

(2010) 04 AHC CK 0117
In the Allahabad High Court

State of U.P.

APPELLANT

Vs

The Additional Commissioner (Judicial) Lucknow Division and
Others

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Transfer of Property Act, 1882 — Section 53, 53A

Citation : (2010) 04 AHC CK 0117

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Sharma, J.—Heard learned Standing counsel appearing for the petitioner and Sri Virendra Singh who has put in appearance on behalf of respondents No. 3 to 39.

2. Through this writ petition the petitioner (State of U.P) has assailed the judgment and order passed by the Prescribed Authority (ceiling) on 31.8.89 and the order dated 31.1.91 passed by Additional Commissioner, Lucknow Division, Lucknow. The Prescribed Authority had allowed the objections filed by the respondent Nos. 3 to 36. The Prescribed Authority dealt with objections put forth by the respondent Nos. 3 to 38 and passed the order on 31.8.89, declaring that no surplus land was available with the said tenure holders. There land holdings were excluded from operation of the Rural Ceiling Act. The details of the land Gata/plots in respect of 27 objectors situated in village Dhakherwa Khalsa, Tehsil Nighasan, District Lakhimpurkheri have been given in judgment itself.

3. The proceedings under the U.P. Imposition of Ceiling on Land Holding Act, 1960(Old Act) were initiated in the above said village. The formal proceedings u/s 10(2) of the old Act of 1960 were taken against tenure holder Asif Ali son of Ejaj Ali, resident of Lakhimpur Kheri, who has been impleaded as respondent no 39 to this petition. After determination of the ceiling area of Sri Asif Ali the Prescribed Authority declared the total area of 647.26 acres of land as surplus area vide an

order dated 27th April, 1963. Details of the land (Khata no, Gata No. and Area) have been given in para 4 of this writ petition. Subsequently, after about 18 years a large number of tenure holders i.e. opposite party Nos. 31 to 33 jointly filed an application dated 27.1.81 u/s 11(2) of the Ceiling Act before the Prescribed Authority (ceiling). This application was supported by an affidavit and application seeking condonation of delay was also annexed. It was alleged by the respondent Nos. 3 to 33 that they are transferries of the land and Bhumidharas of the disputed land situated in village Dhakherwa Khalsa, Tehsil Nighasan, District Lakhimpurkheri. The sale deeds, which were executed in the year 1961-62, were placed on record. According to them they had purchased the land in dispute from the original tenure holder in furtherance of an agreement to sell dated 25th May, 1959. All of them had claimed that they had paid substantial amount at the time of executing agreement and the possession of the land was delivered to them. Since May, 1959 they have been cultivating and in possession over the land in dispute details of which have been given in the memo of the writ petition. It was emphasized before the Court that the writ petition was admitted on 17th April, 93 and operation of the impugned orders was stayed by this Court. Private respondents (poor farmers) are in possession over the land for more than 51 years and their families are solely dependent on the agricultural income derived from the land. The opposite parties No. 3 to 32 submitted before the Prescribed Authority that all of them possess little land and they are not covered under the provisions of Ceiling Act. Most of them were refugees from Punjab as a result of partition occurred in 1947. They had settled in backward region Lakhimpur Kheri and they are being dispossessed after tilling the same for a long period. It was also submitted by the private respondents that after taking possession over the land their names were mutated in the revenue records. That the land owned Sri Asif Ali respondent No. 39 was found to be surplus and the respondent Nos. 3 to 33 lands were also clubbed with that of Sri Asraf Ali. They had developed the land by putting hard work.

4. The matter was contested before the Prescribed Authority, the State had examined Lekhpal, Assistant Registrar Kanoongo and placed the records. The Prescribed Authority has allowed the objections and took note of the agreement to sell, with the event of handing over possession over the land to the farmers on 25.5.59. This event was much earlier to 6th January, 1961, the appointed date. According to them, the agreement to sell was executed by Sri Asif Ali's father he had received adequate consideration and handed over possession of the land to the respondent Nos. 3 to 35. The land did not belong to Ashif Ali and as such the private respondents cannot be deprived of their land due the reason that it was originally owned by said Asif Ali. The State filed an appeal No. 325 of 1990, which was heard and decided by Additional Commissioner (Judicial) Lucknow Division, Lucknow. The appeal was dismissed by the Appellate Authority on 31.1.91. It was barred by law of limitation.

5. Learned Standing counsel has assailed the orders passed by the Prescribed Authority and the Appellate Authority on various grounds. According to him the

sale deeds were executed much later than 25.5.59, it was the land owned by Asif Ali respondent No. 3 9. Since the land was covered under the ceiling laws as surplus land, the respondent Nos. 3 to 33 and others had no right to cultivate the same. It was a surplus land. Allotments in favour of the land less persons were made. The Prescribed Authority and the Appellate Authority had committed manifest error of law and jurisdiction in not considering these pleas of the State of U.P. The Appellate Authority had taken a hyper technical view and not given benefit of limitation to the petitioner. There were several administrative exigencies and as such appeal could not be filed within the prescribed period.

