
(2004) 03 AHC CK 0231

In the Allahabad High Court

Case No : Writ Petition No. 32 (Ceiling) of 2004

Radhey Shyam and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Constitution of India, 1950 — Article 300A
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 11(2),
11(3), 14
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 198(1),
198(3)

Citation : (2004) 4 AWC 3777

Hon'ble Judges : I.M. Quddusi, J

Bench : Single Bench

Advocate : G.M. Kamil, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—Heard learned counsel for the petitioners and the learned standing counsel.

2. The brief facts of the case are that the prescribed authority vide its order dated 15.12.2003 declared 5.489 acre land belonging to the petitioners as surplus. The petitioners filed Appeal bearing No. 309 along with application for interim relief before the learned Additional Commissioner (Judicial), Devi Patan Mandal, Gonda. The Additional Commissioner, Devi Patan Mandal, Gonda while admitting the appeal stayed the order dated 15.12.2003 passed by the opposite party No. 3 till 28.2.2004 vide order dated 23.12.2003. Learned counsel for the petitioners has submitted that during the pendency of the appeal the opposite party Nos. 3 to 5 are trying to disturb the possession of the petitioner's land. It is apprehended that the opposite party Nos. 3 to 5 are going to allot the land of the petitioners to some one else.

3. In view of the above, the authorities cannot take into consideration the order

of the prescribed authority, which is not in existence at all.

4. When the order of the prescribed authority is not in existence as the same has been stayed by the Additional Commissioner and as such the petitioners has no surplus land, allotment of land of the petitioners taking the same as surplus, is arbitrary action on his part and violative of the provision of Article 300A of the Constitution of India. The provision of Article 300A is quoted as under :

"300A. Persons not to be deprived of property save by authority of law.-No person shall be deprived of his property save by authority of law."

5. Besides the above, u/s 14 of the Ceiling Act, there are restrictions imposed upon the Collector for taking possession of the surplus land determined under Sections 11, 12 and 13 of the Ceiling Act in case the order passed under sub-section (1) of Section 11 by the prescribed authority has become final. The provisions of sub-section (1) of Section 14 of the Ceiling Act are also quoted as under :

"14. (1) The Collector shall at any time after :

(d) in case, where the order passed under sub-section (1) of Section 11 has become final, the date of its so becoming final ; or

(e) in case, where no appeal has been preferred u/s 13, the date of expiry of the period of limitation provided therefore ; or

(f) in case, where an appeal has been preferred u/s 13, the date of its decision.

take possession of the surplus land determined u/s 11, Section 12 or Section 13 and also of any ungathered crop or fruits of trees, not being crops or fruits to which sub-section (1) of Section 15 applies, after evicting any person found in occupation of such land, crops or fruits and may for that purpose use or cause to be used such force as may be necessary."

6. A perusal of the above quoted provisions shows that it has been provided therein that in case where an appeal has been preferred u/s 13, after the date of its decision, the Collector may take possession of the surplus land meaning thereby the order of the prescribed authority cannot be treated to have become final unless the appeal is decided in case the same has been filed. But in case no appeal has been filed, it is open for the Collector to take possession of the surplus land only after the date of expiry the period of limitation provided for filing an appeal under sub-section (3) of Section 11 of U. P. Imposition of Ceiling on Land Holdings Act. It has been clarified that as to when the order of prescribed authority shall be treated as final in that sub-section. It has been provided that subject to the provisions of sub- section (2) of Section 13, the order of prescribed authority shall be final and conclusive and be not questioned in any court of law. In sub-section (2) of Section 12 also, it has been provided that subject to any appellate order u/s 13, the order of the prescribed authority under sub- section (1) of Section 12 shall be final and conclusive and shall not be

questioned in any court of law. In sub- section (2) of Section 13, it has been provided that the Commissioner shall dispose of the appeal as expeditiously as possible, and his decision thereon shall be final and conclusive and be not questioned in any court of law.

7. Therefore, finality of the order of prescribed authority comes only on the decision of appeal in case appeal is filed by the tenure holder.

8. Therefore, in the opinion of this Court, the duty of the Collectors of their respective districts is that the provisions of Sections 11 (3), 12 (2), 13 (2) and 14 should be strictly complied with and in case any appeal has been filed by any tenure holder, whose land has been declared surplus by the prescribed authority under U. P. Imposition of Ceiling on Land Holdings Act, should wait the decision of the appeal and only thereafter take possession of surplus land.

9. As the possession cannot be taken during the pendency of appeal till its disposal as discussed above, the allotment of land in respect of that land, which is subject matter of the appeal, is also not proper, as nobody can guess the fate of appeal. It may be allowed, the matter may be remanded or may be dismissed or the area may be reduced. Therefore, on the one hand, the allotment of land would result in multiplicity of litigation while on the other hand the genuine persons who are entitled to get land, would be deprived of getting the land in case the allotment is made prior to the decision of appeal and appeal may be allowed or remanded or area may be reduced or surplus land is reduced therein.

