

(1978) 05 AHC CK 0003
In the Allahabad High Court
Case No : Writ No. 4663 of 1976

Om Prakash

APPELLANT

Vs

The Additional District Judge and Others

RESPONDENT

Date of Decision : 04-05-1978

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 4A

Citation : (1978) AWC 591

Hon'ble Judges : B.N. Saprú, J

Bench : Single Bench

Advocate : M.C. Dwivedi, for the Appellant;

Judgement

B.N. Saprú, J.—This writ petition arises out of proceedings under the U.P. Imposition of Ceiling on Land Holdings Act (hereinafter called the Act).

2. A notice was served on the Petitioner u/s 10(2) of the Act. The Petitioner filed objections. The only objection with which we are concerned is that the Petitioner's claim that his plot Nos. 2, 3, 4 and 5 of village Kumhrar and plot No. 15 and 75 of Bhauraghat were single crop land and were being wrongly treated as irrigated land in the notice u/s 10(2) of the Act.

3. The objection of the Petitioner was dismissed by the Prescribed Authority in this regard and the Appellate Authority has affirmed the finding of the Prescribed Authority.

4. Aggrieved by the order of the Appellate Authority the Petitioner has preferred the instant writ petition.

5. Learned Counsel for the Petitioner has taken me through the relevant papers. The order of the Prescribed Authority which has been filed as an annexure to the writ petition recites that as far as the land in village Kumhrar is concerned, the khasras of 1378 F., 1379 F., and 1380 F. have been produced and they show that none of the plots in this village belonging to the Petitioner had been under two

crops in any one of the aforesaid years.

6. As far as the plots in village Bhauraghat are concerned, the plots as mentioned earlier are 115 (area 1.32 acres) and plot No. 75 (area 1.15 acres), the Prescribed Authority has also mentioned that the khasra indicates that in the year 1378 F., there were two crops in the aforesaid village Bhauraghat. In the other two years the khasra do not indicate that two crops were grown over the land.

7. The Prescribed Authority and the Appellate Authority have both recorded a finding that the plots can be irrigated from a canal specified in Schedule I of irrigation rates notified in notification No. 1579 W/XXXIII-62-W-1946 dated 31st of March, 1963. The Petitioner had objected that Betwa canal was not the canal of Schedule I duly notified but the finding is definitely against the Petitioner and has to be accepted as correct in the instant proceeding.

8. The appellate authority has referred to the fact that the entire land of the two villages is under the effective command of a Schedule I canal and the same has been shown as Nahar Tor in the khasras and on that basis it recorded a finding that the two crops can be raised in this land. It was also found that on the land of village Bhauraghat two crops were grown as is clear from the khasras.

9. It is neither the case of the State nor of the Petitioner that the Petitioner's land can be irrigated from a State tube-well or private irrigation works. The State's stand is that the canal from which the irrigation is available to the Petitioner's plot is a Schedule I canal. The order of the Prescribed Authority, therefore, suffers from manifest error of law and cannot be sustained.

10. Learned Standing Counsel has invited my attention to the provisions of Section 4A of the Act wherein it is provided that where irrigation facilities were available for any land in respect of any crop in anyone of the years, i.e. 1378 F., 1379 F., 1380 F. and atleast two crops were grown on such land, the land can be treated as irrigated land.

11. In this connection, this argument will only be available to the learned Standing Counsel in respect of the land in village Bhauraghat. The Khasra of 1378 F. indicate that in plot No. 115 area 1.82 acre Jwar and Arhar are grown in the kharif over the entire area, and subsequently in Rabi it had wheat in its entire area. In column 21 it is indicated that the first crop, namely, the kharif had failed over the entire area of 1.82 acre. As far as plot No. 75/1, area 1.05 acre is concerned, the khasra indicate that paddy had been sown over 1.15 acres and wheat had been shown as planted over 1.05 acre. In the Rabi crop, it is again indicated in column No. 21 that over 1.05 acre the crop failed.

12. Learned Counsel for the Petitioner has referred to paragraph A-94 of the Land Record Manual and has urged that where a crop has failed entries are made in column 21 as indicative of the failure of the crop. According to the learned Counsel before clause firstly of Section 4A of the Act can be applied, it must be

shown that two crops were grown on such land. He submitted that as one crop has failed in plot No. 115 (area 1.82 acre) and in plot No. 75/1 (area 1.05 acre) the crop also failed the said plots cannot be treated as irrigated land.

Clause (b) of Section 4A runs as follows:

That atleast two crops were grown in such land in any one of the aforesaid years.

13. The word "grown" has to be interpreted. Learned Counsel submitted that grown means that the crop had reached maturity, whereas the learned Standing Counsel submitted "grown" in the context includes a plot of land where any crop which was sown has germinated.

14. To resolve this controversy I sent for Hindi version of the Act where the words are as follows:

Uparyukh varshon me se kisi ek varse me aisi bhumi me kam se kam do phaslen ugai gai thin.

15. The Hindi version indicates that the word sown cannot be read into the section. The argument of the learned Counsel for the Petitioner that where a crop fails over a particular plot, it cannot be deemed to be grown over the land must be accepted unless it is shown that the crop atleast germinated and grow to some extent. There is no such finding. Therefore, it has to be accepted that in plot No. 115 only 1.05 acre can be treated as having two crops over it out of the total area of 1.15 acre.

16. In the result, the impugned order of the lower appellate court in so far as the Petitioner's land in village Kumhrar and Bhauraghat has been held to be as irrigated land is concerned, is quashed. The Appellate Authority will decide the appeal again in accordance with law in the light of the observations made in preceding paragraphs. Any amount deposited by the Petitioner in pursuance of the interim order of this Court dated 21-4-1977 shall be refunded to the Petitioner. Costs on parties.