
(1972) 12 AHC CK 0034
In the Allahabad High Court
Case No : Special Appeal No. 334 of 1968

State of U.P. and Others

APPELLANT

Vs

Smt. Vidhya Wati

RESPONDENT

Date of Decision : 08-12-1972

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 3, 3(1), 4, 5

Citation : AIR 1973 All 409

Hon'ble Judges : Satish Chandra, J;P.N. Bakshi, J

Bench : Division Bench

Advocate : B.L. Yadava, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—In pursuance of a notice u/s 10(2) of the Imposition of Ceiling on Land Holdings Act, 1960. Smt. Vidya Wati, respondent filed an objection that her sons were tenure-holders in their own separate rights within meaning of the Act and their share of the holding cannot be taken into consideration while declaring her ceiling area. This objection was rejected by the Prescribed Authority and the finding was upheld in appeal by the learned District Judge, Bijnor. Smt. Vidya Wati instituted a writ petition. A learned single Judge upheld her contention that the primary question to be determined was whether the sons of Smt. Vidya Wati were holders of a holding in their own separate right or not. This question was not determined by the authorities below. On this view the writ petition was allowed and the matter was sent back for decision afresh. Aggrieved, the State has come up in appeal,

2. The finding is that Smt. Vidya Wati and her two sons are recorded jointly over the holdings in dispute. The records do not carry any specification of the shares of the three co-sharers. The question is whether the entire holding can be taken into consideration while determining the ceiling area of the respondent Smt. Vidya Wati.

3. Section 4 of the Imposition of Ceiling on Land Holdings Act provides that 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. Section 5 provides a limit to a tenure-holder from holding land in excess of the ceiling area applicable to him. Sub-section (2) thereof states that in determining the ceiling area applicable to a person 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. It will thus be seen that the entity whose ceiling area has to be determined is the tenure-holder. A partition in the family of such a tenure-holder, which may have taken place after the 20th day of August, 1959, has to be ignored for purposes of determining the ceiling area of the tenure-holder.

4. Clause (1) of Section 3 of the Act defines "tenure-holder" to mean an individual or a person who is the holder of a holding. Clause (f) defines a "person" to include the family. Thus a family can also be a tenure-holder for the purposes of this Act.

5. Clause (c) of Section 3 defines "family" as follows:--

"(c) "Family" means as consisting of the holder of a holding and any or all of his following relations not being tenure-holders in their own separate right;

(i) wife or husband, as the case may be;

(ii) dependant father and dependant mother;

(iii) son and son's son, as long as they are unseparated from the holder;

(iv) wife or widow of the persons mentioned in Sub-clause (iii);

(v) daughter and unseparated son's daughter, as long as they are unmarried:

Provided that where a relation falls under the above clause in more than one family, he shall nevertheless be a member of only one family in accordance with his choice, if he is under any disability, in accordance with the choice of the person legally authorised to do so on his behalf.

Explanation:-- For the purpose of this clause a son shall be deemed to be separate where land is recorded separately in his name or where his separate share has been declared under ft family settlement, either registered or acted upon prior to the twentieth day of August, 1959 or by a decree of court passed prior to or in a suit pending on the twentieth day of August, 1959, or where a separate land has been assigned to him u/s 12-B of the U.P. Consolidation of Holdings Act, 1953, or the separation of his share has been accepted under the U.P. Large Land Holdings Tax Act, 1957."

The definition brings in all the stated relations of a person within the family of

that person. If a person has a family consisting of himself and relations mentioned in Clause (c), then the family as a unit is deemed by the Act to be the tenure-holder for purposes of Sections 4 and 5.

The definition of "family" makes an exception in the case of relations who are tenure-holders in their own separate right. The Explanation defines who are the tenure-holders in their own separate right. It says that a son or sons' son shall be deemed to be separate when either the land is recorded separately in his name or where his separate share has been declared prior to 20th of August, 1959. This provision coincides with the provision of Section 5 (2) in relation to partition between a joint family. The explanation is specifically confined to son or son's son of a person. Therefore, if a person is a member of a joint family with his son or son's son, the son or son's son will not be the tenure-holder in his own separate right unless either of the two conditions mentioned in the explanation are satisfied, viz., either the son or sons' son is recorded separately or his separate share has been declared prior to 20th day of August, 1959, either by a family settlement or by a decree of a court etc. as mentioned in the Explanation. If these conditions are not satisfied, then a son or son's son of a person will be included in the family of that tenure-holder and cannot be considered as a tenure-holder in his own separate right for purposes of determining the ceiling area of the father or the grandfather as the case may be. This position is reached irrespective of the fact that the son or son's son may have a share in the family holding. As a member of the family the son may have an interest in it by birth depending upon the personal law applicable to him, but that will make no difference to the proceedings for the determination of the ceiling area of the head of the family. The position becomes clear if one keeps in mind that the scheme of the Act is to determine the ceiling area of a family as a unit where the family consists of persons with the kinds of relations mentioned in Clause (c) of Section 3.

6. The phrase "holder of a holding" occurring in the definition of the word "tenure-holder" refers to the person who is the holder. One person will be the holder in the case of a family consisting of himself and the stated kinds of relations. He is the head of a family because he in such a case represents the family. When there is a family of the kind mentioned in Clause (c) then the family is treated as a unit and is represented by its head. The other members of such a family are not deemed to be holders of a holding in their own independent right so that their share which is undefined may be excluded while determining the ceiling area of the family.

7. In the present case the finding is that Smt. Vidya Wati and her two sons were recorded jointly. There was thus no separate record in the name of the sons. Admittedly, there was no partition of the holdings prior to the 20th day of August, 1959. The entire holding had to be considered while determining the ceiling area.

8. In the result, the appeal succeeds and is allowed. The judgment of the learned

Single Judge is set aside and the writ petition is dismissed. As no one has appeared on behalf of the respondents, we make no order as to costs.