

(2003) 10 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18394 of 1986

The State of U.P.

APPELLANT

Vs

The Additional Commissioner Meerut Div. and Sri Sukhbir Singh

RESPONDENT

Date of Decision : 01-10-2003

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1973 —
Section 3(7), 5, 5(1), 5(3)

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10, 29,
30, 9

Citation : (2003) 10 AHC CK 0023

Hon'ble Judges : Yatindra Singh, J

Bench : Single Bench

Advocate : S.C, for the Appellant; R.N. Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

Yatindra Singh, J.—This writ petition deals with the interpretation of Section 29/30- of the UP Imposition of Ceiling on Land Holdings Act, 1960 (the principal Act) as amended by the UP Act no. 18 of 1973 (the amending Act). The principal Act as amended is referred to as the Act,

THE FACTS

2. A notice was issued to Sukhbir Singh (the Respondent) under the Act for determining the ceiling area applicable to him and for declaration of surplus land. In these proceedings the Prescribed Authority discharged the notice on 8.11.1974 Holding that there are 8 members in the Respondent's family namely, two wives Smt. Chameli and Smt. Lali three sons Sahbir Singh, Ajit and Kalu and two minor daughters Ombiri and Rajbiri. Subsequently an application was filed on behalf of State that Smt. Lali is not the wife of Sukhbir Singh but is the widow of Raghubir Singh brother of Sukhbir Singh and number of family members was wrongly determined. In the meantime UP Act No. 2 of 1975 was enacted and a fresh

notice was issued. In these proceedings some orders were passed and case was remanded a few times. In these orders, it was held that Smt. Lalli was not the wife of the Respondent but was the widow of his brother Raghubir Singh. The Prescribed Authority lastly by its order dated 26.12.1980 determined 3 Bigha 9 Biswa 9 Biswansi of irrigated land as surplus. The Respondent filed an appeal and raised the objections that:

? The property was ancestral Sir and Khudkast.

? His eldest son was born prior to abolition of Zamindari and he had half share.

3. The respondent also filed documents in support of his case. His appeal was allowed on 2.1.1984 on the ground that:

? The property was ancestral Sir and Khudkast in the hands of the Respondent

? His elder son was born prior to abolition of zamindari.

? The Respondent and his eldest son had half share each in the property.

In case half share is given to the eldest son then there will be no surplus land as only 3 Bigha 9 Biswa 9 Biswani of land was declared as surplus.

This order has become final. It determines that there was no surplus in the hands of the Respondent on the date of commencement of the Amending Act namely 8.6.1973.

4. During above mentioned proceeding, Smt. Lali expired on 5.2.1981. She was holder of 10 Bighas of land. It devolved on the Respondent. Subsequently a notice u/s 29/30 was served on the Respondent. He filed his objection. The Prescribed Authority, after considering the objections, held by its order dated 31.3.1986 that:

? The Respondent succeeded to 10 Bighas of land of Smt. Lalli widow of Raghubir Singh on her death on 5.2.1981 and proceeding u/s 29/30 are legal,

? This is the relevant date in proceeding u/s 29/30 of the Act and the surplus land has to be determined with reference to it.

? Plot number 296 is not a grove but irrigated land.

? Plot number 4/2 is not unirrigated but irrigated land.

? One of the Respondent's daughters (Ombiri)- who was unmarried earlier-married before 5.2.1981 and the Respondent is not entitled to any additional land on her account.

In view of these findings, 8 Bigha, 7 Biswas of land was declared as surplus land in the hands of the Respondent,

5. The Respondent filed an appeal, which was allowed on 14.7.1986. The appellate court on the basis of a single Judge decision reported in Chet Ram Vs.

The Prescribed Authority (S.D.O.) and Others, (The Chet Ram case) held that the family members are to be determined with reference to the date of commencement of Amending Act namely 8.6.1973 and on that date the respondent was entitled to additional land for her daughter Ombiri. On this finding, the notice was discharged. Hence the present writ petition.

