

(1978) 12 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 435 and 643 of 1978

Marghoobur Rahman

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 18-12-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 3(14), 5(8)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 157, 165

Citation : (1978) 12 AHC CK 0031

Hon'ble Judges : K.N.Goyal, J

Final Decision : Dismissed

Judgement

K. N. Goyal, J.

These two writ petitions arise out of proceedings under the U. P. Imposition of Ceiling on Land Holdings Act. They raise common questions of law and fact and may be conveniently disposed of by a common judgment.

The first point raised by the petitioners tenureholders was that certain land had been given to certain other persons on Batai as far back as in 1960 and that subsequently, an agreement to sell had also been executed in favour of those bataidars. Ultimately, the land was purchased by those bataidars by saledeed dated 16th May, 1974. The contention of learned counsel for the petitioners is that this land should not have been included in the land held by the petitioners.

So far as saledeed of 16th May, 1974 is concerned, learned counsel for the petitioners concedes that the same could not be taken into account in view of the provision of section 5 (8) of the U. P. Imposition of Ceiling on Land Holdings Act which lays down that no tenureholder shall transfer any land held by him during the continuance of proceedings for determination of surplus land in relation to such tenureholder and every transfer made in contravention of this subsection shall be made void. This provision overrides even the provision contained in subsection (6) under which bona fide transfers made after 24th January, 1971,

are to be recognised. In the present case, notice was given to the tenureholder in 1970, while the sale deed was executed in 1974.

Learned counsel for the petitioners has, however, strenuously contended that even if the sale deed of 1974, be ignored, the transferees had already acquired sirdari rights under section 165 of the U. P. Zamindari Abolition and Land Reforms Act. This section, so far as material, lays down that when a bhumidhar other than one referred to in section 157 has let out his holding or any part thereof, the lessee will become and be deemed to be a sirdar. In this connection, he has referred to the oral evidence mentioned in the appellate judgment and also to the entry in the remarks column of the khasra extract for 1376 F. in which the aforesaid transferees are shown as in occupation. The oral evidence is to the effect that these persons were bataidars of the petitioners. The learned Additional District Judge acting as the appellate authority, has aptly pointed out that if the bataidars were actually cultivating the land and had acquired sirdari rights, as alleged, they would certainly not have paid sale consideration unnecessarily in 1974. Thus, his inferential finding is that they were not in actual possession of all. Even if we assume that they were in actual cultivatory possession as bataidars, the permission by the tenureholder to them to cultivate the land on batai basis does not amount to "letting" for purposes of section 165 aforesaid. This section has to be read with section 156. The Explanation to section 156, as it stood during the relevant period, laid down that any arrangement whereby a person is entitled to a right merely to share in the produce grown on the land in consideration of such person assisting or participating with a tenureholder in the actual performance of agricultural operations is not a lease. Thus, a bataidar, was not regarded as a person to whom land had been let within the meaning of section 165. The possession of the so-called bataidars, if any, being permissive, they could also not be deemed to have acquired adverse rights under section 210 of the Act. The finding of the appellate authority on this question is thus not vitiated by any manifest error and does not call for interference.

Learned counsel for the petitioners has next contended that there were pucca nails on certain plots. The site of the nalis had thus ceased to be "land" within the meaning of the U. P. Imposition of Ceiling on Land Holdings Act read with section 3 (14) of the U. P. Zamindari Abolition and Land Reforms Act. He has also contended that as some rastas have been made in some plots for convenience, the land covered by such rastas should likewise be excluded. According to this argument, it had ceased to be land" for the purposes of the said Acts, This argument does not appear to be a wellfounded. Land does not cease to be land for the purposes of either of the two Acts merely because it is not used for actual growing of crops, but for ancillary purposes such as nali or rasta of the character described. So far as the U. P. Imposition of Ceiling on Land Holdings Act is concerned, it is only land falling in any of the categories mentioned in section 6 that is exempt, vide *Tribeni Engineering Works v. State* (1978 A. L. J. 744). In this decision, Hon"ble R.M. Sahai, J. has held that even land put to industrial

use, unless exempt under section 6 (i) (a), continues to be land for the purposes of this Act, I respectfully agree with this decision inasmuch as the provisions of the Act have to be read as a whole and different provisions thereof have to be harmoniously construed. Any other interpretation would render the provisions of several clauses of section 6 nugatory and redundant.

There is thus no force in these writ petitions which are hereby dismissed. No order is made as to costs.