

(1964) 03 AHC CK 0008
In the Allahabad High Court
Case No : Writ Petition No. 406 of 1963

State	Vs	APPELLANT
District Judge and Others		RESPONDENT

Date of Decision : 06-03-1964

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10, 5, 9

Citation : AIR 1964 All 451

Hon'ble Judges : N.U. Beg, J;G.D. Sahgal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.U. Beg, J.—This writ petition arises out of proceedings under the U. P. Imposition of Ceiling on Land Holdings Act, 1960 (Act No. 1 of 1961), hereinafter called "the Act". The said proceedings were taken against one Kedar Nath, who figures as opposite party No. 2 in this writ petition. The Act came into force on the 3rd January, 1961. The Act was promulgated primarily for the purpose of fixing the maximum area which a tenure-holder could hold in Uttar Pradesh. The Act constituted a "Prescribed Authority" which was entitled to issue a notice to a tenure-holder calling upon him to submit a statement within thirty days of the notice disclosing the ceiling area to which the said tenure-holder was entitled under the Act. In the present case the notice in question was issued against Kedar Nath. In this notice the number of the members of the family of Kedar Nath was shown as five. Kedar Nath filed objections to this notice raising a number of pleas. The only plea however, with which we are concerned in this writ petition, related to the number of members of his family as shown in the notice. According to Kedar Nath, the number of members of his family was six and not five. This matter was contested before the Prescribed Authority, and the Prescribed Authority, after considering the evidence produced before it, came to the conclusion that on the date of the enforcement of the Act, i.e. on the 3rd January, 1961, the family of Kedar Nath consisted only of five members. It

further came to the conclusion that subsequent to the date of enforcement of the Act a son was born to Kedar Nath in February 1961 thereby increasing the number of members in the family of Kedar Nath to six.

In view of this finding the Prescribed Authority was of the opinion that Kedar Nath was not entitled to claim any additional area on the basis that the number of members of his family was six and not five. The reason given by the Prescribed Authority was that in determining the ceiling area to which a tenure-holder is entitled the relevant date should be the date of the enforcement of the Act, viz. the 3rd January, 1961, and not any subsequent date. Any issue born to the tenure-holder or any addition in the membership of the family after the said date should, therefore, be disregarded for the purpose of determining the ceiling area of a tenure-holder. In this view of the matter, the Prescribed Authority rejected the objection of Kedar Nath in this regard.

2. Dissatisfied with the said order, Kedar Nath filed an appeal before the District Judge u/s 13 of the Act. The appellate Court reversed the decision of the Prescribed Authority in this regard. It took the view that there was nothing in the Act to justify the conclusion that the number of members of a family of a tenure-holder is to be determined with reference to the date on which the Act came into force. It, accordingly, came to the conclusion that the objector Kedar Nath was entitled to an additional area of eight acres in view of the fact that a son was born to him subsequent to the date on which the Act came into force. The appeal of Kedar Nath was, therefore, allowed in this regard.

3. Dissatisfied with the order passed by the learned District Judge, Kheri in appeal, the State has filed the present writ petition under Article 226 of the Constitution of India. The prayer in this writ petition is that this Court should issue a writ in the nature of certiorari or any other writ, order or direction quashing the order dated the 14th March, 1963, passed in appeal by the District Judge, Kheri opposite party No. 1. Kedar Nath. as mentioned above, was impleaded as opposite party No. 2 in this writ petition. None of the opposite parties has been represented before us in this writ petition. The State has, however, pressed this writ petition through, its learned counsel. This writ petition originally came up for hearing before Sharma, J. who referred it to a Bench on the ground that it involved a question of some legal importance on which there was no decision of this Court.

4. Having heard the learned counsel for the State, we are of opinion that there is force in the contention advanced on behalf of the petitioner.