POINTS FOR DETERMINATION

6. I have heard standing Counsel for the petitioner. No one has put up Appearance on behalf of the Respondent. Sri RN Singh has made submissions on his behalf as a friend of the Court. Following points arise for determination.

i. What is the relevant date for determining the surplus land in proceedings u/s 29/30 of the Act? Is it the date of commencement of the amending Act (i.e. 8.6.1973).

ii. In case the relevant date for proceeding u/s 29/30 of the Act is different then the date of enforcement of the amending Act (8.6.1973), then whether the of family members are to be determined with reference to 8.6.1973 or to the relevant date for the proceeding u/s 29/30 of the Act.

POINT NO. 1: THE DATE OF ACQUIRING LAND IS THE RELEVANT DATE

7. Sub-section (1) of Section 5 of the amended Act [Section 5(1)] provides that from the date of commencement of the amending Act (i.e. 8.6.1973) no tenure holder will be entitled to hold land in excess of the ceiling area applicable to him. The other Sub-sections of Section 5 provide the ceiling area applicable under the Act, Sub-section (7) of Section 3 defines the word "family". It means the tenure holder his wife or husband as the case may be, minor sons, and minor unmarried daughters. Sub-section (3) of Section 5 provides the ceiling limit of 7.30 hectares in case of a tenure holder who has a family of not more than 5 members. In case the family of a tenure holder consists of more than 5 members then he is entitled to 2 additional hectares of land for each additional member, subject to maximum of 6 hectares of additional land.

8. Sections 29 of the Act provides for the subsequent declaration of further land as surplus land provides that ceiling area is liable to be re-determined in case any tenure holder comes to hold any land in anyone of the following contingencies.

i. under the decree or order of any court,

ii. as a result of succession,

iii. by transfer,

iv. by prescription in consequence of adverse possession,

v. any un-irrigated land becoming irrigated land as a result of irrigation from the State Irrigation Work;

- vi. any grove land loosing its character as grove land, and
- vii. any land exempted under the Act ceasing to fall under any of the categories exempted.

9. Section 30 of the act provides determination of surplus land regarding future acquisition. It provides that where any land is liable to be treated as surplus land u/s 29 of the Act, then the tenure holder is required to submit a statement to the Prescribed Authority in the manner provided u/s 9 of the Act. It further provides that in case he fails to submit the same, the Prescribed Authority is to proceed for re-determination of land as provided u/s 10 of the Act. The provisions of the Act in respect of declaration, acquisition, disposal and settlement of surplus land are to be applied as far as applicable in determination of surplus land in these proceedings.

10. In the earlier ceiling proceeding the ceiling area in the hands of the Respondent was determined with reference to 8th June 1973. Smt. Lalli widow of Raghbir Singh died on 5th February 1981 and her property devolved on the Respondent. The order of the Prescribed Authority records that the Respondent did not dispute these" facts. As the Respondent acquired the land through succession, Section 29 of the Act became applicable and the surplus land in the hands of the Respondent is liable to be re-determined.

11 Section 29 and 30 provide for re-determination of ceiling area on happening of certain events; in case they are applicable then it is logical that the ceiling area should be determined with reference to the date on which those events happened. The date-on which events contemplated u/s 29 occurred-is the relevant date in proceeding u/s 29 of the Act. The date of commencement of the amending Act (i.e. 8.6.1973) is not relevant for proceeding u/s 29/30 of the Act.

12. I am not alone in taking this view. A single Judge in *Swamidin v. State of UP* 1996 (87) RD 320 (the *Swamidin* case) has held as follows:

The language of said section [section 29] is very clear which permits re-determination with reference to a date after enforcement of amending Act. This rules out the possibility of ceiling area being determined with reference to the date of enforcement of amending Act. The only date which can be taken into consideration for re-determining the ceiling area u/s 29 (b) can be the date on which an un-irrigated land becomes irrigated as a result of irrigation from State Irrigation Work and it is on fulfilment of this condition alone that the jurisdiction gets conferred on the authority concerned to re-determine the ceiling area. It is a condition precedent for invoking the power for re-determination if petitioner holds land beyond ceiling limit.

13. A division bench in *Satish Chandra Mathur v. State of UP* (1995) 2 UP Civil and Revenue Cases Reporter 1287 (the *Satish Chandra* case) has held as follows:

For the purpose of determining the ceiling area of a tenure holder on the enforcement of UP Act No. 18 of 1973, 8.6.1973 is relevant date with reference

to which it has to be determined. But as regards the land acquired or came to be held by a tenure holder after 8.6.1973, the relevant date with reference to which the ceiling area has to be determined is the date on which he acquired the land or came to hold it.