6. The agreement to sell was not a legal and valid agreement. The benefit of Section 53A of Transfer of Property Act could not be available to the contesting private respondents. They have no right to carry on cultivating the land after its being is declared surplus land.

7. I have heard learned Counsel for the for the petitioner and the learned Counsel for the respondents and perused the record.

8. It was noteworthy that in the present case the farmers of Tarai area of Lakhimpur Kheri are migrants from West Punjab, refugees they came in large numbers and were settled in Tarai region of Uttar Pradesh. Naturally for sustenance they required additional land for sustaining their growing families. It is evident from the record that admittedly the agreement to sell was executed on 25.5.59 after handing over possession. Adequate consideration was paid by them. The possession of the land was admitted by handed over to the farmers. They started cultivating the land since May, 1959, more than 51 years have now passed and the farmers are still in possession over the agricultural land. They have developed the land and are involved in growing food grains, vegetables, sugarcane in the Tarai region. It is correct that Section 5(2) of the Old Ceiling Act forbids transfer of land after 20th August, 1959. In the present case the transfer of land actual handing over possession had already been taken place in May, 1969. The Kharif crop is shown some time in June and July. Since the possession had already been handed over in May, 1959 there was nothing left to be taken in possession after 25th May, 1959. In fact there was no land available with original tenure holder to be taken by the State Government. The Prescribed Authority has taken note of Section 53A of the Transfer of Property Act. The title might not have been transferred, but the entire land was in fact under legal occupation possession of the farmers. Respondent Nos. 3 to 33. The benefit of Section 53A of the Transfer of Property Act could be given to the farmers. The event of 25.5.59 was taken note of by the concerned Revenue Department, and the land was mutated in the name of the private respondents, recording their names in the Khatauni and the other revenue records. In the present case the Appellate Authority had dismissed the appeal on the ground of limitation by writing a reasoned and speaking order.

9. In the present case, the Nayab Tehsildar and other authorities had knowledge of the order dated 31.8.89 passed by the Prescribed Authority. He had taken

note of the order by putting the signatures on 4.9.89. Despite knowledge no appeal was preferred within the specified period of 90 days. The Appellate Authority had dismissed the appeal while exercising his powers u/s 13 of the Ceiling Act. The delay was explained by the State by giving cogent reasons.

10. Both the ceiling authorities i.e. Prescribed Authority and the Appellate Authority have dealt with matter in detail, reasoned and speaking orders were passed, dealing with factual dispute. After taking possession the land in question it was used and developed, thus it can be said to be part performance of the agreement or a transfer of land as per Section 53 of the Transfer of Property Act. Sri Asif Ali had lost possession of the land forever and he was not in a position to provide any land to the State Government as a result of the conclusion of the ceiling proceedings.

11. This Court has also noticed that the farmers, respondent Nos. 3 to 33 and others were not given opportunity of hearing before declaring their land surplus. They were transferees of land. The provisions contained in Section 11(2) and Rule 8 of Ceiling Act were not violated in the present case. The recorded tenure holder should have been given notices before taking any adverse action against them. They could not have been dispossessed from the land in dispute without following due procedure prescribed in law. The case of the private respondent is covered by the following judgments cited by the learned Counsel for the respondents.

1. Rajvir Singh v. Board of Revenue, U.P. and Ors. RD 1974 14.
2. K.K. Handique Vs. Member, Board of Agricultural Income Tax, Assam,
3. State of U.P. v. District Judge 1980 AWC 439.
4. Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another,
5. Dal Chand v. District Judge, Mathura and Ors. RD 1967 40.
6. Rashid Khan and Ors. v. State of U.P. and Ors. RD 1986 14
7. Hari Ram and Ors. v. Special Addl. D.J. Faizabad RD 1989 295.
8. Premnath Motors (P) Ltd. New Delhi v. Bhadur Chand Dhawan and Ors. AIR 1981 215.
9. State of Uttaranchal through Collector Udham Singh Nagar v. Vinod Kumar and Ors. RD 2006 179.

12. In view of above discussion the order passed by the Appellate Authority and Prescribed Authority are unassailable. These are just, legal, valid and proper orders. The farmers could not be deprived of their land after cultivating the same for the last 51 years. They cannot be deprived of their cultivated irrigated land which they have developed during this long period.

13. With the above observation the writ petition is accordingly dismissed. Consequences shall follow. The entries in the Revenue and Consolidation Records shall be accordingly corrected.