5. In the present case the concurrent finding of fact arrived at by the Prescribed Authority as well as the appellate Court is that the son whose birth increased the number of members of the family from five to six was born in February 1961. This finding of fact cannot be questioned at this stage and must, therefore, be accepted as correct, for the purpose of the disposal of this writ petition. The Act admittedly came into force on the 3rd January, 1961. It must, therefore, be held

that the sixth member of the family was born after the coming into force of the Act. The sole question that arises in the present case is whether the addition of a member of the family after the coming into force of the Act should be taken into consideration in determining the ceiling area to which a tenure-holder is entitled.

6. On behalf of the State it is argued that the relevant date for determining the ceiling area is the date on which the Act came into force, namely the 3rd January, 1961. Any addition in the family subsequent to the coming into force of the Act should, therefore, be discarded for the purpose of determining the ceiling area. The expression "ceiling area" is defined in Section 3 (a) of the Act. The term "family" is defined in Section 3 (c) of the Act. Sub-section (1) of Section 4 lays down as follows :

"4. Ceiling area.--(1) Subject to the provisions of this Act, the ceiling area applicable to a tenure-holder shall be calculated after taking into account all the land in any holding in the State held by him, in his own right, whether in his own name or ostensibly in the name of any other person.

(2) (a) The ceiling area of a tenure-holder shall be forty acres of Fair Quality Land.

(b) Where the tenure-holder has, or consists of, a family having more than five members, the ceiling area of such tenure-holder shall be the area mentioned in Clause (a) together with eight acres of Fair Quality Land for every additional member of the family, subject to a maximum of twenty-four such acres :

Provided that, if at any time the family comes to consist of not more than five members all land held by the tenure-holder in excess of the ceiling area under clause (a) shall become liable to be treated as surplus land. "

Explanation--(Omitted as irrelevant)."

7. On behalf of the State strong reliance is placed on the provisions of Section 9 of the Act which lays down the contents of the general notice which has to be issued by the Prescribed Authority to the tenure-holders holding land in excess of ceiling area for submission of statement in respect thereof. Section 9 lays down as follows:

"As soon as may be, after the date of enforcement of this Act, the Prescribed Authority shall, by general notice, published in the Official Gazette, call upon every tenure-holder holding land in excess of the ceiling area applicable to "him on the date of enforcement of this Act", to submit to him within 30 days of the date of publication of the notice, a statement in respect of all his holdings in such form and giving such particulars 28 may be prescribed. The statement shall also indicate the plot or plots for which he claims exemption and also those which he would like to retain as part of the ceiling area applicable to him under the provisions of this Act."

The crucial words in the above section are "on the date of enforcement of this

Act". These words which have been underlined (here in " ") in the above quotation, to our mind, clearly indicate that the relevant date for determining the ceiling area is "the date of the enforcement of the Act" and not any subsequent date. The Prescribed Authority under the above provision of law is required to call upon the tenure-holder to submit before it a statement of his claim in respect of the ceiling area to which he is entitled in relation to the date of enforcement of the Act.

Section 9 relates to the general notice that is Issued by the Prescribed Authority. Section 10 relates to the special notice to be issued by the Prescribed Authority to tenure-holders failing to submit a statement or submitting an incomplete or incorrect statement. Sub-section (1) of Section 10 provides that where a tenure-holder has failed to submit a statement or submits an incomplete or incorrect statement required to be submitted by him u/s 9, the Prescribed Authority shall, after making such enquiry as he may consider necessary either by himself or by any person subordinate to him, cause to be prepared a statement containing such particulars as may be prescribed.

The statement prepared under this section has also, therefore, to be in accordance with the provisions of Section 9. Sub-section (2) of Section 10 provides that the statement prepared by the Prescribed Authority under sub-Act, be entitled to hold an area in excess of the ceiling upon him to show cause within a period specified in the notice why such statement should not be taken as correct. It is, therefore, clear that the statement prepared u/s 10 of the Act which is served on the tenure-holder along with the notice is also prepared with reference to the date of the enforcement of the Act.

