

(1970) 02 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3371 of 1965

Parwez Alam

APPELLANT

Vs

State of UP and Others

RESPONDENT

Date of Decision : 26-02-1970

Acts Referred:

Imposition of Ceiling of Land Holdings Act, 1961 — Section 3, 5

Citation : (1970) 40 AWR 290

Hon'ble Judges : H.C.P. Tripathi, J

Bench : Single Bench

Advocate : N.D. Ojha and Malik Mohib Uddin, for the Appellant;

Final Decision : Allowed

Judgement

H.C.P. Tripathi, J.—In proceedings under the Imposition of Ceiling on Land Holdings Act plots in dispute were declared surplus land with Respondent No. 4.

2. In response to the notification published u/s 14 of the Act, the Petitioner filed an objection to the effect that the aforesaid plots were held by Respondent No. 5 and not by Respondent No. 4, that the Respondent No. 5 had executed a registered sale deed dated 27/30-11-1959 in his favour for a consideration of Rs. 1000/- and that he was their Bhumidhar.

3. The Prescribed Authority dismissed the objection on the finding that the aforesaid plots were recorded in the name of the tenure-holder, namely Respondent No. 4 and as the Petitioner was basing his objection on a sale-deed of a date long after 20-8-1959 it had to be ignored. Accordingly he dismissed the objection.

4. In appeal the learned Addl. Civil Judge did not give any finding as to whether Respondent No. 4 was or was not the tenure holder of the plots but dismissed the appeal on the finding that as the objector claimed title to the land on the basis of a sale-deed dated November 1959 which had to be ignored the objection had no force. This petition is directed against the aforesaid orders of the

Prescribed Authority and the appeal court.

5. On 20-1-1966 an order was passed by this Court directing that "the possession of the Petitioner over the land in dispute shall not be disturbed and the said land shall not be settled with any person".

6. Mr. N.D. Ojha, learned Counsel for the Petitioner, has argued that the central question to be determined in the case was as to who was the tenure holder of the land which was declared surplus land and (on) this question the appellate Court had failed to give any finding.

7. Mr. S.N. Upadhaya, learned Standing Counsel, on the other hand, has argued that the order of the Prescribed Authority clearly indicates that it was the Respondent No. 4 who, really held the land ostensibly in the name of his wife and as such the land could have been declared as surplus land because the transfer effected after 20-8-1959 had to be ignored.

Section 3(1) reads:

Tenure holder means an individual or a person who is the holder of a holding.

Section 5 provides that,

from the date of enforcement of this Act no tenure holder shall, except as otherwise provided by this Act, be entitled to hold an area in excess of the ceiling area applicable to him....

A plain reading of the definition of "tenure holder" in Section 3 and Section 5 of the Act makes it evident that within the meaning of the Act, a tenure-holder is he whose holding is under consideration for determining the ceiling area and the surplus land. In other words, if A is not the owner of the land belonging to B, then he cannot be held to be a tenure holder of that land within the meaning of this Act. In this view of the matter the Central question to be determined in the case was as to whether Respondent No. 4 whose ceiling area was being determined was or was not a tenure-holder of those plots. The Prescribed Authority has given a finding on this question to the effect that it was Respondent No. 4 who held the land. Unfortunately in appeal the Civil judge did not consider this question and consequently failed to give any finding. The result is that his order stands vitiated.

8. In the result this petition is allowed, the order passed in appeal by the Addl. Civil Judge on 13-3-1965 is quashed and the case is remanded to him with the direction that the appellate court shall re-hear the appeal and decide it in accordance with law in the light of the observations made in this order. In the circumstances of the case, the parties shall bear their own costs.