10. The object of enactment of U. P. Imposition of Ceiling on Land Holdings Act mentioned in the beginning of the Act, is provided as under :

"Whereas it is necessary in the interest of the community to ensure increased agricultural production and to provide land for landless agricultural labourers and for other public purposes as best to subserve the common good ;

And whereas a more equitable distribution of land is essential.

And, therefore, it is expedient to provide for the imposition of ceiling on land holdings in Uttar Pradesh for the aforementioned purposes."

11. In view of the above, the land neither should be allotted to the eligible persons nor the possession should be taken after, which is subject matter of the appeal during the pendency of appeal. When the surplus land is to be settled in favour of landless persons, the provisions of Section 27 of the Ceiling Act is to be followed. Sub-section (3) of Section 27 is relevant, which is quoted hereinbelow :

"27 (3) Any remaining surplus land shall be settled by the Collector in accordance with the order of preference and subject to the limits, specified respectively in sub-sections (1) and (3) of Section 198 of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950."

12. A perusal of the above quoted provisions shows that in making allotment/ settlement of surplus land, the order of preferences given in sub- sections (1)

and (3) of Section 198 of U.P.Z.A. and L.R. Act are to be followed.

13. Therefore, the provisions of sub-sections (1) and (3) of Section 198 of the Act are also liable to be perused, which are quoted as under :

"198 (1). In the admission of persons to land as (bhumidhar with non-transferable rights) or asami u/s 195 or Section 197 (hereinafter in this section referred to as allotment of land) the Land Management Committee shall, subject to any order made by a Court u/s 178 observe the following order of preference :

(a) landless widow, sons, unmarried daughters or parents residing in the circle of a person who has lost his life by enemy action while in active service In the Armed Forces of the Union ;

(b) a person residing in the circle, who has become wholly disabled by enemy action while in active service in the Armed Forces of the Union ;

(c) a land agricultural labourer residing in the circle and belonging to a Scheduled Caste or Scheduled Tribe ;

(d) any other landless agricultural labourer residing in the circle ;

(e) a bhumidhar, or asami residing in the circle and holding land less than 1.26 hectares (3.125) ;

(f) a landless person residing in the circle who is retired, released or discharged from service other than service as an officer in Armed Forces of the Union ;

(g) A landless freedom fighter residing in the circle who has not been granted political pension ;

(h) Any person landless agricultural labourer belonging to a Scheduled Caste or Schedule Tribe not residing in the circle but residing in the Nyaya Panchayat Circle referred to in Section 42 of the U. P. Panchayat Raj Act, 1947."

"198 (3). The land that may be allotted under sub-section (1) shall not exceed :

(1) in the case of a person falling under clause (c) such area as together with the land held by him as bhumidhar, or asami immediately before the allotment would aggregate to 1.26 hectares (3.125) ;

(3) in any other case, an area of 1.26 hectares (3.125 acres)."

14. Since the above mentioned priorities are to be followed then the class of persons mentioned at "a" above are given preference in comparison to other classes. Therefore, if a person is allotted land in respect of which, an appeal is pending and the person so allotted the land belongs to category "a" and other surplus land, matter of which has become final is allotted as such even subsequent to the class of persons mentioned at "b" above and he gets possession and the class of persons to whom the land was allotted even prior to the persons belonging to category "b" does not get possession of the land

because of the pendency of appeal, in that case, the order of preference will be disturbed and there will be violation of sub-section (1) of Section 198 as the persons of category "b" will get possession and the persons mentioned in category "a" would not get possession and would remain landless. Therefore, the land should be settled and allotted in favour of landless persons in accordance with the preference mentioned in sub- sections (1) and (3) of Section 198 of U.P.Z.A. and L.R. Act only when the order of the prescribed authority becomes final u/s 11 (3) and 11 (2) and Section 14 of the Ceiling Act, which have been quoted above.

15. It is not expected from the State that it will violate the provisions of Constitution of India and will deprive the persons of their rights to keep their property with them. The Collector of the District should also take responsibility in supervising that his subordinate should not pass orders for allotment of land belonging to the persons against whom there is no order of the prescribed authority in existence under U. P. Imposition of Ceiling on Land Holdings Act declaring surplus land. It is expected by this Court that appropriate action shall be taken by the Collector concerned against the officers, who have made entries of the land of the petitioners In the revenue record.

16. A copy of this order shall be sent to the Chief Secretary of U. P. Government, who may circulate its copies to the District Magistrates for the purpose that the rights of the persons envisaged in the Constitution should not be curtailed otherwise than in accordance with law.

17. A copy of this order shall also be sent to the Collector concerned for necessary action. In case possession of the land has been taken, the same shall be given back to the petitioner immediately without further delay.

18. The writ petition is allowed. with the above mentioned directions.

19. No order as to costs.