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**(2007) 05 AHC CK 0109**  
**In the Allahabad High Court**

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|------------------------------------|----|------------|
| Super Cassettes Industries Limited | Vs | APPELLANT  |
| State of Uttar Pradesh             |    | RESPONDENT |

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**Date of Decision :** 24-05-2007

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 96

**Citation :** (2007) 7 AWC 6816 : (2007) 103 RD 164

**Hon'ble Judges :** S.U. Khan, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

This Judgment has been overruled by : Super Cassettes Industries Ltd. Vs. State of Uttar Pradesh and Another, (2009) 13 JT 272 : (2009) 12 SCALE 656 : (2009) 10 SCC 531 : (2009) 15 SCR 627 : (2009) 9 UJ 4474 : (2010) AIRSCW 140 : (2009) 7 Supreme 299

S.U. Khan, J.—Heard Sri Ravi Kiran Jain learned senior counsel assisted by Sri Ayyub Khan learned Counsel for the petitioner, learned standing counsel for original respondents State of U.P and Additional Commissioner and Sri Pradeep Kumar learned Counsel appearing on behalf of Greater Noida Gautam Budh Nagar which has been impleaded through order dated 4.4.2007 passed on its impleadment application.

2. Prescribed authority under U.P Imposition of Ceiling on Land Holdings Act, 1960/Additional Collector (F & R) Gautam Budh Nagar in case No. 5 of 2002 u/s 9(2) of the Act State v. Super Cassettes Industries Limited passed an order on 17.12.2003 cancelling the notice dated 24.1.2002 u/s 9(2) of the Act. Against the said order State filed appeal before Commissioner being Appeal No. 3 of 2003-04. In the appeal petitioner who is respondent therein raised an objection that appeal was not maintainable. Additional Commissioner (Administration), Meerut Division Meerut through order dated 29.10.2004 rejected the objection and held the appeal to be maintainable. This writ petition is directed against the

said order of the appellate court.

3. Provision of appeal is provided u/s 13(1) of the Act, which is quoted below:

Any party aggrieved by an order under Sub-section (2) of Section 11 or Section 12, may, within thirty days of the date of the order, prefer an appeal to the [Commissioner] within whose jurisdiction the land or any part thereof is situate.

4. The question to be decided in this writ petition is as to whether the order of the prescribed authority against which appeal has been filed falls under Sub-section (1) or Sub-section (2) of the section 11 of the Act. If the order falls under Sub-section (1) then appeal is not maintainable.

5. u/s 9 as it stood prior to 1973, prescribed authority was required by general notice published in the Official Gazette to call upon every tenure holder holding land in excess of the ceiling area applicable to him to submit within thirty days statement in respect of his holdings giving particulars as prescribed. By virtue of U.P. Act No. 18 of 1973, section 9 as it stood till then was renumbered as Sub-section (1) of Section 9. Sub-sections (2), (2-A) and (3) were added in Section 9 through the said amendment. Section 9 (2) along with its proviso is quoted below:

Section 9[(2) As soon as may be; after the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings Amendment) Act, 1972, the Prescribed Authority shall, by like general notice, call upon every tenure-holder holding land in excess of the ceiling area applicable to him on the enforcement of the said Act, to submit to him within 30 days of publication of such notice, a statement referred to in sub-section (1)]

[Provided that at any time after October 10, 1975, the Prescribed Authority may, by notice, call upon any tenure holder holding land in excess of the ceiling area applicable to him on the said date, to submit to him within thirty days from the date of service of such notice a statement referred to in Sub-section (1) or any information pertaining thereto.]

6. It appears that under the powers granted by the aforesaid proviso general notice was issued on 24.1.2002, copy of which is annexure 2 to the writ petition. The said notice as it top contains the provision of Section 9(2) of the Act. In the first para of the said notice given by Additional Collector (F & R) Gautam Budh Nagar, it is stated that as per report of Deputy Collector and Tehsildar, petitioner had unauthorisedly encroached upon the land in question. Thereafter it is mentioned in the notice that every tenure holder who on 8.6.1973 possessed more land than permitted to be held under the ceiling Act should file statement in CLH Form 2.

