to me that this is a pure finding of fact and taking into consideration that I am sitting in the writ jurisdiction with its own limitations, I do not find the case to be one where I can interfere. The learned Counsel drew my attention to the copy of the inspection note submitted by the Tahsildar which is Annexure I to the counter affidavit. He contended that from the said note it will be seen that in certain plots mango trees are said to stand whose height has been stated to be from 10 to 15 feet and whose width is stated to be from 1 1/3 to 2 feet. The counsel contended that such trees cannot be held to be of 4 or 5 years standing. He contended that this was a pure surmise on the part of the Tehsildar which was not binding on the Prescribed Authority. It should be seen that from the report it is clear that in such plots crops have been grown and in these matters the burden of proof is on the Petitioner. It was for him to have satisfied the court that the trees were planted before 24th January, 1971. It seems to me that in these questions the findings recorded by the authorities below cannot be said to be such as can invite interference in the writ jurisdiction. My attention was drawn to the pronouncement of Hon. C.S.P. Singh, J. reported in Mahendra Singh Vs. The State of U.P. and Others, . The learned Judge emphasised that the requirement u/s 3(8) is that the trees should have been planted before 24th January, 1971. That undoubtedly is so but I have held above that the burden for establishing the said fact is on the tenure-holder. In any case, I do not think that I can really interfere in the findings recorded by the authorities below on the said question.

4. Accordingly, this petition is allowed in the manner that the judgment of the appellate court and the order of the Prescribed Authority are quashed in so far as the said authorities have failed to give the benefit of two additional hectares irrigated land in respect of the adult son who migrated to Pakistan. The Prescribed Authority shall recalculate the ceiling area of the Petitioner by giving him the benefit of two additional hectares of irrigated land in respect of the said son and the surplus land shall thereafter be determined. In the circumstances, there will be no order as to costs.