

(1991) 04 AHC CK 0077
In the Allahabad High Court
Case No : Writ Petition No. 2204 of 1981

State of U.P., through Collec?tor, Bahraich	APPELLANT
Vs	
Mukh Ram Singh and Another	RESPONDENT

Date of Decision : 03-04-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 4A

Citation : (1991) 04 AHC CK 0077

Hon'ble Judges : S.N.Sahay, J

Final Decision : Dismissed

Judgement

S.N. Sahay, J.—The only question which arises for determination in this writ petition is whether plot No. 89A is an irrigated land or not within the meaning of Section 4A of the U.P. Imposition of Ceiling on Land Holdings Act, 1960. It was held by the Prescribed Authority that the above mentioned plot is an irrigated plot. But this finding was reversed in appeal by the learned IInd Additional District Judge, Bahraich. He has taken the view after examining the entries in Khasra of 1380 fasli and entries made in the notice issued under the aforesaid Act that the said plot is unirrigated land.

2. Learned counsel for the petitioner has relied on the provisions of Section 4A and the findings recorded by the Prescribed Authority. The material portion of Section 4A reads as follows:

?The prescribed authority shall examine the relevant khasras for the years 1378 Fasli 1379 Fasli and 1380 Fasli, tie latest village map and such other records as it may consider necessary, and may also make local Inspection where it considers necessary, and thereupon if the prescribed authority is of the opinion: thirdly,

(a) that any land is situated within the effective command area of a lift irrigation canal of a State tube well or a private irrigation work; and

(b) that the class and composition of its soil is such that it is capable of growing

at least two crops in an agricultural year; then the Prescribed Authority shall determine such land to be irrigated land for the purpose of this Act.

Explanation 1. For the purpose of this section the expression effective command area means an area, the farthest field whereof in any direction was irrigated

(a) in any of the years 1978 Fasli, 1379 Fasli and 1380 Fasli; or

(b) in any agricultural year referred to in the clause "secondly".

There are two other explanations which are not material for the purposes of this case.

3. It will be clear from a perusal of the abovementioned provisions that before a land may be held to be an irrigated land, it is the duty of the Prescribed Authority to examine the relevant khasras for the years 1378 Fasli to 1380 Fasli, the latest village map and such other records as may be considered necessary. Then he may also make local inspection where it is considered necessary. After that, the Prescribed Authority has to record a finding whether the land is situated within the effective command area of a lift irrigation canal of a State tube well or a private irrigation work and also whether the class and composition of its soil is such that it is capable of growing at least two crops in an agricultural year. If the prescribed procedure has not been followed and no such findings are recorded then the Prescribed Authority will have no jurisdiction to determine the land to be an irrigated land for the purposes of the Act.

4. In the present case, it has been observed by the Prescribed Authority in his judgment that he did not examine the khasras for 1378 to 1380 Fasli because they were not produced by the party concerned. He has mentioned that there are private tube wells near the disputed plot and only on this basis he had recorded the finding that the said plot is an irrigated land. It was open to the Prescribed Authority to ask for the Khasras from his own records and examine the same, and not only the khasras but also the village map and other necessary records. He has not specifically recorded the finding that the class and composition of the soil is such that it is capable of growing at least two crops in an agricultural year. Therefore simply because there are two tube wells near the disputed plot, it cannot be held in view of Section 4A, and clause thirdly of that Section, that it is an irrigated plot. Moreover the finding recorded by the learned Additional District Judge is a finding of fact based on appreciation of evidence including entries in Khasra 1380 Fasli and there is no justification to interfere with the said finding, in the writ petition. It may be incidently mentioned that the learned counsel for the opposite parties has also referred to the case reported in 1979 AWC 9 Dharendra Mohan Chaudhary and others v. IInd Additional District Judge, Bareilly and others, in which it has been held that in order that a land may be termed as irrigated one, it is necessary that the land must be irrigated from the canal or any lift irrigation canal or any State tube well or a private irrigation work and that even if the land is irrigated by boring tube well, it cannot be said that the irrigation work was done from a private irrigation work and it cannot be termed

as irrigated land.

5. The writ petition accordingly fails and it hereby dismissed. No order as to costs.