7. CLH Forms 1 and 2 are referred in Rule 6 of the rules framed under the Act, which is quoted below:

6. The general notice to be published in pursuance of Section 9 and the

statement required to be submitted thereunder by every tenure holder holding the land in excess of the ceiling area applicable to him in the State shall be in CLH Forms 1 and 2 respectively.

8. Rules 7 and 8 are also relevant hence they are quoted below:

7. (1) Soon after the issue of general notice in C.L.H. Form 1, the Prescribed Authority shall, after making necessary, enquiries cause to be prepared a statement in C.L.H. Form 3.

2. In proposing the ceiling area applicable to a tenure-holder in part C of C.L.H Form 3, the Prescribed Authority shall have regard to the following:

[(a)\*\*\*\*]

(b) As far as possible, sub-division of holdings should be avoided by including in the first instance share of the tenure- holder in joint holdings in the proposed ceiling area applicable to the tenure-holder.

(c) The ceiling are proposed to be given to the tenure-holder should be as compact as possible.

[8. As soon as may be, after the expiry of thirty days from the date of publication of the general notice in C.L.H. Form 1 in the Official Gazette, the Prescribed Authority shall causes to be served upon every tenure-holder, who has failed to submit the statement in C.L.H Form 2 or, has submitted an incomplete or incorrect statement, a notice in C.L.H. Form 4 together with a copy of the statement in C.L.H Form 3 prepared under Rule 6 calling upon him to show cause within a period of fifteen days from the date of service of the notice why the aforesaid statement be not taken as correct:

Provided that where the statement in C.L.H. Form 3 also includes land ostensibly held in the name of any other person, the prescribed authority shall cause to be served upon such other person a notice in C.L.H. Form 4 together with a copy of the statement in C.L.H. Form 3 calling upon him to show cause within a period of fifteen days from the date of service of the notice why the aforesaid statement be not taken as correct:

Provided further that in the case of a tenure-holder who is a member of Armed Forces (Military, Naval or Air Force of the Union of India, the period within which he will be called upon to show cause why the statement in C.L.H. Form 3 be token as correct shall be ninety days from the date of service<sup>1</sup>, of the notice in C.L.H. Form 4.]

9. In pursuance of notice dated 24.1.2002, petitioner filed objections, copy of which is annexure 3 to the writ petition. From perusal of the objections dated 4.6.2002, it appears that notice dated 24.1.2002 contained some annexures also which have not been annexed alongwith annexure 2, which is copy of the notice. In annexure 2 no plot number is mentioned. However, in the objections it is mentioned that alongwith notice CLH Form 5 was annexed mentioning number of

plots belonging to the petitioners i.e. Khata No. 33, 93 and 102. The main objection was that land had been purchased through three different sale deeds of March and April 1987; that most of the lands purchased were non agricultural as the vendor had already obtained a certificate to that effect u/s 143 of U.P.Z.A.L.R Act. In respect of third Khata i.e. Khata number 102 the objection was that it was abadi land. It was also mentioned that while preparing CLH Form 5 land was wrongly shown to be irrigated.

10. Thereafter prescribed authority decided the matter on 17.12.2003. Prescribed authority in its detailed Judgment running into 15 pages held that provisions of Section 9(2) of the Act were not applicable. Section 11 of the Act is quoted below:

Section 11. Determination of Surplus land where no objection is filed. - (1) Where the statement submitted by a tenure holder in pursuance of the notice published u/s 9, is accepted by the Prescribed Authority or whether the statement prepared by the Prescribed Authority or u/s 10 is not disputed within the specified period, the Prescribed Authority shall accordingly, determine the surplus land of the tenure-holder.

