
(1978) 04 AHC CK 0028
In the Allahabad High Court
Case No : Civil Misc. Writ No. 3037 of 1976

Purendra Narain Tripathi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-04-1978

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 5(1), 5(3), 5(4), 5(5), 5(6)

Citation : (1978) AWC 432 : (1978) RD 198

Hon'ble Judges : B.N. Sapru, J

Bench : Single Bench

Advocate : S.R. Misra, for the Appellant;

Final Decision : Allowed

Judgement

B.N. Sapru, J.—This petition arises out of proceedings under the U.P. Imposition of Ceiling on Land Holdings Act.

2. The Petitioner was a tenure holder and proceedings in order to determine the ceiling area applicable to him were drawn up. The Petitioner was aggrieved by an order of the Prescribed Authority declaring certain land belonging to him to be surplus. The Petitioner filed an appeal which was also dismissed.

3. The Petitioner had sought an additional area of land on the ground that certain members of his family were entitled to the benefit of Section 5(3)(a) of the aforesaid Act. The Petitioner's case was that he had an unmarried daughter and a major son. The two authorities below have held that the Petitioner had failed to establish that his daughter was unmarried. They therefore, held that she was not a member of his family and as such, the Petitioner could not get any additional land on that account.

4. In this writ petition Sri S.R. Misra, learned Counsel for the Petitioner stated that in view of the small area declared to be surplus land, the Petitioner can succeed on the alternative ground that additional land which should have been

given because he had an adult son Rajesh Kumar which plea also been wrongly rejected. In these circumstances, he did not address me on the question as to whether in view of the question (?) of the Prescribed Authority and of the appellate authority was correct.

5. It has been found by the learned District Judge that the Petitioner had a son Rakesh who was a major. The District Judge refused to give the benefit of the two additional acres of land to the Petitioner on the ground that he had failed to prove affirmatively that his son Rakesh had no agricultural land, or less than two hectares of agricultural land in his name.

The provisions of Section 5(3)(a) run as follows:

(3) Subject to the provisions of Sub-sections (4), (5), (6) and (7), the ceiling area for purposes of Sub-section (1) shall be-

(a) in 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 tenure-holders or who hold less than two hectares of irrigated land, subject to a maximum of six hectares of such additional land.

6. The ceiling area applicable for the purposes of Sub-section (1) shall be as provided in Clause (b) of Sub-section (3) which is as follows:

in the case of a tenure-holder having family of more than five members, 7.30 hectares of irrigated land (including land held by other members of his family), besides, each of the members exceeding five and for each of his adult sons who are not themselves tenure-holders or which hold less than two hectares of irrigated land, two additional hectares of irrigated land or such additional land which together with the land held by such adult son aggregates to two hectares, subject to a maximum of six hectares of such additional land.

7. In this case it has been found that the Petitioner had an adult son Rakesh. Unless it was established that Rakesh had agricultural land, the Petitioner tenure holder would have been entitled to two additional hectares of irrigated land or such additional land which would aggregate to two hectares. There is no provision in Sub-section (3) parallel to the provisions contained in Section 5(6)(b) which has provided that in cases falling within the proviso to Section 5(6)(b), the burden shall rest upon the party claiming its benefit.

8. The learned Additional District Judge committed an error of law manifest on the face of the record when he placed the burden of proving that Rakesh had no agricultural land in his name on the Petitioner. If the acquiring authority's case was that the Petitioner was not entitled to the benefit of Section 5(3), it should have proved that Rakesh was a tenure-holder of an agricultural land.

9. As I have held that the Petitioner was entitled to get additional land on the ground that he had an adult son Rakesh the orders of the Prescribed Authority and of the Additional District Judge cannot stand.

10. In the result, the writ petition is allowed. The impugned orders are quashed and the Petitioner is held entitled to additional land on the ground that he has an adult son Rakesh. The Petitioner is entitled to his costs.