
(1998) 04 AHC CK 0104
In the Allahabad High Court
Case No : Special Appeal No. 67 of 1998

Rajni Kant Sahai	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 06-04-1998

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5
Constitution of India, 1950 — Article 136(1), 226, 227
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10, 11, 12, 12A, 13
Uttar Pradesh Imposition of Ceiling on Land Holdings Rules, 1961 — Rule 5

Citation : (1998) 2 AWC 1295

Hon'ble Judges : D.P.Mohapatra, C.J;G.P. Mathur, J

Bench : Division Bench

Advocate : Tribeni Shanker, for the Appellant; S.C. and H.R. Dube, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—The question which requires consideration here is whether a special appeal lies against the judgment of a single Judge rendered in a writ petition under Article 226 of the Constitution wherein orders passed by the Prescribed Authority under Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Act) had been challenged.

2. The appellant filed a writ petition challenging several orders passed by the prescribed authority whereby his 24 bighas of land was declared as surplus and the application moved by him indicating his choice of the plots which he wanted to retain was rejected. The writ petition was dismissed by a learned single Judge by the judgment and order dated 9.9.1997 and the present special appeal has been filed assailing the said judgment. The provision for special appeal is contained in Chapter VIII, Rule 5 of the Allahabad High Court Rules. 1952 (for short High Court Rules) and in terms thereof, no special appeal is maintainable against the Judgment of a single Judge rendered in exercise of jurisdiction

conferred by Article 226 or 227 of the Constitution in respect of any judgment or order of a Tribunal made or purported to be made in exercise or purported exercise of Jurisdiction under any Uttar Pradesh Act or under any Central Act with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution. In terms of the language of the Rule, the present special appeal will not be maintainable if the judgment and orders assailed in the writ petition were given by a Tribunal. Sri Triveni Shanker learned counsel for the appellant has submitted that the orders impugned in the writ petition had not been given by a Tribunal and, therefore, the present special appeal is maintainable.

3. In order to examine the contention raised, it will be convenient to briefly refer to the scheme and some of the provision of the Act. As the preamble shows, the U. P. Imposition of Ceiling on Land Holdings Act, 1960 was enacted to provide for imposition of ceiling on land holdings in Uttar Pradesh and certain other matters connected therewith. The object of the Act is to provide a more equitable distribution of land, 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. Section 3 (13) defines a prescribed authority and it means such officer not below the rank of an Assistant Collector of the First Class as may be empowered by the State Government by notification in the gazette to perform functions of prescribed authority under the Act for such area or areas as may be specified in that behalf, Chapter II of the Act deals with imposition of ceiling on land holdings, exemption and acquisition of surplus land. Section 5 lays down that on and from the commencement of Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act. 1972, no tenure-holder shall be entitled to hold in the aggregate throughout Uttar Pradesh. any land in excess of ceiling area applicable to him. Section 9 lays down that the prescribed Authority shall by general notice, published in the official gazette, call upon every tenure-holder holding land in excess of the ceiling area applicable to him on the date of enforcement of the Act. to submit to him within 30 days, a statement in respect of all his holdings. The prescribed authority is also required to issue a general notice in the like manner. Section 10 lays down that where a tenure-holder fails to submit a statement or submits an incomplete or incorrect statement as required by Section 9, the prescribed authority shall, after making such enquiry, as he may consider necessary cause to be prepared a statement containing such particulars as may be prescribed and shall thereupon cause to be served upon every such tenure-holder a copy of the statement so prepared. Section 11 provides for determination by the prescribed authority of the surplus land where no objection is filed. Section 12 lays down that where objections are filed the prescribed authority shall, after affording the parties reasonable opportunity of being heard and of producing evidence, decide the objections after recording his reasons and determine the surplus land. Section 12A deals with choice of the tenure-holder regarding plots he would like to retain as part of the ceiling area applicable to him. Section 13 gives a right of appeal to a party aggrieved by an

order u/s 11 or 12 of the Act. Section 14 gives power to the Collector to take possession of the surplus land after the order passed u/s 11 or 12 as the case may be has become final. Section 17 lays down that every tenure-holder whose surplus land is vested in the State shall be entitled to receive and be paid an amount as laid down in the Schedule. u/s 18 all proceedings relating to assessment and payment of amount payable under Section. 17 are to be laid before the Prescribed Authority who is required to prepare a draft assessment roll u/s 19. The disposal of objections to the draft assessment roll is to be done by the prescribed authority after affording an opportunity to the objector of producing evidence. Section 37 provides that any officer or authority holding an enquiry or hearing an objection under the Act, shall, in so far as it may be applicable, have all the powers and privileges of a civil court, and follow-the procedure laid down in the Code of Civil Procedure, for the trial and disposal of suits relating to immovable property. Section 38 empowers the prescribed authority to require any tenure-holder to furnish such particulars by affidavit in respect of the land held by him and members of his family as may be prescribed. Section 39 lays down that no suit, prosecution or other legal proceedings shall lie against any person for anything done or purported to be done in good faith in pursuance of the Act or any rule framed or order passed under the Act. Rule 5 of U. P. Imposition of Ceiling on Land Holdings Rules, 1961 provides that all proceedings under the Act shall be held before the prescribed authority within whose Jurisdiction the tenure-holder ordinarily resides.

4. The word Tribunal¹ is not defined in the High Court Rules and, therefore, it will be useful to notice its meaning as given in the dictionaries which is as under :

Webster's Third New International -- A Court or forum of justice ; a person Dictionary or body of persons having authority to hear and decide disputes so as to bind disputants ; something that decides or judges something that determines or directs a judgment or course of action.

