

(1978) 05 AHC CK 0028
In the Allahabad High Court
Case No : Civil Misc. Writ No. 8416 of 1971

Tribhunwan Dutt and Another	Vs	APPELLANT
The Civil Judge and Others		RESPONDENT

Date of Decision : 25-05-1978

Acts Referred:

Limitation Act, 1963 — Section 5
Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1975 —
Section 10, 10(1), 10(2), 14(1), 14(3)
Uttar Pradesh Imposition of Ceiling on Land Holdings Rules, 1961 — Rule 10, 11, 4,
5, 6

Citation : (1979) AWC 26

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : V.K.S. Chaudhary, for the Appellant;

Final Decision : Allowed

Judgement

R.M. Sahai, J.—This petition demonstrates the incalculable harm and injustice to which a tenure-holder can be exposed if the Prescribed Authority on whom rests the primary responsibility of implementing the provisions of U.P. Imposition of Ceiling on Land Holdings Act acts in complete disregard of the provisions contained in the Act.

2. In response to a notice issued u/s 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act to Smt. Rama Devi, Respondent No. 4, who had transferred the land in dispute by two registered sale deeds dated 12-5-1959 and 28-7-1959, before the prescribed date (20-8-1959 before the Act was amended on 8-6-1973) filed an application on 4-4-1963 alleging that the land of district Bahraich shown in the notice as her tenancy was incorrect as she had sold it and was not its tenure-holder. In the end it was added that in case any land was found surplus it may be taken from the land situated in Bahraich. The objection was supported by an affidavit. On 22-4-1963 the prescribed authority passed the following order:

In support of her objection she has filed only an affidavit. No oral or documentary evidence has been adduced. She has alleged sale of her land by sale deeds. But no such deeds have been produced nor any one has come forth in the witness box to state about the same. As such her objection remains unsubstantiated. She has given her choice for the land to be maintained by her. I accordingly determine and declare all the plots of village Saharia district Bahraich shown in column . . . as surplus.

3. In pursuance of the order passed by the Prescribed Authority the surplus land was notified in the Official Gazette on 12-10-1963 and the Petitioner was dispossessed on 9-6-1969. The dispossession left the Petitioner surprised except that the land was declared surplus. The tale of running from 9-6-1969 culminating in filing an objection on 21-6-69 u/s 14(3) of the Act is described in paragraphs 5 and 6 of the writ petition which reads as under:

5. That the Petitioners did not know of the aforesaid Gazette notification. The official Gazette does not come in the village. The Petitioner No. 1 is semi-literate while Petitioner No. 2 is illiterate except that he could write his name. Even the Tahsil Authorities did not know that the aforementioned land had been notified in the Official Gazette and came to know of it only when dakhil was effected. The Petitioners came to know of it for the first time from the Lekhpal on 21-6-1969 that the land had been taken away from the Petitioner in some ceiling case.

6. That the Petitioners thereupon went to their Tahsil Headquarters at Nanpara but were informed that they should go to the Court of the Sub-Divisional Officer, Bahraich for the purpose of finding out how the alleged Dakhil Dehni had been taken. The Petitioners thereafter made inquiries at Bahraich but were informed that there was no ceiling case in the Court of the Sub-Divisional Officer, Bahraich. Thereupon the lawyers advised the Petitioners to go to Gonda as Smt. Rama Devi was a resident of Gonda district to find out the case under the Act under which the land might have been declared to be the surplus land and to find out particulars of the case. At Gonda the Petitioners went to the Ceiling Officer where they were told that they should go to Balrampur to the Court of the Sub-Divisional Officer at Balrampur and should file their objections there. It was then that the Petitioners went to Balrampur and filed objections in the court of the Sub-Divisional Officer at Balrampur on 25-6-1969. The delay thus occasioned was solely due to the fact that the Petitioners did not come to know of the ceiling case in which the land was declared to be the surplus land and the Prescribed Authority by which it was declared to be the surplus land. Further the Petitioners were sent from one place to another before they discovered that the land was declared to be the surplus land of Smt. Rama Devi and by the Sub-Divisional Officer, Balrampur, distt. Gonda.