POINT NO. 2: FAMILY MEMBERS-ON THE RELEVANT DATE u/s 29

14. The date relevant for proceeding u/s 29/30 of the Act would always be later than 8.6.1973. Should the number of family members be determined with reference to 8th June 1973 or should it be determined with reference to the date relevant for proceeding u/s 29/30 of the Act? In case the family members are to be determined as on 8th June 1973 then the Respondent would be entitled to two hectares of additional land for his daughter Ombiri but in case it is to be determined on the date relevant for proceeding u/s 29/30 of the Act (i.e. 5.2.1981) then he would not be so entitled as she was already married by that time.

15. In the present case, the appellate court has held that the family members as on 8th June 1973 and not as on the date relevant for determination of surplus land u/s 29/30 of the Act is to be considered. This is held in view of the Single Judge decision in the Chetram Case. Is this case correctly decided?

16. Sri R.N. Singh who has appeared as a friend of the court for the Respondent submitted that

i. No proceeding can be initiated u/s 29/30 of the Act merely on the ground that numbers of the family members have reduced.

ii. In case reduction in the family members cannot entitle the State to take proceeding u/s 29/30 of the Act then this may not be taken into account in proceeding u/s 29/30 of the Act when they are legally taken. Only those events-for which proceeding u/s 29 is initiated -may be considered. In these proceedings the reduction of family members can neither be nor ought to be considered.

iii. The Chetram case is rightly decided.

17. This argument is a double edged sword; it cuts both ways. If reduction of family members cannot be considered, then increase in family members can also not be considered in proceeding u/s 29/30 of the Act. In case the ceiling area is to be calculated with reference to the date of happening of an event contemplated u/s 29/30 of the Act and 8th June 1973 is act the date relevant for consideration, then I see no justification as to why the family members-as on 8th June 1973 should be considered. In such an event, the family member as in existence on the relevant date for calculating surplus land ought to be considered.

18.The Single Judge in the Swamidin case held that

So far as number of family members is concerned as I am of the opinion that ceiling area has to be determined with reference to the date on which unirrigated land became irrigated," which has given rise to notice u/s 29 (b), the ceiling

authorities have to see the family of petitioner for the purpose of determining ceiling area u/s 5(3) of the Act as it was on the date when unirrigated land became irrigated. If any member of : petitioners family ceased to be a member of his family or some new members have been added to the family then the same has to be considered with reference to the date on which the unirrigated land became irrigated which has given rise to the notice.

19. The division bench in the Satish Chandra case also held that,

Section 29 and 30 do not deal with or refer to the members of the family of a tenure holder, but in view of provisions of Sub-section (3) of Section 5, members of his family as on the date on which he acquires the land or comes to hold it after 8.6.1973, have to be taken into account, while determining the ceiling area, under those sections. The object of legislature is that at no point of time on or after 8.6.1973 a tenure holder should be allowed to hold more than 7 30 hectares land plus some such additional land as may be permissible under the Act depending on the number of members of family.

In view of this division bench decision, it cannot be said that the Chetram case still holds the field. The law expressed in the Chetram case is not correct in view of the division bench case.

20. The District Judge allowed the appeal on the basis of the Chetram case. It no longer holds the field. The family member as in existence on the relevant date for proceeding u/s 29 of the Act is to be considered. On that date Ombiri daughter of the Respondent, was already married: the Respondent was not entitled to two hectares of additional land on her account. The judgment of the appellate court is incorrect and is set aside. The case is sent back to the appellate court for reconsidering surplus land in the hands of the Respondent in accordance with law.

CONCLUSION

21. My conclusions are as follows:

- a) Single Judge "decision reported in Chet Ram Vs. The Prescribed Authority (S.D.O.) and Others, is not correctly decided in view of the division bench decision reported in Satish Chandra Mathur v. State of UP: (1995) 2 UPCR 1287.
- b) The date-on which events contemplated u/s 29 occurred-is the relevant date in proceeding u/s 29 of the Act.
- c) In proceeding u/s 29/30 of the Act the family members as on the date relevant for these proceeding should be considered.

22. In view of my conclusions the writ petition is allowed and the case is sent back to the appellate court for re-decision in accordance with law.