(2) The Prescribed Authority shall, on application made within thirty days from the date of the order under Sub-section (1) by a tenure holder aggrieved by such order passed in his absence and on sufficient cause being shown for his absence, set aside the order and allow such tenure-holder to file objection against the statement prepared u/s 10 and proceed to decide the same in accordance with the provisions of Section 12.

(3) Subject to the provisions of Section 13, the order of the Prescribed Authority shall be final and conclusive and be not questioned in any court of law.

11. On 22.05.2007 and 23.05.2007, matter was heard again in respect of discrepancy between the notice and objection. Learned Counsel for the petitioner supplied certain documents, which<sup>1</sup> were, taken on record. Learned Counsel for the petitioner stated that in reply to the notice dated 24.01.2002, initially reply/objection was filed by the Petitioner on 21.02.2002. Copy of the said objection has been supplied. u/s 9(2) statement/reply is to be filed within 30 days. The reply dated 21.02.2002 was within 30 days from the notice dated 24.01.2002.

12. In the order Passed by the Prescribed Authority in favour of the petitioner (Annexure-8 to the writ petition), it is mentioned on internal Page 8 (Page 45 of the Paper Book) that in pursuance of order dated 23.05.2002, petitioner had submitted statement of his land. On 22.05.2007 and 23.05.2007, learned Counsel for the petitioner was required to file copy of order dated 23.05.2002. However, the said copy was not supplied instead, the statement filed by the petitioner was supplied on 23.05.2007, which at its top mentions in bold letters that it is statement of tenure-holder in compliance of order dated 23.05.2002.

13. Rule 12 is quoted below:

Objections filed u/s 10 and 11 shall be entered in Misal Band Register in C.L.H. Form 5.

14. The fact that in the reply dated 04.06.2002, reference was made to C.L.H. Form 5 makes it quite clear that the reply was u/s 10(2) of the Ceiling Act.

15. Moreover, notice under proviso to Section 9(2) is more akin to a notice u/s 10 of the Act.

16. However, the most important thing is that quoting of wrong provision either in notice or reply or order is never fatal. It is the essence, which is to be seen. No appeal against orders u/s 11(1) of the Act is maintainable for the reason that under the said sub-section, no adjudication takes place. Under the said sub-section, orders are passed on admission. Just as u/s 96, C.P.C., no appeal is maintainable against decree passed by the Court with the consent of Parties similarly, against orders passed u/s 11(1) of the Ceiling Act, no appeal is maintainable. Under the said sub-section, either tenure-holder accepts the case of the State or State accepts the case of the tenure-holder without any contest or adjudication. However, if matter is disputed by either party and thereafter Prescribed Authority adjudicates the dispute either in favour of the State or tenure-holder, the order falls u/s 11(2) of the Ceiling Act. Such order is clearly appealable u/s 13. In the instant case, the order of the Prescribed Authority dated 17.12.2003 is clearly an order after considering and resolving the dispute. It runs into 15 pages. Each and every point of the tenure-holder has been decided after discussion of the material on record. Several points had been raised by the tenure-holder and on every point, there was a serious dispute in between tenure-holder and the State. Accordingly, the order of the Prescribed Authority cannot be said to be based on consent.

17. Moreover, copy of order dated 23.05.2002 has not been filed. It appears that through the said order, petitioner was directed to file objections on merit and confusion of provision, which was quoted in the notice dated 24.01.2002 was cleared. In any case as mentioned earlier, quoting a wrong provision is never fatal.

18. Accordingly, I hold the appeal to be maintainable. Writ petition is, therefore, dismissed.

19. As far as prayer of Greater NOIDA is concerned, no order is required to be passed thereupon. Learned Counsel for Greater NOIDA had only argued that due to continuance of stay order passed in this writ petition, some difficulties were being felt in proposed acquisition of the land in dispute along with other adjoining lands. As the writ<sup>1</sup> petition itself has been dismissed, hence interim order passed in the writ petition automatically comes to an end.