

(1980) 10 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6661 of 1979

Onkar Singh

APPELLANT

Vs

District Judge, Nainital

RESPONDENT

Date of Decision : 08-10-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 3(a), 4, 5, 6

Citation : (1980) 10 AHC CK 0023

Hon'ble Judges : R.R.Rastogi, J

Final Decision : Dismissed

Judgement

R. R. Rastogi, J.

This" is tenureholder"s writ petition arising out of proceedings under the U. P. Imposition of Ceiling on Land Holding Act (hereafter the Act). The controversy involved is in a narrow compass and it is as to what should be the relevant date for the entitlement of a landholder to hold the land in the aggregate as provided under the Act.

The brief facts are these. The Prescribed Authority, Kashipur, by its order dated 3031979 declared 4.79 acre area of plot No. 106M of village Gari Indrajit as surplus land. The petitioner filed an appeal and contended that since his family consisted of members, he should have been allowed benefit of two additional hectares of land. According to the petitioner child born to him on 2691974 should have been treated as a member of the family for allowing its benefit. This contention was repelled by the Prescribed Authority on the view that since the ceiling area is to be determined with reference to 861973 and since this child was born after that date, the petitioner was not entitled to any such benefit. The appellate Court as well has taken the same view.

It would be seen that there is no dispute that the child in respect of when the benefit is being claimed was born on 29 61974. It was submitted before me on

behalf of the petitioner by Sri Rajesh Tandon that the relevant date for determination of ceiling area is not 861973 but that is the date on which the calculation of surplus area is made and since this child was in existence on that date the benefit claimed should have been allowed. Reliance has been placed on a decision of a learned Judge of this Court in Babu Lal v. State of U. P. (1963 A.L.J. 960.). That was a case under the provisions of the Act as it stood prior to the amendments made by U. P. Act 23 of 1973, 2 of 1975 and 20 of 1976.

The petitioner in that case had claimed that he was entitled to concession under Section 4 (2) of the Act on account of the birth of a son in May, 1962. That claim was rejected by the Prescribed and the Appellate Authorities on the ground that the relevant date was 311961 and since admittedly the child was not in existence on that date, the birth of the child in May, 1962 was irrelevant. The tenureholder came up before this Court by way of writ petition and his contention was accepted. The view taken was that according to Clause (a) of Section 3 ceiling area means the land determined in accordance with the provisions of Section 4. That section dealt with ceiling area and read as under :

"(1) Subject to the provisions of this Act the ceiling area applicable to a tenureholder shall be calculated after taking into account all the land in any holding in the State held by him in his own right.....

"(2) (a) The ceiling area of a tenureholder shall be 40 acres of fair quality land.

(b) Where the tenureholder has, or consists of a family having more than 5 members, the ceiling area of such tenureholder shall be the area mentioned in Clause (a) together with acres of fair quality land for every additional member of the family, subject to the maximum of 24 such acres;

Provided that at any time the family comes to consist of not more than 5 members, all land held by the tenureholder in excess of the ceiling area under Clause (a) shall become liable to be treated as surplus land....."

Subsection (1) of Section 5 provided that as and from the date of enforcement of this Act no tenureholder, except as otherwise provided by this Act, be entitled to hold an area in excess of the ceiling area applicable to him. In subsection (2) it was stated that in determining the ceiling area applicable to the tenureholder at the commencement of this Act any transfer or portion of land made after the 20th day of August, 1959 shall be ignored. The view taken was that subsection (2) of Section 5 is confined to the calculation of the ceiling area at the commencement of the Act and it does not say that ceiling area would hold good for all time and further that subsection (1) lays down the principle that no one should hold an area exceeding the ceiling area. It was observed :

"This restriction comes into effect from the date of the enforcement of the Act."

It was further observed that subsection (1) also does not give any guideline for calculating ceiling area and for that one has to turn to Section 4 of the Act. That section nowhere refers to the date of the commencement of the Act. It is

subsection (1) which provides for calculating the surplus land. It was observed :

"Section 4 suggests that the strength of the family has to be considered at the stage of calculating the ceiling area. It was on 181962 that respondent had to calculate the ceiling area. He was satisfied that a child was born on 751962. That child was apparently in existence on 181962. So on 181962 the respondent No. 2 could not have excluded the son born on 751962."

