
(2001) 05 AHC CK 0054
In the Allahabad High Court
Case No : C.M.W.P. No. 19341 of 2001

Ram Bhajan

APPELLANT

Vs

Chief Revenue Officer/Prescribed Authority, Mirzapur and
others

RESPONDENT

Date of Decision : 25-05-2001

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 27

Citation : (2001) 3 AWC 1924 : (2001) 92 RD 538

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : V. Singh, for the Appellant; S.C., S.N. Singh and Anuj Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Singh, J.—By means of this writ petition, the petitioner has sought quashing of the order passed by the respondent No. 2 dated 7.3.2001 and the orders passed by respondent No. 1 dated 22.5.1986 and 20.11.1987.

2. The facts in brief are that a notice was issued u/s 10 (2) of the U. P. Imposition of Ceiling of Land Holding Act (hereby referred to as the Act) by which an area of 20-0-4 was proposed as surplus. The said notice was confirmed by the judgment of the Prescribed Authority dated 15.12.1976 and the area 20-0-4 was declared as surplus. Against that judgment, the tenure holders filed restoration and thereafter appeal, but both were dismissed. Ultimately, by the judgment of this Court dated 23.11.1984, the matter was remanded back for reconsideration.

3. It appears that in the meantime on 12.3.1979, the land as was declared surplus was allotted to the petitioner who claims to have come in possession over that land.

4. After remand of the matter when it was taken up by the respondent No. 1/ Prescribed Authority after consideration of entire facts, evidence and after giving

full opportunity to the tenure holders and the State who were parties in the proceedings before the respondent No. 1, a decision was taken that at the time of issuance of notice u/s 10 (2) of the Act, the tenure holder was not possessed with any surplus land and thus respondent No. 1/Prescribed Authority vide its judgment dated 22.5.1986 discharged the notice dated 8.11.1976 as was issued u/s 10 (2) of the Act to the tenure holders and it was held that there is no surplus land.

5. As a consequence of that decision, respondent No. 1/ Prescribed Authority by that very order dated 22.5.1986 directed that the name of the allottee, i.e., petitioner be expunged and the land was directed to be recorded in the revenue records in the name of the tenure-holder. By the order dated 22.5.1986, it has been further observed by the respondent No. 1/Prescribed Authority that in the event the land is found to be irrigated at any point of time, fresh notice can be Issued to the tenure holders. The order dated 22.5.1986 further directs. Issuance of Parwana Amaldaramad for making necessary correction in the revenue records. It appears that the allottees filed appeal against the order dated 22.5.1986 passed by the respondent No. 1 /Prescribed Authority that was dismissed as not maintainable. It is thereafter the Prescribed Authority by its order dated 20.11.1987 gave necessary direction for issuance of revised Parwana Amaldaramad as a consequence to the order dated 22.5.1986. It is against this judgment of the Prescribed Authority dated 22.5.1986, a revision was filed by the petitioner which was recommended by the Additional Commissioner vide its judgment dated 14.11.1990 to the Board of Revenue for being allowed. The recommendation of the Additional Commissioner for allowing the revision is solely on the ground that the allottee was not heard before passing the order by the Prescribed Authority and, therefore, for giving an opportunity of hearing remand is required.

6. When the matter was taken up by the Board of Revenue, the revision was dismissed holding the same to be not maintainable and thus the petitioner has challenged the order of the Board of Revenue dated 7.3.2001 and that of the Prescribed Authority dated 22.5.1987 and 20.11.1987.

7. I have heard learned counsel for the petitioner Sri V. Singh who has submitted his argument in support of the writ petition and Sri. S.N. Singh who appeared on behalf of the respondent No. 6.

8. It has been argued by the learned counsel for the petitioner that the Judgment of the two authorities below are erroneous. It has been argued that no proceeding have been initiated by the tenure holder for getting the allotment in favour of the petitioner cancelled u/s 27 (4) of the Act and as a specific procedure has been prescribed for cancellation of the lease, without having taken recourse "thereof, the lease in favour of the petitioner cannot be treated to be cancelled. It has been further argued that admittedly no notice and opportunity has been given to the petitioner and, therefore, the orders of the courts below which have an adverse effect on the petitioner's right being in violation of

Principles of Natural Justice is legally vitiated.

9. In support of the aforesaid contentions, learned counsel for the petitioner has placed reliance on the decision in *Satyapal and others v. State of V. P. and others* 1986 ALJ 1232 and *Chauthi and others v. State of U. P. and others* 1989 ALJ 644.

10. In response to the arguments as has been advanced by the learned counsel for the petitioner, it has been submitted by Sri S.N. Singh, learned counsel for the respondent that as no land of the tenure holder remained as surplus in view of the judgment of the Prescribed Authority dated 22.5.1986, allotment in the petitioner's favour will automatically fall and, therefore, giving of opportunity to the allottee/ petitioner will be just a futile exercise and, therefore, Principle of Natural Justice will have no application as the petitioner may have nothing to say in the matter.