The reply to these paragraphs is contained in the counter affidavit filed by the Naib Tahsildar, Gonda:

6. That the contents of para 5 of the writ petition are not admitted as stated

therein. The Tahsil Authorities knew very well about the publication of surplus land of Respondent No. 4 in the Official Gazette. Moreover in view of Section 14(3) of the Act notification of surplus land u/s 14(1) amounts to constructive knowledge to all. The legal presumption would be that the Petitioner had full knowledge about the declaration of surplus land of Respondent No. 4, after its publication in the Official Gazette.

7. That in reply to the contents of para 6 of the writ petition it is stated that the circumstance narrated by the Petitioners in filing the delayed objection do not justify the condonation. It was rightly held by Civil Judge Bahraich in Misc. revenue appeal No. 5 of 1970 decided on 30-8-71, copy of which is attached with the writ petition.

On the objection and reply filed by the Petitioner and the Collector the Prescribed Authority framed two issues; one, whether the Petitioner was a Bhumidhar and the other, whether the objection was barred by time. The Prescribed Authority dismissed the objection on the finding, "It is rather difficult to believe that the objector may have remained in dark for all long years." That the land in dispute lay in District Bahraich whereas it was declared surplus in District Gonda without any notice or intimation to the Petitioner was not disputed either before the Prescribed Authority or in the writ petition. The Prescribed Authority did not care to look into the reasons disclosed by the Petitioner else he would not have fell into the error. That the appellate court not only repeated the mistake but applied the principle of "sufficient" cause so harshly that instead of subserving the cause of justice it throttled it. He held "the disputed plots were taken by the Collector u/s 14(8) on 6-6-1969. Even if it be accepted for the sake of argument that the Appellant came to know of the declaration of suit plots as surplus land in ceiling from the Lekhpal on 21-6-1969 what prevented him from filing these objections on 22-6-1969 or any day before 25-6-69?"

The expanses of the word "sufficient cause" engulfs in its fold good or just, bonafide, honest individually and collectively. Any cause which prevents a person approaching the court within time is sufficient. In doing so it is the test of reasonable man in normal circumstances which has to be applied.

4. The mere fact that a person with exceptional speed or superhuman effort could have approached is no ground for refusing relief to another whose only fault may be lack of resources or poor advice etc. An illiterate litigant residing in a village unaware of the niceties of law needs a reasonable if not better treatment than a big business magnate or commercial head fighting his cause through law officer or the State Government or Union Government manning its litigation through an entire law department. If an explanation given by the law officer of a company or a Superintendent in the law department that the delay was caused due to correspondence and obtaining expert advice or instruction from the Government can be considered honest, just and bonafide, it is indeed callous to disregard the explanation of a poor, illiterate, ignorant villager whose total wealth is the land and to protect which he runs from pillar to post and is

exploited at all hands whether it be the court staff or the lawyers' chamber.

5. As far back as 1962 the Supreme Court in the case of Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., approved the classic passage from the Full Bench judgment of the Madras High Court in Krishna v. Chelappar ILR 13 Mad 269.

Section 5 gives the court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and" discretion ought to be exercised upon principles which are well understood; the words "sufficient cause" receiving liberal construction so as to advance substantial justice with no negligence nor inaction nor want of bonafide as imputable to the Appellant.

