

(1978) 01 AHC CK 0021
In the Allahabad High Court
Case No : Civil Misc. Writ No. 5606 of 1975

Uma Shankar Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-01-1978

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10, 3(7), 5(3)

Citation : (1978) AWC 381

Hon'ble Judges : K.C. Agarwal, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

K.C. Agarwal, J.—In response to a notice issued u/s 10 of U.P. Imposition of Ceiling on Land Holdings Act (briefly stated as "the Act"), the Petitioner filed an objection. He claimed, inter alia, that as there were six members in his family, he was entitled to two hectares to additional land under Clause (b) of Sub-section (3) of Section 5 of the Act. The claim was repelled by the Prescribed Authority. This was affirmed in appeal by the learned Civil Judge. Hence, this writ.

2. The fact that the family of the Petitioner consisted of six members was not in dispute. His family consisted of himself, his wife, three daughters and one son. The dispute before the Prescribed Authority as well as before the learned Civil Judge was that one of the daughters of the Petitioner Smt. Bimla Devi had been married and, therefore, she had ceased to be a member of the family of the Petitioner. The term "family" has been defined in Section 3(7) which in relation to a tenure holder means himself or herself and his wife or husband, as the case may be (other than a judicially separated wife or husband) minor sons and minor daughters (other than married daughters). It would thus be seen that whereas an unmarried minor daughter is a member of the family of a tenure holder, a major or married daughter is not included therein. In the instant case, the

submission advanced on behalf of the Petitioner was that none of the two authorities gave any finding on the question that Smt. Bimla Devi was a major, that she had been married on the date of the coming into force of U.P. Act No. 18 of 1973. The submission made appears to be correct. Before the learned Civil Judge, the point argued on behalf of the Petitioner was that neither was Smt. Bimla Devi married before 8th June, 1973, on which date the U.P. Act No. 18 of 1973 came into force, nor was she major on the aforesaid date, and, therefore, the Petitioner was entitled to two additional hectares of land.

3. After perusal of the judgments of the Prescribed Authority as well as the learned Civil Judge, I find that none of the two authorities gave any finding on the two controversies stated above because of the impression that the relevant date with reference to which the findings were required to be given was the date of the delivery of the judgment by the Prescribed Authority & not 8th of June, 1973. This is incorrect. The question of the number of family members in a family of a tenure holder had to be decided with reference to the date on which the U.P. Act No. 18 of 1973 came into force as it is with reference to this date that a tenure holder is required under the Act to submit his return. A member of the family attaining majority after this date or going out of the family was not material at all for the purposes of deciding the ceiling or surplus area. Since in the opinion of the learned Civil Judge the relevant date was the date of judgment of the Prescribed Authority, he found that as on the aforesaid date Smt. Bimla Devi had been married and thus ceased to be a member of the family of the Petitioner, the latter was not entitled to the benefit of Clause (b) of Sub-section (3) of Section 5 of the Act. As already stated above, this was not correct. Consequently the judgment of the learned Civil Judge will have to be set aside and the matter will have to go back to him for deciding the appeal preferred by the Petitioner afresh. He will decide whether Smt. Bimla Devi had attained majority on 8-7-1973 and had been married before that date. If the answer to any of these two questions is in the (?) Petitioner would, of course, not be entitled to get additional land. But, if the answer is in the negative, the Petitioner would certainly be entitled to get the benefit to Clause (b) of Sub-section (3) of Section 5 of the Act.

4. In the result the appeal succeeds in part and is partly allowed with costs. The judgment of the learned Civil Judge is set aside only in respect of the aforesaid issue, and he is directed to decide the appeal afresh in the light of the observations made above in the judgment. The stay order is discharged.