

(2012) 04 AHC CK 0070

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9516 of 1999

Ram Milan

APPELLANT

Vs

Additional Commissioner, Chitrakoot Dham Division and
Others

RESPONDENT

Date of Decision : 30-04-2012

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(1),
10(2), 16, 29, 30, 30
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 169

Citation : (2012) 9 ADJ 116 : (2013) 1 AWC 279

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : R.K. Pandey and S.K. Shukla, for the Appellant;

Final Decision : Allowed

Judgement

Hon'ble Sunil Hali, J.—A proceeding under Sections 10(2)/29-30 of the U.P. Imposition of Ceiling on Land Holdings Act was initiated against the petitioner by the respondents on 15.12.1975 as a result of which 4 Bigha 11 Biswa 11 Biswansi land was declared surplus. The case set out is that one Smt. Brijrani wife of Gajraj Prasad executed a registered will in favour of petitioner's son Sunil Kumar and bequeathed the entire movable and immovable property in his name. On the basis of this will, the name of Sunil Kumar was mutated in the revenue record after her death. Smt. Brijrani was an independent tenure holder as such she had right to bequeath the property u/s 169 of the U.P. Z.A. & L.R. Act. A notice under Sections 10(2)/29-30 was issued to the petitioner by the respondent No. 2 in which 7.20 acre land in irrigated category was proposed to be declared as surplus. The petitioner filed objection and contested the notice by stating that the entire proceedings are void and without jurisdiction and barred by res judicata. After considering the objections of the petitioner, on 31.10.1998, the respondent No. 2 passed an order declaring 2.911 hectare land as surplus. The petitioner filed an appeal before the respondent No. 1. The appeal also stood

dismissed, vide appellate Court's order dated 9.3.1999. Both the orders dated 31.10.1998 and 9.3.1999 are subject-matter for challenge before this" Court.

2. The contention of the petitioner is that notice does not comply with the requirement of Section 29/30 of the U.P. Imposition of Ceiling on Land Holdings Act.

3. In order to understand the controversy involved in the present writ petition, it is necessary to note certain facts. The land of the petitioner was declared surplus on 15.12.1975 totaling 4 bighas 11 biswa 11 biswansi. The case set out against the petitioner through the notice is that the will executed by the mother of the petitioner in favour of his son was intended to defeat the provisions of the Act. The stated position of the petitioner was that he owns the land in the plot No. 502 measuring 8.56 acres, the rest of the holding which has been mentioned in the notice are recorded in the name of other tenure holders, who are the necessary parties but they have not been given any notice. It is further submitted by the petitioner that the land, which stood transferred in the name of Sri Sunil Kumar by means of registered deed, has wrongly been included in the holding of the petitioner. The land, which is in possession of the petitioner, has wrongly been shown to be irrigated while actually plot No. 504 area 0.08 acre and plot No. 1076 are 0.034 acres land has been recorded as grove in C.H. Form 41 and the plot No. 1089 is recorded as unirrigated land in C.H. Form 41. It is further submitted that the holdings of the petitioner is single crop land and Ken canal has been shown to be the source of the irrigation. The facility of Ken canal is only provided for paddy crop as has been mentioned in the notification dated March 31, 1953 in Appendix-1.

4. I have heard Mr. R.K. Pandey and learned Standing Counsel appearing for the respondents.

5. The land succeeded to the petitioner's son by way of will executed by petitioner's mother cannot be construed to be a separate holding. It shall always be presumed that the petitioner is the owner of the said holding is the case set out by the respondent. This is based on the premise that the mother had executed this will in favour of the son of the petitioner only with the intent to avoid the clutches of the Ceiling Act. It is not in dispute that the surplus land admeasuring an area 4 bigha 11 biswa and 11 biswansi declared by the respondent No. 2 already vests in the State. The notice u/s 29/30 was issued in respect of the land which was transferred in the name of the petitioner's son by his mother. This was a sham transaction as mother was part of the family and could not be construed to be a separate tenure holder. It is important to examine import of Section 29 which is quoted hereinbelow :

29. Subsequent declaration of further land as surplus land.--Where after the date of enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 --

(a) one land has come to be held by a tenure-holder under a decree or order of

any Court, or as a result of succession of transfer, or by prescription in consequence of adverse possession, and such land together with the land already held by him exceeds the ceiling area applicable to him; or

(b) any unirrigated land becomes irrigated land as a result of irrigation from a State irrigation work or any grove land loses its character as grove-land or any land exempted under this Act ceases to fall under any of the categories exempted, the ceiling area shall be liable to be redetermined [and accordingly the provisions of this Act, except Section 16, shall mutatis mutandis apply].

6. Plain reading of Section 29 visualizes that if any land comes to be held by a tenure-holder under a decree or order of any Court, or as a result of succession or transfer, or by prescription in consequence of adverse possession, and such land together with the land already held by him exceeds the ceiling area applicable to him, the ceiling area shall be liable to be redetermined. In case any unirrigated land becomes irrigated land as a result of irrigation from a State irrigation work or any grove land loses its character as grove-land or any land exempted under this Act ceases to fall under any of the categories exempted also require redetermination. The provision contemplates that after the enforcement of the Act 1972, if any land has been acquired by the tenure holder through various modes provided hereinabove or the character of the land has been changed from unirrigated to irrigated there shall be redetermination of the ceiling area.

7. In the present case, the impugned notice indicates that in terms of Section 10(1) the petitioner is in possession of land except surplus area as determined on 8.6.1973. Re-determination has been made without mentioning its grounds in the notice which was served on the petitioner. The ingredients u/s 29/30 are not mentioned in the said notice. However, in the final order passed by the Prescribed Authority, the issue regarding the acquiring of the land by the son of the petitioner, Sunil Kumar, from his grandmother has been mentioned. As a matter of fact, an issue has been framed in this behalf. In this regard, it was incumbent upon the Prescribed Authority to have indicated that grounds for initiation of proceedings u/s 29 existed before embarking upon the inquiry.

8. The notice also does not make mention that after 8.6.1973 unirrigated land has been converted into irrigated land by irrigation from canals owned by the State Government. This fact also does not find place in the impugned orders. The re-determination of the surplus land presupposes that there has been earlier determination made u/s 10(2) declaring land of the tenure holder as surplus. It is only on the happenings of the events as prescribed u/s 29 of the Act, which requires to be redetermined afresh. The appellate Court also fell into error in affirming the order of the lower Court.

9. In the circumstances, I allow this petition and set aside the impugned orders dated 31.10.1998 and 9.3.1999 passed by the Prescribed Authority as well as Appellate Authority. However, it is made clear that passing of this order will not

preclude the respondents from initiating fresh proceedings in accordance with law, if they are so advised.