
(1981) 10 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3013 of 1979

Smt. Rani Prem Kunwar

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 21-10-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 2, 2(O), 6, 8

Citation : (1982) AWC 508

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : Bharat Ji Agarwal, for the Appellant;

Final Decision : Disposed Of

Judgement

K.P. Singh, J.—This writ petition arises out of proceedings under the provisions of Urban Land (Ceiling and Regulation) Act, 1976. The Petitioner had submitted details of her land u/s 6 of the above mentioned Act. She was served with a draft notice u/s 8 of the Act. She filed several objections against the draft notice and had asserted that the excess area indicated in the draft notice was incorrect. The competent authority through its order dated 14-2-78 declared 1,31,653 sq. meters as excess area of the Petitioner. Aggrieved by the judgment of the competent authority the Petitioner had preferred an appeal which has also been dismissed by the appellate authority through its judgment dated 6-3-1979. Against the judgment of the appellate authority the Petitioner has approached this Court under Article 226 of the Constitution of India.

2. The learned Counsel for the Petitioner has contended before me that plot Nos. 446, 539, 177 and 444 were agricultural plots and they have been wrongly treated as vacant land under the provisions of the above mentioned Act. The second contention raised on behalf of the Petitioner is that plot Nos. 381, 387, 391 and 394 constitute a pond and cannot be treated as land under the provisions of the above mentioned Act. The third contention raised on behalf of

the Petitioner is that certain plots of the Petitioner were considered as agricultural land of the Petitioner for the purposes of the U.P. Imposition of Ceiling on Land Holdings Act and the same in the proceedings giving rise to this petition has not been treated as land for agricultural purposes. Hence an error apparent on the face of the record has crept in and the declaration of excess area of the Petitioner stands vitiated in law. According to the learned Counsel for the Petitioner it is not open to the State to contend that the plots which were declared tenancy of the Petitioner under the U.P. Imposition of Ceiling on Land Holdings Act should not be treated as land for agricultural purposes in the present case.

3. The learned Counsel for the State has tried to refute the contentions as raised on behalf of the Petitioner and has tried to support the impugned judgments.

4. I have considered the contentions raised on behalf of the Petitioner and I have gone through the impugned judgments and materials attached with the writ petition, counter affidavit and rejoinder affidavit. It is not disputed before me that some of the plots of the Petitioner have been recorded in the relevant khatauni as her tenancy land but the same land has not been treated as used mainly for purpose of agriculture only on the ground that khasra entries were of field. The appellate court has dealt with the claim of the Petitioner in this regard in the following words:

...Accordingly land is not to be deemed to be used mainly for the purpose of agriculture if such land is not entered in the revenue or land records of agriculture. It means that the land had to be recorded in the village records in a manner which would suggest that it was land used for the purpose of agriculture. Unless there be such an entry in the revenue records no land can be treated as used mainly for the purpose of agriculture. Such entry can enter only in the khasra. The Appellant should therefore have filed extract of khasra of 1383F. He failed to do so. Khatauni extract was filed on record, but could not show user of the land. Title of the Appellant in respect of the land would not help. Therefore, the plea of the land being mainly used for agriculture and, therefore, out of the definition of vacant land cannot succeed. It was rightly rejected by the competent authority.

5. It is a matter of common experience that at times the Lekhpals do not make entries. Under the above mentioned Act it has not been stressed that the Khasra extracts govern determination of the use of the land for agriculture purposes. u/s 2(o) of the Urban Land (Ceiling and Regulation) Act, 1976 "urban land" has been defined as meaning:

(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan ;

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a

municipality (by whatever name called a notified area committee, a town area committee, a city and town committee, a small town committee a cantonment board or a panchayat but does not include any such land which is mainly used for the purpose of agriculture.

Explanation : For the purpose of this clause and Clause (O):

(A) "agriculture" includes horticulture, but does not include raising of grass, dairy farming, poultry farming, breeding of livestock and such cultivation, or the growing of such plant, as may be prescribed:

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture.

Provided...

Provided further...

