

(2011) 03 AHC CK 0113

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14735 of 2011

Nagina and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2),
11(2), 27

Citation : (2011) 4 ADJ 110 : (2011) 8 RCR(Civil) 2021 : (2011) 112 RD 758

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Judgement

A.P. Sahi, J.—This writ petition has been filed by 9 tenure holders claiming themselves to be the recorded tenure holders of the disputed plots which is alleged to have been declared as surplus under the provisions of the U.P. Imposition of Ceiling and Land Holdings Act.

2. The contention raised is that the land in question had been settled in favour of the Petitioners by the erstwhile Zamindars of the land and by virtue of such settlement, they have become Seerdars and again Bhumindhars i.e. tenure holders in their own right under the U.P.Z.A. and L.R. Act, 1950, by operation of law.

3. The Petitioners also contend that their names were recorded in the revenue records and for that they have relied upon the extract of Khatauni between 1366-1368 Fasli and 1372-1374 Fasli. They also contend that the land has been allegedly declared surplus in the hands of such persons, who are alleged to be the tenure holders whereas the correct facts are that the said land has already been settled in favour of the Petitioners and cannot be treated to be surplus.

4. A copy of the objection moved u/s 11(2) of the U.P. Imposition of Ceiling and Holdings Act has been filed as Annexure-3. It is urged that the Petitioners came to know very recently about the said land having been made part of the surplus

land under the Ceiling Act whereas during the consolidation operations, the Petitioners had been allotted Chaks in respect of the same land as they were in possession and ownership of the same.

5. The only prayer made is that a mandamus be issued to decide the objections and till the objections are disposed of, the Petitioners be not dispossessed by the Respondents - authorities.

6. Learned Counsel for the Petitioner has invited the attention of the Court to the orders passed in Writ Petition Nos. 67690/2006, 29689/2007, 41729/2007, 60643/2007, 59444/2008, 54437/2009 and 2400/2010, which have been quoted in the body of the petition.

7. Relying on the said decisions, it is urged that even otherwise this Court has acknowledged that recorded and even unrecorded tenure holders are entitled to be heard in the ceiling proceedings and objections u/s 11(2) have to be disposed of before any other remedy is availed of by a person claiming rights. Sri R.C. Singh has invited the attention of the Court to paragraphs 32, 33 and 34 of the decision in the case of Virendra Deep Singh and Ors. v. District Magistrate, Rampur and Ors. 2010 (10) ADJ 646 (DB), to urge that the objections u/s 11(2) are obviously subsequent to the determination of surplus land which entitles a tenure holder aggrieved to file an objection. This is in order to protect the right of such tenure holders, who have not been given notice u/s 10(2) of the Act. Some of the Petitioners in the said decision had straight away approached this Court by filing a Writ Petition under Article 226 of the Constitution of India without moving any such objection before the ceiling authorities. Following the ratio as indicated in paragraphs 32, 33 and 34 of the aforesaid decision, the Court held that a tenure holder is not entitled to straight away maintain a petition and he has to approach the authority by filing an objection before the ceiling authorities.

8. Accordingly, the writ petition is disposed of with a direction to the Respondent No. 3 to decide the objections of the Petitioners u/s 11(2) of the Ceiling Act. The Petitioners allege that they are still continuing in possession over the land as they were recorded during consolidation operations and the said land could not have been subjected to any lease u/s 27 of the Ceiling Act. In such a situation and in view of the authorities that have been referred to in the writ petition, till there is a final decision on the objection in accordance with law, and in the event the Petitioners are in actual physical possession of their land, they shall not be dispossessed till such objections are decided.

9. With the aforesaid directions, the writ petition stands disposed of.