6. Annexure 7 to the writ petition is copy of the application under Section 5 of the Limitation Act filed before the Prescribed Authority. It was alleged that the Petitioner was a resident of village and was far away from any transport facility, that no government Gazette or even newspaper etc. have any circulation in his village, the village is situate at 12 or 13 miles from the Tahsil and is 38 miles from district Bahraich, the Petitioner came to know of the proceedings taken against Respondent No. 4 only four days ago. The allegations were supported by affidavits and statement on oath, copy of which has been filed as annexures 8, 9 and 10. The reply to the affidavits under Section 5 by the Collector has been attached as Annexure 11. It states that the land has been rightly declared as surplus of Smt. Rama Devi and the surplus land was notified on 12-10-63 as such the allegation that the Petitioner came to know only four days ago is incorrect. The allegations on oath supported by an affidavit bringing out in detail the reasons for lack of knowledge and delay of four days in reaching the court, before the Prescribed Authority remained uncontroverted either by furnishing any detail or examining any witness. As possession was taken on 6-6-69 the Civil Judge expected the Petitioner, a resident of interior unconnected with transport facility to rush without even knowing the reason for dispossession, the proceedings in which he was dispossessed and according to him even if the Petitioner came to know on 21-6-69 what prevented him from filing the objection on 22-6-69 or any day before 25-6-69.

7. On the evidence before him the Civil Judge completely misconstrued the import of "sufficient cause". The circumstances were self explanatory. The orders thus, cannot be maintained.

8. The learned State Counsel pointed out that no relief can be granted to the Petitioner as after Act 2 of 1975 any objection under Section 14(3) has to be abated. And even if the orders are quashed and the Prescribed Authority is directed to decide he will not be in a position to carry out the mandamus issued by this Court. It may be so but the orders being contrary to law are liable to be quashed.

9. The question then is what is the effect of the order dated 22-4-63 passed by the Prescribed Authority declaring the land in dispute as surplus of Respondent

No. 4.

10. Admittedly Respondent No. 4 was a bhumidhar. The Interest of a bhumidhar is transferable. She sold her interest prior to the prescribed date. The effect of sale was that she was no more the tenure-holder of the land in dispute. The name of the Petitioner was mutated in the revenue records, in pursuance of an order dated 3-10-1959 (filed as Annexure 6) passed by the Sub-Divisional Officer, Nanpara. It is not clear when notice under Section 10(2) was issued to Respondent No. 4 but the publication in the official Gazette under Section 9(1) and notice under Section 10(2) of the Act were issued much after the date when the Petitioner's name came in the revenue records. Even Rama Devi in her objection pointed out the factum of sale deed.

11. The Act contemplates determining of ceiling area of a tenure-holder. Tenure-holder means, under the Act, holder of holding and holding means the land or lands held by a person as a bhumidhar, sirdar, an asami.

12. The notice under Section 9(1) calls upon every tenure holder holding land in excess of ceiling area applicable to him to submit statement. Section 10(1) empowers Prescribed Authority in case of non-filing of statement or filing of an incomplete or incorrect statement to make such "inquiry as he may consider necessary" and get a statement prepared as prescribed. This Sub-section therefore, contemplates (1) non filing of objection or a filing of an incorrect and incomplete statement; (2) making of such inquiry as the Prescribed Authority may consider necessary; and (3) getting a statement prepared containing such particulars as may be prescribed. The statement is prescribed in C.L.H. Form 3. It has three parts A B and C. The form continues to be the same in material particulars even after the Act was amended on 8-6-1973. In the original Form total holding of a tenure holder was required to be shown in Form A, exempted or cultivated of Keora etc. in part B and ceiling and surplus area in part C. Such details cannot be found out without examining the record thoroughly and examining the tenure holder if necessary. In the circumstances inquiry as he considers necessary is not mere formality. In *Upper Ganges Sugar Mills Ltd. Vs. Civil Judge, Bijnor and Others*, it was observed by Gangeshwar Prasad, J.:

When the Prescribed Authority proceeds to act u/s 10 the field of his inquiry is not limited to the statements filed in response to the notice issued u/s 9 or to the persons actually filing the statements. He has to conduct an enquiry whether a tenure-holder is liable to submit a statement has failed to do so and also whether the statement submitted by a tenure-holder is correct.

