

(2011) 11 AHC CK 0480
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15338 of 1988

Rama Shanker

APPELLANT

Vs

Additional Commissioner, Jhansi Division Jhansi and Others

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 16, 29, 29(a), 30

Citation : (2012) 7 ADJ 202

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : V.S. Saxena, K.P. Shukla and N.K. Mishra, for the Appellant; D.K. Tiwari and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Sudhir Agarwal, J.—Heard counsels for the parties and perused the record. This writ petition is directed against the order dated 29.3.1985 passed by Prescribed Authority Maudaha, District Hamirpur declaring 166.05 (Annexure-5 to the writ petition) acre unirrigated land of tenure-holder surplus and the appellate order dated 12.8.1988 (Annexure-6 to the writ petition) whereby the appellate authority has dismissed the appeal of tenure-holder but has partly allowed the appeal of State modifying the Prescribed Authority's order and declaring 526.91 acres of unirrigated land as surplus. The petitioners have also challenged the notice dated 5.8.1983 issued u/s 10(2) of U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the "Act, 1960").

2. The facts, in brief, giving rise to the present dispute are that a notice u/s 10(2) of Act, 1960 was issued to tenure-holder stating that he possess 414.12 acres of land and the entire land being irrigated it was equivalent to 165.65 acres of land (irrigated). The tenure-holder was entitled to retain 27.92 acres hence 137.73 acres of irrigated land was surplus and liable to be declared accordingly. This notice was issued in 1976. Objections were filed but Prescribed Authority

rejected the objections and declared the proposed land surplus. The matter was taken in Appeal No. 1003 of 1976. Another Appeal No. 1005 of 1976 was filed by some other person who had also filed objections against the aforesaid notice. Both these appeals were decided vide judgment dated 6.10.1977. The District Judge, Hamirpur, the appellate authority, allowed appeal of tenure-holder Badari Prasad to the extent of reducing the surplus area to 0.91 acres of irrigated land as surplus. The appeal of objectors was also allowed except of one objector, namely, Guman Singh.

3. The aforesaid appellate order became final since it was not challenged by State in any higher forum. Thereafter another notice dated 5.3.1983 was issued to Sri Badari Prasad, father of petitioner though in the meantime he had already died. Objections were filed by petitioner and others that the earlier ceiling proceedings having attained finality, no fresh proceedings could have been initiated and secondly that Sri Badari Prasad had already died, notice to his legal heirs and others ought to have been issued separately, etc.

4. The Prescribed Authority in the second notice dated 5.3.1983 had proposed 526.91 acres of land surplus. After considering the objections the Prescribed Authority passed impugned order dated 29.3.1985 observing that earlier total land which was taken into consideration was only 414.12 acres while this time 596.66 acres, meaning thereby 182.54 acres new land has been included in the notice, hence earlier proceedings shall not bar the fresh notice. On other aspects of the matter he disallowed the sale-deeds of substantial part of land and ultimately declared 166.05 acres of land by giving benefit of reduction of area of land in consolidation proceedings. He held that even by excluding 428.24 acres of land pursuant to earlier proceedings still in respect to different land included in the fresh notice there is 166.05 acres of land surplus with tenure-holder.

5. Again two appeals were filed, one by petitioners and another by State. The petitioner's main contention was that a fresh notice could not have been issued and Section 29 has no application in the case in hand while on behalf of State the exclusion of entire land, subject-matter of earlier proceedings was questioned. On behalf of petitioner it was also pointed out that inclusion of land on behalf of some other tenure-holder is totally illegal. On the contrary, the State relied on the amendment of the Act and Sections 4A, 29 and 30. It was contended that entire land of tenure-holder was unirrigated while in the second notice substantial land has been shown irrigated, therefore, the earlier proceedings shall not bar subsequent one.

6. Section 4A provides for determination of irrigated land. It does not throw any light on the validity of fresh proceedings after finalization of ceiling proceedings earlier. Section 29 (substituted by U.P. Act No. 18 of 1973) permits redetermination of ceiling area and reads as under:

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 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; 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.

7. There are only two conditions, one, whether the tenure-holder after the date of enforcement of U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 has got some land under a decree order of the Court or as a result of succession or transfer or by prescription in consequence of adverse possession and such land along with land already held by him exceeds the ceiling area applicable to him. The second condition is if earlier unirrigated land becomes irrigated as a result of irrigation facilities from State irrigation work or any grove land loses its character as grove land or any land exempted under the Act, 1960 ceases to be so exempted. If some land stood omitted to be included in the earlier proceedings though already possessed by tenure-holder, that itself would not justify redetermination u/s 29 of Act, 1960.

8. Despite repeated query, learned Standing Counsel could not show as to which part of Section 29 would apply in the present case to justify the second notice issued in 1983.

9. The earlier order Annexure-1 to the writ petition passed by appellate authority clearly shows that the entire land of tenure-holder, subject-matter of appeal, was shown irrigated and that is how it was equivalent to 165.65 acres of land in terms of irrigated area. The aforesaid observation reads as under:

His entire land was shown to be irrigated equivalent to 165.65 acres of land in terms of irrigated area.

10. Both the authorities below on this issue have simply referred that earlier the total area under consideration was 414.12 acres while in the notice dated 5.3.1983 it was 596.66 acres, meaning thereby some new land was added in the notice, hence redetermination was justified u/s 29 but have not pointed out whether the alleged new land satisfy requirement of Section 29(a) in addition to land he was already having after the enforcement of U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, so as to justify redetermination u/s 29.

11. All other aspects of the matter would be available to be considered to authorities below only when it could have been shown by them that redetermination of ceiling area was justified having fallen under the specific conditions provided in Section 29 and only then the authorities below would have

been justified to proceed further and not otherwise. On this issue the impugned orders are very cryptic, vague and show non-application of mind in correct perspective.

12. In view thereof the impugned orders cannot sustain. The writ petition is allowed. The orders dated 29.3.1985 and 12.8.1988 are hereby set aside. The matter is remanded to Prescribed Authority to re-examine the same and pass a fresh order in the light of observations made above and in accordance with law after giving opportunity of hearing to all concerned parties. The fresh exercise shall be completed by Prescribed Authority within a period of three months from the date of production of a certified copy of this order. There shall be no order as to costs.