The New Lexicon Webster's -- A group of persons empowered to Dictionary decide a specific issue according to the law, arbitrator in a dispute etc.

Oxford Advanced Learners" -- Place of judgment, board of officials Dictionary of Current English or Judges appointed for special duty Language e.g. to hear appeal against high rank, for exemption from military service.

Longman Dictionary of -- A group of people appointed Contemporary English officially. Judges, etc. with powers to deal with special matters.

5. Article 136(1) of the Constitution provides that the Supreme Court may grant special leave to appeal from any judgment, decree or order made by any Court or Tribunal. In *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, (Para 6), what will constitute a Tribunal was explained in following words :

"..... The expression "a Court" in the technical sense is a Tribunal constituted by

the State as a part of ordinary hierarchy of Courts which are invested with the State's inherent judicial powers. The Tribunal as distinguished from the Court, exercises judicial powers and decides matters brought before it judicially or quasi-judicially. but it does not constitute a Court in the technical sense. The Tribunal, according to the dictionary meaning, is a seat of justice ; and in the discharge of its functions, it shares some of the characteristics of the Court..... The Tribunals which are contemplated by Article 136(1) are clothed with some of the powers of the Courts. They can compel witnesses to appear, they can administer oath, they are required to follow certain rules of procedure ; the proceedings before them are required to comply with rules of natural justice, they may not be bound by the strict and technical rules of evidence, but, nevertheless, they must decide on evidence adduced before them ; they may not be bound by other technical rules of law, but their decisions must, nevertheless, be consistent with the general principles of law. In other words, they have to act Judicially and reach their decisions in an objective manner and they cannot proceed purely administratively or base their conclusions on subjective tests or Inclinations. The procedural rules which regulate the proceedings before the Tribunals and the powers conferred on them in dealing with matters brought before them, are sometimes described as the "trappings of a Court" and in determining the question as to whether a particular body or authority is a Tribunal or not. sometimes a rough and ready test is applied by enquiring whether the said body or authority is clothed with the trappings of a Court."

In para 8 it was observed as follows :

"..... It would thus be noticed that apart from the importance of the trappings of a Court, the basis and essential condition which makes an authority or a body a tribunal under Article 136, is that it should be constituted by the State and should be invested with the State's inherent judicial power."

6. The same question was again examined by a Constitution Bench in *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, wherein it was held as follows :

"Judicial functions and Judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the State transfers its judicial functions and powers mainly to the Courts established by the Constitution, but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even expedient to attempt to describe exhaustively the features which are common to the tribunals and the Courts, and features which are distinct and separate. The basic and the fundamental features which is common to both the Courts and the Tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State.

In considering the question about the status of any body or authority as a

tribunal under Article 136(1), the main test to be applied is whether the body or authority has been constituted by the State and has been clothed with the State's inherent judicial power to deal with disputes between parties and determine them on the merits fairly and objectively."

The test applied by the Supreme Court in determining whether any body or authority has the status of a Tribunal for the purpose of Article 136(1) of the Constitution can also be applied while interpreting Chapter VIII, Rule 5 of the Rules of the Court. Therefore, what is to be seen is whether the Judgment or order which was subject-matter of challenge in the writ petition filed under Article 226 or 227 of the Constitution had been given by a body or authority which had been constituted by the State and had been clothed with the State's inherent judicial power to deal with disputes between the parties and to determine them on merits fairly and objectively.

7. The definition of the prescribed authority as given in Section 3 (13) of the Act shows that he is an officer not below the rank of Assistant Collector empowered by the State Government by notification in the gazette, to perform the functions of prescribed authority under the Act. He is required to decide the dispute regarding ceiling area of a tenure-holder and determine the surplus area possessed by him. While holding an enquiry or hearing an objection under the Act, the authority in so far as it may be applicable has all the powers and privileges of civil court and has to follow the procedure laid down in the CPC for the trial and disposal of suits regarding immovable property. It obviously means that the dispute has to be determined on merits, fairly-and objectively. Thus there cannot be even a slightest doubt that an officer or authority while holding any enquiry and hearing objection under the Act, acts as a Tribunal.

8. Sri Triveni Shanker has also urged that as the rejection of the appellant's application u/s 12A of the Act had been challenged in the writ petition, which did not relate to determination of surplus land, the present special appeal is maintainable. We are unable to accept the contention raised. The appellant had challenged several orders of the prescribed authority in the writ petition including an order relating to determination of surplus area. No independent power is conferred upon the prescribed authority by Section 12A of the Act. What the section requires is that while determining the surplus area, prescribed authority shall as far as possible accept the choice indicated by the tenure-holder to the plot or plots which he and other members of his family would like to retain as part of the ceiling area applicable to them. Therefore, this merely gives a guideline to the prescribed authority in the matter of determination of specific plots as surplus area while hearing an objection u/s 12 of the Act, Section 12A cannot be read de hors Section 12 as it merely provides for accepting the choice of the tenure-holder while passing a final order u/s 11 or 12 of the Act. It will be wholly incongruous to hold that the same prescribed authority while determining the surplus area functions as a Tribunal but while deciding the specific plots to be declared as surplus, after taking into consideration the choice Indicated by the

tenure-holder, functions in a different capacity and not as a Tribunal. The whole exercise is one and the prescribed authority cannot have dual capacities. Therefore, even if an application for choice u/s 12A is moved subsequently, any decision made thereon would be by a Tribunal. Since we are of the opinion that the orders which were subject-matter of challenge in the writ petition were made by a Tribunal, the present special appeal filed under Chapter VIII, Rule 5 of the Rules of the Court is not maintainable.

9. The special appeal is, accordingly, dismissed.