11. It has been further argued by the learned counsel that as the allotment was made during the pendency of the proceedings which was being perused by the tenure holders and in any view of the matter. the land having not remained as surplus, the said allotment becomes void ab initio and no proceedings for cancellation was separately required and the Prescribed Authority was fully competent to take decision in respect to the status of the parties, which has been rightly restored by the Judgment dated 22.5.1986.

12. In view of the submissions as have been advanced across the Bar, the facts became admitted that in view of the decision of the Prescribed Authority dated 22.5.1986, no land of the tenure holder remained as surplus and the judgment of the Prescribed Authority dated 22.5.1986 has been admittedly not challenged by the State till date as no material in this respect has either been brought by the petitioner before this Court and no submission has been advanced in this respect and thus in view of the judgment of the Prescribed Authority dated 22.5.1986, there remains no surplus land which could remain subject-matter of any allotment.

13. It is well-settled that the matter of declaration of the land as surplus is between the State and the tenure holder and nobody comes in between and thus once the State has chosen not to take up the matter to the higher forum, challenging the judgment of the Prescribed Authority by which notice for declaration of the land as surplus itself was withdrawn, no argument can be advanced by the petitioner raising any finger on this aspect that the tenure holder might have surplus land if the matter is examined in further details In the light of the facts as are being pleaded by him.

14. It is also settled that the allottee cannot acquire any better right than the right as exists with the State and thus the State itself having no right to the land as the same did not remain as surplus, the claim of the allottee will fall short as the giver himself is not possessed to part anything to the petitioner.

15. The decision as has been cited by the learned counsel for the petitioner

although lays down that the allottee has to be given opportunity of hearing before cancellation of the allotment, but, in my opinion, those decisions have no application to the facts of the present case. Those decisions can only apply when there is proceedings for cancellation of the allotment and some impropriety and illegality in the allotment proceedings are alleged, which can be subject matter of enquiry and scrutiny in that cancellation proceedings for which certainly the allottee will have to be given opportunity of hearing so that he can demonstrate the completion of all the formalities and validity of the allotment. But so far the present case is concerned, neither the tenure holder has taken any ground nor has challenged the validity of the allotment on any ground which may be available for cancellation of the allotment. Here by virtue of the fact that by the judgment of the Prescribed Authority, no land remained as surplus and thus as a consequence thereof, the Prescribed Authority has directed to restore the correct position of the revenue records and, therefore, the decision as has been cited by the learned counsel for the petitioner will not fit-in in the facts of the present case.

16. In fact, the land having been given to the allottee by the Collector, the allottee cannot get any better title than the Collector was possessed, as the petitioner has stepped into the shoes of the Collector. In view of the judgment of the prescribed authority dated 22.5.1986, the restoration of the correct entry in the revenue record and even restitution of the possession will be an automatic follow-up to which the petitioner can have no say in the matter as he has no *locus standi* to intervene in the matter of declaration of the land as surplus.

17. In view of the aforesaid discussions, it is clear that by the judgment of the Prescribed Authority dated 22.5.1986, no land of the tenure holder remained surplus and, therefore, the Prescribed Authority appears to be justified in giving further direction that the revenue records in the name of the tenure holders be corrected after deleting the name of the allottee and necessary *Parwana* be issued accordingly.

18. In view of my reasoning that allottees have no better right than the State/Collector and further the allottees have no right to come in between in the proceedings of declaration of land as surplus, in view of the facts so exist on record as no land of the tenure holder remained surplus, the petitioner appears to have no triable case which in the event of affording opportunity he can canvass before the court below and, therefore, grant of opportunity as being claimed by the petitioner will be futile exercise, causing further delay in restoration of revenue records in pursuance of the judgment of the prescribed authority dated 22.5.1986.

19. Equity also lies in favour of the tenure holder/respondent as by process of law ultimately he succeeded in getting the land discharged from the ceiling proceedings and, therefore, he is entitled to get his name restored in the revenue papers in preference to the petitioner as the State/Collector from whom the petitioner has derived right has lost its control and domain over the land in

dispute and thus the petitioner will not be entitled to get any relief in preference to the claim of the respondent tenure holder.

20. For the reasons given aforesaid, I do not find any infirmity in the direction given by the Prescribed Authority for entering the names of the tenure holder after deletion of the name of the petitioner in the record and for issuance of the revised Parwana Amaldaramad, after his decision that there is no surplus land and notice issued to the tenure holder is being withdrawn. The revisional court has rightly dismissed the petitioner's revision.

21. Accordingly, the writ is dismissed without their being any order as to cost.