

(1978) 11 AHC CK 0002
In the Allahabad High Court
Case No : Civil Misc. Writ No. 797 of 1977

Mohammad Abbas

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 14-11-1978

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 12A, 5(3), 5(6)

Citation : (1979) AWC 23

Hon'ble Judges : K.N. Seth, J; H.N. Seth, J

Bench : Division Bench

Advocate : Ravi Kiran Jain, for the Appellant;

Final Decision : Allowed

Judgement

K.N. Seth, J.—In this petition arising out of proceedings under the U.P. Imposition of Ceiling on Land Holdings Act (hereinafter referred to as the Act), the only question involved is whether the sale deeds executed by the major sons of the tenure-holder after 24th January, 1971 were liable to be ignored and not taken into account in determining the ceiling area applicable to the tenure-holder.

2. The sale deeds in question were executed by the two sons of the tenure-holder on May 12, 1971, September 7, 1971 and March 8, 1972 transferring the entire land recorded in their names. It was claimed that the tenure holder was entitled to 2 additional hectares of land on account of the fact that he had two major sons who did not hold any land on the appointed date, that is, 8th June, 1973. The Ceiling Authorities rejected the claim on the reasoning that the transfer of land made after 24th January, 1971 was liable to be ignored as it had not been established that the sale deeds were executed in good faith and for adequate consideration.

Sub-section (6) of Section 5 of the Act provides

In determining the ceiling area applicable to a tenure holder, any transfer of land

made after the twenty fourth day of January, 1971, which but for the transfer would have been declared surplus land under this Act, shall be ignored and not taken into account.

Provisos (a) and (b) and the Explanations appended to Sub-section (6) are not relevant for deciding the question involved in the case. The applicability of this provision is not confined to transfer made by the tenure-holder but the transfer must be of land which but for the transfer would have been declared surplus land under the Act. If the land transferred could not be declared surplus while determining the ceiling area applicable to the tenure-holder, transfer of such land is not liable to be ignored.

3. Under Sub-section (3) of Section 5 of the Act the ceiling area to which a tenure-holder is entitled is fixed with reference to the number of members in the tenure-holder's family and land held by other members of the tenure-holder's family is to be aggregated with the land held by the tenure-holder. The word "family" as defined in the Act in relation to a tenure-holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband) minor sons and minor daughters (other than married daughters). It does not include the major sons of the tenure-holder. By virtue of Sub-section (3) of Section 5, if the tenure-holder is a male, land recorded in the name of his wife, provided she is not a judicially separated wife, and minor sons and minor daughters (other than married daughters) has to be clubbed in determining the ceiling area which the tenure-holder is entitled to retain. It is apparent that land held by the major sons is not to be included in the holding of the tenure-holder. The surplus land, if any, has to be carved out of land held by the tenure-holder and other members of the family whose lands are to be aggregated with the land held by the tenure-holder for purposes of determination of the ceiling area. If land is held by the major sons of the tenure-holder, it is neither to be included in the holding of the tenure-holder nor can it be included in the land sought to be declared surplus. Section 12A, which deals with the manner in which the surplus area is to be carved out, also does not indicate that the land which is not to be aggregated with the land held by the tenure-holder for determining the ceiling area can be taken into account for carving out the surplus area.

4. Since land held by the major sons of the tenure-holder was not land which would have been declared surplus under the Act, the transfer of that land could not be ignored in determining the ceiling area applicable to the tenure-holder although the land was transferred after the 24th day of January, 1971.

5. In the result, the petition is allowed. The impugned order of the Prescribed Authority dated 30th April, 1976 and that of the Appellate Authority dated 16th November, 1976 are quashed. The ceiling area to which the tenure-holder is entitled shall be determined by the Prescribed Authority on the basis that he is entitled to four hectares of additional land on account of his two adult sons. Parties shall bear their own costs.