(C) Notwithstanding anything contained in Clause (B) of this Explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture.

Section 2(q) reads as follows:

"vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include...

6. In the present case I find that both the authorities have not treated a portion of the land claimed by the Petitioner as agricultural land on the ground that khasra extracts were not produced. In the khatauni if the disputed land was shown as bhumidhari the main purpose of the land would be for agriculture. Revenue records include khatauni as well, khasra indicates factual position of the possession held by a tenure holder but if that factual possession is not recorded in the khasra no conclusive inference can be drawn that the land was not used for agriculture purpose. Use for agricultural purpose can be established by oral evidence also. In the present case the Petitioner had filed several affidavits but the same have not been accepted on the ground that khasra extract was not filed.

7. At this place it is proper to mention that some plots of the Petitioner were held as tenancy land under the provisions of U.P. Imposition of Ceiling on Land Holdings Act. If a portion of the land was treated by the State as the land held by the Petitioner for agriculture purposes whether it would be open to the State to contend otherwise in the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976. This aspect of the matter has not been correctly appreciated by the appellate authority. The appellate authority or the Prescribed Authority have also not positively held that the disputed land was shown in the khasra extract of 1383 F. as not used for agriculture purposes. Khasra extract is also a document maintained by the State. Since the authorities had drawn adverse inference against the Petitioner without considering the circumstance

that khasra extract was the document of the State and that the State had treated a portion of the land claimed by the Petitioner as her agricultural land under the provisions of U.P. Imposition of Ceiling on Land Holdings Act. I think that the appellate authority has not approached the problem from a correct angle and the impugned order deserves to be quashed. Since I have decided to send the case back to the appellate authority for reconsideration of the claim of the Petitioner I do not think it proper to deal with the other contentions raised on behalf of the Petitioner. All the pleas raised on behalf of the Petitioner before me shall be examined by the appellate authority and the appellate authority shall record categorical findings in that regard. The appellate authority should also take into account the provisions of Section 2(o) Explanation (C) of the Act while determining the question whether the land claimed by the Petitioner was used for agriculture purposes.

8. A contention has been raised before me that certain plots of the Petitioner which were under water cannot be treated as vacant land within meaning of the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. In this connection the learned Counsel for the Petitioner has relied upon the observations of the learned Single Judge in Rani Prem Kunwar Vs. The District Judge and Others, and has also placed reliance upon the dictionary meaning of the word "land" given in the Random House Dictionary of the English Language and has contended that the disputed land being under water can never be treated as vacant land. I do not think it proper at this stage to express any opinion in that regard. The dictionary meaning of the term does indicate that person having interest in land under water can claim the earth surface by way of land. However, this question is also left open to be determined by the appellate authority in accordance with law.

9. In the impugned judgment of the appellate authority it has been observed that the land which is for agriculture purposes under the provisions of U.P. Imposition of Ceiling on Land Holdings Act may not be land used for agriculture purposes under the Urban Land (Ceiling and Regulation) Act, 1976. This question has not been examined by the appellate authority in relation to evidence on record of the present case. If a particular piece of land is treated as land used for agriculture purposes under provisions of the U.P. Imposition of Ceiling on Land Holdings Act why the same should not be treated as such under the Urban Land (Ceiling and Regulation) Act, 1976 specially when under the definition it has been emphasised that the land should be recorded in the revenue record as used for agriculture purposes. Added to this if the State had treated a portion of the land as agriculture land and it is not being treated so in proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 the authorities should weigh the contentions raised on behalf of the parties and should decide that question in the light of the evidence on the record of the case. I find that the appellate court has made observations in the impugned judgment in this regard without any relation to the evidence. The appellate authority should re-examine the contentions raised on behalf of the parties before declaring excess area held by the Petitioner.

10. In the result, the writ petition succeeds and the impugned judgment of the appellate authority dated 6-3-1979 in Urban Ceiling Appeal No. 125 of 1978 Rani Prem Kunwar v. State is hereby quashed and the appellate authority is directed to decide the claim of the Petitioner afresh in the light of the observations made above. The parties are directed to bear their own costs.