
(1978) 04 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3809 of 1976

Raghuraj Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 28-04-1978

Acts Referred:

Imposition of Ceiling of Land Holdings Act, 1961 — Section 10(2), 2(7), 3(7), 5(3)

Citation : (1978) AWC 504

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

Advocate : K.M. Sinha, for the Appellant;

Final Decision : Allowed

Judgement

C.S.P. Singh, J.—Consequent to notice issued u/s 10(2) of the Imposition of Ceiling on Land Holdings Act, the Petitioner filed objection and one of the contentions raised before the Prescribed Authority was that the family of the tenure holder consisted of eight members of which 3 sons were majors members shown to less. Additional land was claimed on this basis. The Prescribed Authority found that the family consisted of eight members. He, however, did not accept the contention of the tenure-holder that three of his sons were adults. The finding was that only two of them were adults. In view of this finding, he granted an additional area of 4.94 acres of irrigated land to the Petitioner for the two adult sons.

2. On an appeal being filed, the appellate Authority held that as the Petitioner had been given six hectares of additional land and as such he was not entitled to any further additional land. The finding of the Appellate Authority that the Petitioner was given six hectares of additional land on account of number of the members of his family being eight does not appear to be correct. The Prescribed Authority has given only 4.9 acres of additional land for two major sons which is equal to only two hectares of additional land. In the event of the family of tenure-holder being in excess of five, the tenure-holder is entitled to additional land in

accordance with Section 5(3)(b) of the Ceiling Act. The relevant portion of this provision is as under:

Section 5(3)(b)- 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 this family), besides, each of the members exceeding five and for each of his adult sons who are not themselves tenure-holders or who 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.

3. Under this provision in case the family exceeds five in number, each member of the family exceeding five is entitled to additional land; the additional land however, cannot exceed six hectares. The Prescribed Authority seems to be of the view, since there were only two adult sons, additional land could have been given only in respect of these two persons. This is based on a misinterpretation of Section 5(3)(b) of the Act. The mention of the adult son in Section 5(3)(b) is necessitated in this provision on account of the fact that an adult son is not included in the definition of the words "family" as defined in Section 3(7) of the Act. But this does not lead to the result that it is only when adult sons are there that a tenure-holder will be given additional land. This provision is directed for the benefit of tenure-holders who have a family exceeding five members, irrespective of the fact that whether they are majors or a minor excluding, however, major daughters as they do not come within the definition of the word "family" u/s 2(7) of the Act. Every member in excess of five is entitled to additional land, subject to the limit prescribed in Section 5(3)(b) of the Act. Thus in the present case, as the family of the tenure-holder consisted of eight persons the tenure-holder was entitled to additional land in accordance with the provisions of Section 5(3)(b) of the Act, for each member of the family, irrespective of the fact whether they were majors or minor. As there appears to be some misunderstanding on the part of the Appellate Authority as regards the amount of additional land given to the tenure-holder, the matter is remanded back to the Appellate Authority to consider the question of additional land being given to the Petitioner in accordance with Section 5(3)(b) of the Act. The additional land which the tenure-holder will be entitled to would be for each family member in excess of five. Counsel also tried to urge that the Appellate Authority and the Prescribed Authority have erred in not relying on the sale deed executed by the tenure-holder. Adequate reasons have been given by the Prescribed Authority and the Appellate Authority for not relying on these sale deeds. There is no sufficient reason on the record to interfere with this conclusion.

4. The petition is accordingly partly allowed. The Appellate Authority is directed to redetermine the surplus area of the Petitioner after giving additional land to the Petitioner in accordance with Section 5(3)(b) of the Act in the light of the observation made in this judgment in accordance with the law. The stay order is discharged. There shall be no order as to costs.