

(2011) 08 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 43363 of 2011

Smt. Fatima

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 198

Citation : (2012) 1 ADJ 604

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

Bench : Single Bench

Advocate : Sandeep Kumar Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—Heard learned counsel for the petitioner and learned Standing Counsel. The petitioner's lease has been annulled on the ground that the petitioner does not fall within the preferential category and that the allotment is illegal and is against the provisions of law.

2. Learned counsel for the petitioner submits that the entire action taken against the petitioner was in violation of law and without affording any opportunity of hearing to the petitioner and, therefore, the impugned order is vitiated and the same deserves to be set aside.

3. This petition had been entertained on 3rd August, 2011 when the following order came to be passed:

Heard learned counsel for the petitioner.

The dispute relates to grant of lease to the petitioner for plantation under the Government Order dated 30th December, 1985. This lease is obviously not under the U.P. Z.A. & L.R. Act, 1950. The terms and conditions of such leases are therefore strictly governed by the said government order wherein Clause 2, the following categories have been defined as the preferential priorities for grant of

lease:

A perusal of the same demonstrates the categories which are similar to that as prescribed u/s 198 of the U.P. Z.A. & L.R. Act, 1950.

The petitioner is not a widow and at the same time she is the wife of Irfan Hussain who is reported to have more than four hectares of land as his personal holding.

The issue is as to whether the petitioner is dependant on her husband or not, and secondly, whether she falls within any of the categories as mentioned aforesaid and is otherwise not ineligible.

As the learned Standing Counsel takes an objection to the eligibility of the petitioner for grant of such lease in her favour, learned counsel for the petitioner prays that the matter be adjourned for Monday to enable him to assist the Court on this issue.

Put up on Monday.

4. The petitioner was given full opportunity before this Court. The material on record firstly discloses that the petitioner's husband, namely, Irfan Hussain, owns about four hectares of land. Secondly, there is no material on record to indicate that the petitioner has ever worked as an agricultural labourer. As a matter of fact, there is no pleading to that effect.

5. The allotment to the petitioner is for plantation under a Government Order dated 30th December, 1985. The procedure prescribed for such allotment is contained therein and it also indicates the criteria of eligibility which has already been quoted hereinabove in the order dated 3.8.2011. This provision of eligibility is akin to the provisions of Section 198 of the U.P. Z.A. & L.R. Act. In order to interpret the said eligibility clause, the allotment being one for agricultural purposes, the Explanation given under Sub-section (1) of Section 198 of the Act would be a relevant criteria to adjudge as to whether the petitioner is eligible or not. Once the statute prescribes the eligibility criteria and the provisions in the Government Order being akin to that the definition of the words "landless agricultural labourer" then the same can be borrowed from the parent statute for the purpose of construing as to whether the petitioner falls within such category or not. The explanation clearly excludes spouse from such allotment if the spouse has agricultural land or holding under the U.P. Z.A. & L.R. Act. In the instant case, the petitioner's spouse admittedly has about four Acres of land and, therefore, applying the aforesaid definition the petitioner becomes ineligible.

6. Not only this, Clause-2 of the Explanation also indicates that the claimant should be an agricultural labourer. There is nothing on record to indicate that the petitioner has ever worked as an agricultural labourer. In the absence of any such pleading or proof, the petitioner cannot be treated to be an agricultural labourer. The petitioner therefore does not fulfill the eligibility criteria. The finding recorded, even if it is in violation of principles of natural justice, cannot bring

about another result if fresh opportunity is given to the petitioner. In the absence of any such material, the petitioner cannot prove things otherwise. The writ petition lacks merit and is accordingly dismissed.