8. The view that the ceiling area is to be determined with reference to the date of the enforcement of the Act also finds support from the provisions of Section 5 of the Act. Sub-sections (1) and (2) of Section 5, which are relevant in this connection, provide as follows:

"5. Imposition of ceiling of existing land holdings :

(1) As and from the date of enforcement of this Act no tenure-holder shall, except as otherwise provided by this Act, be entitled to hold an area in excess of the ceiling area applicable to him, anything contained in any other law, custom or usage for the time being in force, or agreement, to the contrary notwithstanding.

(2) In determining the ceiling area applicable to a tenure-holder at the commencement of this Act any transfer or partition of land made after the twentieth day of August, 1959, which but for the transfer or partition would have been declared surplus land under the provisions of this Act, shall be ignored and not taken into account."

A perusal of Sub-section (1) of Section 5 quoted above indicates that the excess of the ceiling area applicable to a tenure-holder is also to be determined "as and from the date of the enforcement of this Act." Further, Sub-section (2) of Section

5 also supports the same conclusion in so far as it lays down that any transfer or partition made after the 20th of August, 1959, is to be ignored for the purpose of determining the ceiling area allowable at the date of the commencement of the Act i.e. at the date of enforcement of the Act. The cumulative effect of the provisions of Sections 9, 10 and 5 of the Act cited above, therefore, is to point irresistibly to the conclusion that the relevant date for determining the ceiling area as contemplated by the framers of the Act was the date of the enforcement of the Act and not any date subsequent thereto,

9. In coming to the contrary conclusion, the learned District Judge has relied on the proviso to Sub-section (2) of Section 4 cited above. This proviso runs as follows):

"Provided that, if at any time the family comes to consist of not more than five members, all land held by the tenure-holder in excess of the ceiling area under Clause (a) shall become liable to be treated as surplus land."

This proviso relates to a subsequent stage and refers to a contingency in which the number of members of the family is reduced to five or below five. It is, therefore, obvious that where the framers of the Act intended to deal with a future contingency, they have expressly made provision in regard to it. The only future contingency contemplated in this proviso relates not to the addition of the members of the family above five but to the reduction of the members of the family to five or below that number. In the present case we are concerned not with the reduction of the members of the family to or below five but with the addition of the members of the family above five. The framers of the Act have, therefore, made an express provision in respect of the reduction of the members to or below five, but not in respect of the addition of the members above five.

We fail to see how this proviso which is appended to Sub-section (2) of Section 4 has the effect of nullifying or defeating the mandatory provisions of Section 9 of the Act and the necessary inference that follows from the provisions of Sections 10 and 5 of the Act. The very fact that the legislature has made express provision only in respect of a future contingency relating to the reduction of the members to or below five and not to the addition of the members above five shows that the legislature wanted to disregard the addition of members of the family above five as a future contingency to be taken into consideration after the coming into force of the Act. Further it is also obvious that the occurrence of the future contingency contemplated in the proviso operates not to the advantage of the tenure-holder but to the disadvantage of the tenure-holder. We fail to understand how a proviso which deals with a contingency which accrues to the disadvantage of a tenure-holder can be utilised for the purpose of supporting an interpretation which gives him an advantage.

10. The learned District Judge has further observed in his order as follows :

"There is nothing in the Act to justify an inference that a person born after the Act came into force should not be included in the family of the tenure-holder."

While making the above observation the learned District Judge obviously ignored the clearly mandatory injunctions of Section 9 of the Act as well as the provisions of Sections 10 and 5 of the Act referred to above. In fact, the judgment of the learned District Judge is conspicuous by the absence of any reference to the provisions of Section 9 of the Act, which is the crucial provision in this regard as well as to the provisions of Sections 10 and 5 of the Act which are also relevant in this connection.

11. For the above reasons, we are of opinion that there is an error of law in the order passed by the learned District Judge and the error is a manifest one. The impugned order, therefore, suffers from a legal error apparent on the face of the record and interference by way of a writ is called for in the present case. We, accordingly, allow this writ petition and direct that a writ of certiorari be issued quashing the order of the learned District Judge dated the 14th March, 1963.

12. In view of the fact that the opposite parties were not represented before us, we, pass no order as to costs.