

(1978) 02 AHC CK 0077
In the Allahabad High Court
Case No : Civil Misc. Writ No. 10586 of 1975

Mohammad Muzaffar

APPELLANT

Vs

IIIrd Additional District Judge and Others

RESPONDENT

Date of Decision : 10-02-1978

Acts Referred:

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

Citation : (1978) AWC 293 : (1979) RD 13 : (1978) RD 3

Hon'ble Judges : K.C. Agarwal, J

Bench : Single Bench

Advocate : R.H. Zaidi, for the Appellant; K.C. Dhulia, for the Respondent

Final Decision : Allowed

Judgement

K.C. Agarwal, J.—This writ petition is directed against the judgment of the Third Additional District Judge, Muzaffarnagar dated 28th April, 1975 holding that 7 Bighas 3 Biswas 17 Biswansi land of the Petitioner was liable to be declared as surplus.

2. In response to the notice issued u/s 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act (hereinafter referred to as "the Act"), the Petitioner filed an objection and claimed that as he had two adult sons he was entitled to four hectares of additional land under Clause (a) of Section 5(3) of the Act. The claim of the Petitioner was repelled by the Prescribed Authority on the finding that since those two adult sons of the Petitioner were Pakistani national and were not Indian citizens, the Petitioner was not entitled to additional land for those sons. In appeal the finding of the Prescribed Authority was maintained. Hence this writ petition.

3. For appreciating the controversy involved in this case I may refer to Clause (a) of Section 5(3) of the Act, which lays down:

5. (3): On the case of tenure holder having a family of not more than five members, 7.30 hectares of irrigated land including land held by other members

of his family, plus two additional hectares of irrigated land or such additional land which together with the land held by him aggregates to two hectares, for each of his adult sons, who are either not themselves tenureholders or who hold less than two hectares of irrigated land subject to a maximum of six hectares of such additional land;

It would be seen that in a case covered by the aforesaid clause a tenure holder becomes entitled to two additional hectares of land. A tenure holder who gets additional land under this clause continues to be its owner. By virtue of this section the ownership or the rights of the tenure-holder do not neither stand transferred in favour of the adult sons nor the rights of the tenureholder get extinguished. This section does not make any distinction between a son of a tenure-holder being an Indian citizen or a citizen of another country. It simply provides that for each of his adult sons, who are either not themselves tenureholders or who held less than two hectares of irrigated land, a tenureholder having a family of not more than 5 members shall be entitled to get two additional hectares of land for each one of the two sons subject to a maximum of six hectares of such additional land. It is, therefore, not possible to interpret this provision as laying down that its benefit would be available to a tenure-holder only whose adult son is Indian citizen. Simply because at one time the relations between India and Pakistan were not good and that it had been declared an enemy country does not mean that an Indian citizen who is a tenureholder is not entitled to get additional land for each one of his adult sons. In fact, the courts below were completely wrong in applying the provisions of the Enemy Properties Act and in holding that if additional land is given to the tenureholder and as the same would subsequently be liable to be declared as enemy property within the meaning of that Act, therefore, the Petitioner would not be entitled to the said land. Firstly, the Pakistan is not now an enemy country and secondly the land would be given under Clause (a) of Section 5(3) of the Act to the tenureholder living in India and not to the Pakistani nationals. Hence as the land given to such a tenure-holder does not become the property of a Pakistani national at any point of time, that question of its declaration as Enemy Property would not arise.

4. Shri K.C. Dhulia, counsel for the State, however, contended that the object of Clause (a) of Section 5(3) of the Act cannot be and is not to give additional land to a tenureholder whose adult sons are not Indian citizens. As there is nothing either in the section or in the object of the Act to justify such a conclusion, I am not prepared to accept the same. The language of Clause (a) of Section 5(3) of the Act, in my opinion, is unambiguous and leaves no scope for such an interpretation. If the Legislature intended that a tenureholder would not be entitled to get land for his son who was living in Pakistan or any other country, it would have made a provision to that effect. As said by the Supreme Court in *Shyam Kishori Devi v. Patna Municipal Corporation* 1966 S.C. 1678, the intention of the Legislature is primarily to be gathered from the language used. A construction which requires for its support addition or substitution of the words

has to be avoided. In my opinion, therefore, as the words of the statute have to be first under-stood in the natural and ordinary sense, the right of the Petitioner to get four hectares additional land for his two adult sons living in Pakistan cannot be denied.

5. In the result, the writ petition succeeds and is allowed. The judgments of the learned Additional District Judge, Muzaffarnagar dated 28-4-1975 and that of the Prescribed Authority dated 19-12-1974 are quashed and the case is sent back to the Prescribed Authority to recalculate the ceiling area of the Petitioner in accordance with law and in the light of the observations made above. The Petitioner will be entitled to the refund of the entire amount deposited by him in pursuance of the interim order dated 29-9-1975. There will be no order as to the costs.