

(1952) 02 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 853 of 1951

Shitab Singh and Others

APPELLANT

Vs

Suraj Bali and Another

RESPONDENT

Date of Decision : 28-02-1952

Acts Referred:

Constitution of India, 1950 — Article 227

Uttar Pradesh Land Utilization Act, 1947 — Section 3, 6

Citation : AIR 1952 All 750

Hon'ble Judges : Misra, J; Beg, J

Bench : Division Bench

Advocate : Shafiqur Rahman, for the Appellant;

Final Decision : Dismissed

Judgement

1. This is a petition under Articles 226 and 227 of the Constitution.

2. The applicants, Shitab Singh, Bhola Singh and Sheo Baksh Singh pray that the order of allotment to the opposite parties of certain agricultural lands passed by the Deputy Commissioner, Kheri, on 4-4-1951, u/s 3, Land Utilisation Act (V of 1948) be cancelled and the petitioners be permitted to retain the plots to which the aforesaid order related. Section 3 of the Act provides that

"(1) Notwithstanding anything contained in the Uttar Pradesh Tenancy Act, 1939, or in any other enactment for the, time being in force, the Collector may, by notice in writing in the form specified in the Schedule, call upon the landlord of any land situated within his jurisdiction, which is not grove-land or land let to or held by a tenant, and which has not been cultivated or, if previously cultivated, has not been cultivated during the Rabi and Kharif immediately preceding the commencement of this Act, to let out such land or pre-arrange for the cultivation thereof within fifteen days from the date of the service of such notice or within such further period as the Collector may extend:

"Provided that no notice shall be issued under this sub-section in respect of any

land which was recorded in 1353 Fasli as pasture land, or which is used as threshing floor, irrigation tank, or for the benefit generally of the inhabitants of the village or any portion thereof:

"Provided further that where such land is in the possession of a thekedar the Collector shall issue notice to both the thekedar and the landlord.

"(2) The notice shall be served on the landlord by delivering or tendering to him a copy of such notice. But if the landlord is not readily traceable or refuses to accept the notice, the service shall be effected by affixing a copy of such notice to the chaupal or some other public place in the village and thereupon the landlord shall be deemed to have been sufficiently served.

"(3) If the landlord within one week from the date of the service of the notice shows to the satisfaction of the Collector that the land is not capable of being cultivated or that it is already being cultivated or has been let out for cultivation the Collector shall cancel the notice.

"(4) If the notice is not complied with within the time allowed under Sub-section (1) or is not cancelled under Sub-section (3), the Collector may get such land cultivated on behalf of the State Government for such period as he thinks necessary or may let out such land to a tenant for cultivation.

"(5) Where the land is let out by the landlord in pursuance of the notice under Sub-section (1) or by the Collector under Sub-section (4), the rent payable by such tenant and the tenure and other conditions of his tenancy shall be determined as provided in Section 126-A of the U. P. Tenancy Act, 1939.

"(6) If the land is cultivated on behalf of the State Government under Sub-section (4), the landlord shall be entitled to receive such rent as may be determined by the Assistant Collector, first class, having jurisdiction and his decision shall be final."

3. The petitioners maintain that they are tenants of the lands under leases issued to them by the landlords on 2-7-1950, and 18-10-1950, before the notice u/s 3. From the documents filed by the petitioners it appears that the landlords did not produce the leases when they appeared in response to the notice u/s 3 and were called upon to produce them. The Deputy Commissioner, therefore, came to the conclusion that the landlords' allegation that the land had already been let out was without substance and held that the plots were in fact vacant. He accordingly leased them out to the opposite-parties, Suraj Mal and Prabhu Dayal.

The petitioners then came on the scene and filed fresh objections on the basis of the leases mentioned above alleging that they were holding some of the lands and cultivating them since July and others since October 1950 when they were admitted to tenancy by the landlord. The Deputy Commissioner refused to accent the assertion. He observed that the landlords' failure to produce the leases and the fact that the petitioners did not file any extract from the village records to show that they had been cultivating the land from before indicated that the

leases upon which they relied were fictitiously made and this was a "belated move on behalf of the landlords to get back the land".

4. The petitioners now claim that the dismissal of their objections by the Deputy Commissioner was not justified either in fact or in law and they urge that the order amounts to an invasion of their fundamental rights to hold and cultivate the land leased out to them by the landlords.

5. From the narration of facts given above, it would be clear that the petitioners inspite of the finding of the Deputy Commissioner insist that the leases upon which they relied were genuine. As remarked by one of us in "PAMBHI v. THE STATE". 1952 All W R 106 the superintendence referred to in Article 227 of the Constitution of India does not invest the High Court with an unlimited prerogative to interfere in cases where a wrong decision has been arrived at by Judicial or quasi-judicial tribunals either on fact or on questions of law and that powers conferred by the article on the High Courts must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or natural justice. The right to obtain relief thereunder depends further on the conditions that no other remedy is available to the applicant and the remedying of the wrong is essential in order to prevent very serious results.

6. The question of fact which is sought to be reagitated by the petitioners must be deemed in view of Section 6 of the U. P. Land Utilization Act to be concluded by the decision of the Deputy Commissioner. There is no infringement of any fundamental rights and no apparent dereliction of duty or the violation of the principles of natural justice. We dismiss the application summarily. The order of stay dated 26-10-1951, is discharged.