

(2007) 08 UK CK 0043

In the Uttarakhand High Court

Case No : Writ Petition No. 2764 of 2001 (S/S)

Shri Malook Singh and Others

APPELLANT

Vs

The 1st Additional District Judge, Nainital and Others

RESPONDENT

Date of Decision : 01-08-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 11(2)

Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2008) 8 UC 757

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : H.M. Bhatia, for the Appellant;

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—By means of this writ petition, moved under Article 226 of Constitution of India, the Petitioners have challenged the order dated 06-07-19782, passed by First Additional District Judge, Nainital, where by ceiling appeal No. 55 of 1980, filed by the Petitioners, was dismissed. The Petitioners have further challenged the orders dated 17-06-1980 and 21-07-1980, passed by Prescribed Authority (Respondent No. 2), whereby rectification application was allowed and the Petitioners were refused to be impleaded as party in the proceedings under U.P. Imposition of Ceiling on Land Holdings Act, 1960 (U.P. Act No. 1 of 1961).

2. Heard learned Counsel for the Petitioners and learned standing counsel.

3. Brief facts, as narrated in the writ petition are that Petitioners are in occupation of land of plot No. 22/4, situated in Village Mehtaban, Tehsil Bazpur (earlier part of District Nainital). Petitioners' case is that they were recorded in occupation over said land since the year 1376 Fasli (calendar year 1969). Proceedings under U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred as U.P. Act No. 1 of 1961), were started by the State

against Ranbir Lal Kapoor (Respondent No. 3). His land spread over in different villages measuring 174 bigha and 12 biswa. was declared surplus in the proceedings. In the proceedings against Shri Ranbir Lal Kapoor, there was mention of plot No. 23/4 of aforesaid village Mehtaban and out of said plot, area measuring 38 bighas 3 bishas, was declared surplus. Copy of the order dated 26-11-1977, by which total area measuring 174 bighas 12 biswas, which included aforesaid 38 bighas 3 (sic) surplus by Prescribed Authority, is Annexure-1 to the writ petition. The Prescribed Authority, vide its order dated 17-06-1980 (copy of the order is Annexure-2 to the writ petition), rectified the orders dated 22-11 -1977 and 26-11-1977, and it was directed that the plot No. 22/4, shall be read instead of plot No. 23/4. According to the Petitioners, this affected the rights of the Petitioners and they filed their objections u/s 11(2) of U.P. Act No. 1 of 1961. However, the Prescribed Authority, rejected said objections, vide its order dated 21-07-1980 (copy Annexure-4 to the writ petition). On this the Petitioners challenged said order, passed by the Prescribed Authority, before the appellate authority i.e. District Judge, Nainital. The First Additional District Judge, Nainital-Respondent No. 1 (to whom the appeal was transferred), after hearing the parties, passed the impugned order dated 06-07-1982, dismissing the appeal of the Petitioners. Copy of the impugned order dated 06-07-1982, is annexed as Annexure A-6 to the writ petition. The Petitioners have challenged the impugned orders on the ground that the Prescribed Authority and the appellate authority, committed error of law in rejecting the objections and the appeal of the Petitioners. It is further alleged that the rectification made is barred by time.

4. This writ petition was filed before Allahabad High Court on 14-10-1982, where it was admitted on said dated and an order was passed to the effect that the Petitioners shall not be dispossessed from the land in question, provided they are not already dispossessed. The writ petition is received by this Court, by transfer u/s 35 of U.P. Reorganisation Act, 2000, for its disposal. Perusal of the record, shows that neither Respondent No. 3 turned up to contest the writ petition nor any counter affidavit is filed on behalf of the State.

5. It is not disputed between the parties that Village Mehtaban, came under U.P. Zamindari Abolition and Land Reforms Act, 1950 w.e.f. 01-07-1969 i e. 1376 Fasli. It is also not disputed between the parties that proceedings under U.P. Imposition of Ceiling on Land Holdings Act, 1960, were initiated against Respondent No. 3 Ranbir Lal Kapoor, who owned land in different villages. From the orders under challenge, it is also clear that notices were issued under said Act in respect of land including plot No. 23/4 of Village Mehtaban. It is also not in dispute that a total land measuring 174 bigha and 12 biswa, was declared surplus in the proceedings against Ranbir Lal Kapoor (Respondent No. 3), which included 38 bigha 3 biswa land of plot No. 23/4. The impugned order dated 17-06-1980 (copy of which is Annexure-2 to the writ petition), shows that Prescribed Authority, passed an order dated 17-06-1980, rectifying his order dated 26-11 -1977 that plot No. 23/4 of Village Mahtaban, shall be read as plot

No. 22/4. On this, Petitioners, filed their objections (copy of which is Annexure- 3 to the writ petition) but the same were dismissed by the Prescribed Authority vide order dated 21-07-1980, holding that Petitioners who are recorded as cultivators of Class 9 in the revenue record, have no right to be impleaded in the proceedings. Said order is affirmed in the appeal by the appellate authority.

6. On behalf of the Petitioners, attention of this Court is drawn to the various papers, which are copies of the revenue record, annexed with the supplementary affidavit dated 22-04-2007. These documents corroborate the fact that the Petitioners were recorded cultivators of Class 9 over plot No. 22/4 of Village Mehtaban. Though the tenure holder was Ranbir Lal Kapoor of said village along with some others, the question before this Court is whether the Petitioners have a right to be heard in the proceedings before the Prescribed Authority or not.

7. In view of principle of law laid down by the Division Bench of Allahabad High Court in Dilbag Singh v. State of U.P. 1978 ALJ 717, the objections of such cultivators should be heard on merits by the Prescribed Authority u/s 11(2) of U.P. Act No. 1 of 1961. The Full Bench of Allahabad High Court has given similar view also in Upper Ganges Sugar Mills Ltd. Vs. Civil Judge, Bijnor and Others,

8. There is no doubt that cut-off date in the proceedings of ceiling in question was 08-06-1973, whereafter if the transfers are made, the same are illegal. But in the present case, the Petitioners have not based their claim through Ranbir Lal Kapoor. The entries made in the khatauni show that the Petitioners were in occupation as cultivators without title when the ceiling proceedings under aforesaid Act, were initiated. In the circumstances, it cannot be said that the Petitioners had no right to be heard. Not only this, the most significant document is Annexure-6 to the aforesaid supplementary affidavit, which is copy of khatauni of the year 1397 Fasli to 1402 Fasii (Calendar year 1990 to 1995), which shows that the Petitioners have been declared bhumidhar of plot No. 22/4, vide judgment and order dated 30-10-1986, passed in zamindari abolition appeal No. 661/102 of 1982-83, by Additional Commissioner, Kumaun (Judicial), Nainital.

9. In the circumstances, in view of principle of law laid down in aforementioned cases, the Prescribed Authority, has erred in law in not hearing the objections of the Petitioners u/s 11(2) of U.P. Act No. 1 of 1961.

10. Therefore, the writ petition deserves to be allowed. The writ petition is allowed to the extent that impugned order dated 06-07-1982, passed by Respondent No. 1, and order dated 21-07-1980, passed by Prescribed Authority, are quashed. The order dated 17-06-1980, passed by the Prescribed Authority, rectifying plot No. 23/4 as plot No. 22/4 (Village Mehtaban) shall be subject to the final decision on merits on the objections of the Petitioners, who were recorded as cultivators of Class 9 on the date of ceiling and, later declared bhumidhar in respect of said plot. The Prescribed Authority shall decide the objections of present Petitioners on merits. No order as to costs.