According to this decision, therefore, the determination of ceiling area has to be made with reference to the date on which the calculation of ceiling area is made and as noted above that was because of the fact that Section 4 did not refer to the commencement of the Act and subsection (5) merely emphasised that the restriction came into play from 311961. That section was not relevant for the purposes of calculating the area, for which it was only Section 4 to which one had to refer to. The amendments which have been made by U. P. Act 23 of 1973, by U. P. Act 2 of 1975 as also by U. P. Act 20 of 1976 are quite extensive in nature. Now Section 3 contains the definitions and Section 4 provides for determination of area for purposes of ceiling and exemptions. For the purposes of determining the ceiling area under Section 5 or any exemption under Section 6 it lays down the mode in which the irrigated land would be computed. Section 4A is also relevant in this behalf because it lays down the manner in which irrigated land shall be determined. Then comes Chapter II which provides for imposition of ceiling on land holdings, exemptions and acquisition of surplus land. This Chapter starts with Section 5 which provides for imposition of ceiling, The provisions of this section may be noted in brief. Subsection (1) says that "on and from the commencement of the U. P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 (that is 8th of June, 1973), no tenureholder shall be entitled to hold in the aggregate throughout Uttar Pradesh any land in excess of the ceiling area applicable to him. Subsection (2) provides for certain types of land to which subsection (1) will not apply. Subsection (3) says that subject to the provisions of subsections (4), (5), (6) and (7) the ceiling for purposes of subsection (1) shall be; (a) in the case of a tenureholder having a family of not more than five members 7.30 hectares of irrigated land including the 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 such of his adult sons, who are either themselves not tenureholders or who hold less than two hectares of land, subject to a maximum of six hectares of each additional land. Clause (b) of this subsection makes similar provision in respect of a tenureholder having a family of more than 5 members. It is not necessary to mention the provisions contained in subsections (4), (5), (6), (7) and (8). If these provisions are compared with the provisions existing before the amendments made, it would be seen that Section 4 has now taken the place of Section 3 while the provision contained in the erstwhile Sections 4 and 5 have not been inserted in Section 5. Subsection (1) of Section 5 is almost in similar terms as it stood earlier and while interpreting this provision the view taken in Babu Lai's case was that this subsection lays down the principle that no one

should hold an area exceeding the ceiling area. The restriction contained in these subsection comes into effect from the date of commencement of the Act which now will be 8th of June, 1973. As noted above, earlier the provision for calculation of surplus area was in Section 4 which in terms did not refer to the date of commencement of the Act. Now the position is different because it is subsection (3) under which the ceiling area for purposes of subsection (i) is to be determined and when subsection (1) says that no tenureholder shall be entitled to hold in the aggregate throughout the State of Uttar Pradesh any land in excess of the ceiling area applicable to him as on 8th of June, 1973, it follows as a necessary corollary that this determination of the ceiling area is to be made with reference to this date and certainly not the date of calculation. An indirect support to this approach may be found if reference is made to Section 29 of the Act which says :

"Where after the date of enforcement of the U. P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, any land has come to be held by a tenureholder under a decree or order of any Court, or as a result of succession of transfer, or by prescription in consequence of adverse possession, and such land together with the land already held by him exceeds the ceiling area applicable to him.

b)

The ceiling area shall be liable to be determined and accordingly the provisions of this Act except Section 16 shall mutatis mutandis apply."

It would be seen that this section empowers the Ceiling Authorities to take steps to redetermine the ceiling area on the happening of certain events. In other words the relevant date for the calculation of the ceiling area is 8th of June, 1973 and if any event subsequent thereto as mentioned in this provision comes into existence, the Ceiling Authorities are empowered to take step to redetermine the ceiling area.

If the view which has been canvassed before me on behalf of the petitioner is accepted it will lead to certain anomalies. In the case of an addition in the family occurring after the aforesaid date and before the date of calculation, benefit for the additional members in the family is claimed but if unfortunately some members of the family dies, with the result that the number of the family members comes down, a question may arise as to whether a benefit to which the tenureholder was entitled on June. 1973, can be withdrawn because of the decrease in the number of family members after that date and before the date of calculation such a question had come up before a learned single Judge of this Court in Shiv Nath Singh v. State of U. P.(1978 A.W.C. 211), and the answer was given in the negative that the tenureholder cannot be deprived of the benefit because the adult son has died subsequent to the relevant date, that is, 8th of June, 1973. In D. M. Chaudhary v. II Additional District Judge(1979 A.W.C, 9)it this question had not arisen directly but on the facts of that case the view taken

was that the ceiling authorities are required to determine the ceiling area held and possessed by the tenureholder on the relevant date, that is, 8th of June, 1973.

In my opinion, therefore, the relevant date for determination of ceiling area as now provided in the date of enforcement of U. P. Act 23 of 1973, that is 8th of June, 1973. It was not be the date of issue of notice or the date on which calculation to the petitioner on 26/9/1974, that is the child was not in existence on 8th of June, 1973, the petitioner was not entitled to the benefit of additional two hectares.

The petitioner fails and is accordingly dismissed. There will, however, be no order as to costs.