13. After this decision was given the Act was thoroughly amended in 1973. But the scheme of preparation of CLH Form 3 after making of an inquiry as contemplated in Section 10(1) of the Act has been retained. The argument of the State counsel that the manner and method of inquiry is left to the volition of the Prescribed Authority and in any case it is not justiciable, cannot be accepted as it shall amount to conferring arbitrary and unguided powers on authorities who are

to act quasi-judicially. Even in the statutes where the words used are "in the opinion of" it has been held that sufficiency of material for formation of opinion may not be justiciable but the courts can examine whether there was any material in support of formation of the opinion or not. The word "inquiry" is much stronger than the word "opinion."

14. To carry out the objective of Section 10(1), detailed rules have been framed. Rules 4 to 11, were as they are after the amendment of the Act in 1973, 75 and 76. If CLH Form 3 is prepared without complying with the provisions of Section 10(1) and Rules 4 to 11 the subsequent proceedings which are based on it cannot be said to be in accordance with the procedure provided under law.

15. If any inquiry worth the name would have been made by the Prescribed Authority he could not have taken the land in dispute as the land of Respondent No. 4. How could the land entered in the name of Petitioner be considered as Bhumidhari of Respondent No. 4 except by closing eyes to the reality. On what material the Prescribed Authority concluded that the land situated in District Bahraich was the Bhamidhari of Respondent No. 4 has not been disclosed either in the order or in the counter affidavit filed in this Court. It is thus obvious that the CLH Form 3 was prepared without any inquiry as contemplated in Section 10(1). The effect was that a wrong statement was prepared and land belonging to the Petitioner was shown in the total holding of Respondent No. 4 who was not its tenure holder.

16. The learned State counsel urged that the order cannot be quashed as it was passed in proceedings initiated against Respondent No. 4 and she has not filed any writ petition nor she is aggrieved by the order. An order passed without jurisdiction is nullity. The declaration of Petitioner's land as surplus without notice to him in proceedings against Respondent No. 4 who was not its tenure-holder, did not bind the Petitioner and under law he can ignore such order. In *Kiran Singh and Others Vs. Chaman Paswan and Others*, it was held:

It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its validity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.

17. In *Ujjain Bai v. State* AIR 1962 SC 1621 it was held by S.K. Das, J.:

A tribunal may lack jurisdiction if it is improperly constituted, or if it fails to observe certain essential preliminaries to the inquiry....The jurisdiction of an inferior tribunal may depend upon the fulfilment of some condition precedent or upon the existence of some particular fact. Such a fact is collateral to the actual matter which the tribunal has to try and the determination whether it exerts or not is logically prior to the determination of the actual question which the

tribunal has to try.

(Halsbury Laws of England 3rd edition Vol. 11 page 59)

18. The Prescribed Authority has jurisdiction under the provisions of the Act to determine ceiling and surplus area of a tenure-holder. This in its turn depends on making of inquiry, preparation of statement of a tenure-holder, its service on the holder of holding and decision on objection if any. While doing so if the Prescribed Authority wrongly assumes the facts that the land in dispute belonged to Respondent No. 4 and gave itself the jurisdiction to determine it as her surplus land, the order was without jurisdiction. If the order was without jurisdiction, the consequent notification and dispossession of the Petitioner were ultra vires the Act. The Act contemplates notification of surplus land of a tenure-holder. As no proceedings for determination of the land in dispute were taken against the tenure-holder the necessary facts conferring jurisdiction to notify in the official Gazette were missing. As the notification suffered with procedural infirmity the action of the Collector under Section 14(8) was without any authority of law.

19. The result is that this petition succeeds and is allowed. The orders dated 30-8-1971, and 23-1-1970 are quashed. The order dated 22-4-1963 so far it relates to Petitioner's land is also quashed. The Respondent is directed to restore possession to the Petitioner forthwith. It shall be open to the Prescribed Authority to take proceedings against the Petitioner for determination of ceiling area if after inquiry he finds that the Petitioner is possessed of land more than the prescribed limit. The Petitioner shall be entitled to its costs which are assessed at Rs. 300/ -.