

(2012) 03 AHC CK 0063

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26440 of 2006

Satendra Mani Tiwari

APPELLANT

Vs

Commissioner, Gorakhpur Division, Gorakhpur and Others

RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 27(4)

Citation : (2012) 6 AWC 6475 : (2012) 116 RD 75

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : Manoj Kumar Rajvanshi and J.P. Mishra, for the Appellant; S.V. Goswami, A.K. Pathak, C.B. Yadav, R.P. Pandey and R.P. Ram, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

A.P. Sahi, J.—The order passed by the learned Commissioner on 2.2.2006 impugned herein is an order in proceedings under sub-section (4) of section 27 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960. The application filed by the petitioner, who is the tenure holder, for cancelling the lease in favour of the contesting respondent, has been rejected on the ground that the identity of the land which is being claimed by the petitioner in his choice could not be established and the petitioner has not filed any evidence to that effect. This petition has been taken up in the revised call. A counter-affidavit has been filed on behalf of some of the contesting respondents, who are the alleged allottees but no Counsel has appeared today on their behalf. Learned Standing Counsel has been heard on behalf of respondent Nos. 1 and 2.

2. A counter-affidavit has been filed on behalf of the State supporting the impugned order with bald averments that the petitioner had been unable to produce any documentary evidence to prove that the plots, which were being claimed by him, were not surplus and were within his choice. In such a situation, the impugned order is sustainable.

3. Sri Rajvanshi submits that the entire record of the revenue department including the schedule prepared along with the order of the Prescribed Authority clearly indicates the land which has been declared surplus as also the land which has to be retained by the tenure holder as per his choice. Sri Rajvanshi submits that the order of the Prescribed Authority dated 28.2.1995 is final and as a matter of fact it is according to the said order that the claim of the petitioner has to be examined. It is urged that once the petitioner has set up his claim according to the said order, then the burden shifted on the State to verify the correctness or otherwise of the plot numbers of village Siswa Goiti to be retained by the petitioner. The sum and substance of the argument of Sri Rajvanshi is that as on date the petitioner is not in possession even on that land which was allowed to be retained under, order dated 28.2.1995.

4. The allottees had taken a stand before the learned Commissioner that the land claimed by the petitioner is a different land which came to be allotted in terms of an earlier order of the Prescribed Authority dated 30.9.1977. They urged that they are allottees of the land which has been declared surplus under the order dated 30.9.1977 and, therefore, the land in question is not the same land hence there is no occasion for cancellation of the said lease.

5. The same argument has been adopted by the learned Standing Counsel.

6. I have perused the impugned order dated 2.2.2006. The same categorically records that the plots, which have been allotted to the lease holders - the contesting respondent herein, do not tally with the old plot numbers which were declared surplus in the order dated 30.9.1977. Once this finding had been arrived at by the learned Commissioner then it was his duty to have at least ascertained the correct plot numbers and call for a report from the Prescribed Authority before proceeding to reject the application. The Commissioner records that the order dated 28.2.1995 also does not correctly indicate the plot numbers. If the order of the Prescribed Authority is also not indicating the plot numbers as claimed by the petitioner, then it was all the more necessary for the Commissioner to summon the entire records and call for a report from the Prescribed Authority as to the status of the land which was being claimed by the petitioner to be retained under the order dated 28.2.1995 and tally the old number and the new numbers after consolidation and then should have passed an appropriate order. It is not a case where the evidence has been lost or not available. It is a case where the evidence is available in the revenue department itself. In the circumstances in order to do complete justice between the parties, it was obligatory on the part of the Commissioner to have summoned a report from the Naib Tehsildar (Ceiling) and Sub-Divisional Officer of the area concerned and then allow the parties to have led evidence thereon. The authorities have dealt with the matter cursorily and rejected the application shifting the entire burden on the petitioner, which, in my opinion, is an erroneous approach for the reasons given herein above. Accordingly, the writ petition is allowed. The order dated 2.2.2006 cannot be sustained and is hereby quashed. The matter is remitted to

the Commissioner, Gorakhpur Division, Gorakhpur, who shall proceed to dispose of the matter in the light of the observations made herein as expeditiously as possible preferably within 6 months from the date of production of a certified copy of this order before him. The petitioner shall also co-operate by supplying whatever relevant material is available with him and also point out the material available with the revenue department to verify his claim.