

Har Chandi and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : May-24-1990

Reported in : AIR1991All24

Judge : A.N. Varma and ;D.S. Sinha, JJ.

Acts : Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Sections 27(3) and (4); [Constitution of India](#) - Article 39; [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 198 and 198(3); Uttar Pradesh Panchayat Raj Act, 1947 - Sections 28C

Appeal No. : Civil Misc. Writ Petn. No. 6187 of 1979

Appellant : Har Chandi and Others

Respondent : State of U.P. and Others

Advocate for Def. : N. Sahai and ;B. Dayal, Adv.

Advocate for Pet/Ap. : G.N. Varma, Adv.

Judgement :

ORDER

D.S. Sinha, J.

1. The petitioners feel aggrieved by the order dated 25th July, 1979 passed by the Additional Commissioner, Meerut Division, Meerut, in exercise of powers under S. 27(4) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, hereinafter called the Ceiling Act, whereby the settlement of surplus land in their favour under sub-sec. (3) of S. 27 of the Ceiling Act has been cancelled.

2. The impugned order is based on the finding that the settlement of the surplusland in favour of the petitioners was irregular for the following reasons :--

(a) that there was no proper proclamation before the settlement of the surplus land took place;

(b) that the preferences enumerated under S. 198 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, hereinafter referred to as the Z.A. and L.R. Act, were not considered while making the settlement of the surplus land in favour of the petitioners;

(c) that for settlement of the surplus land in favour of the petitioners Har Chandi, Gopi and Mantoori, there was no permission of the Collector as required by S. 28C of the U.P. Panchayat Raj Act, 1947 and

(d) That with the allotment of the surplus land in favour of the petitioners Shiv Dull and Hari Ram, the land in their possession exceeded the maximum limit prescribed under S. 198(3) of the U.P.Z. A. and L.R. Act.

3. With regard to first irregularity of lack of proper proclamation before the settlement of the surplus land in favour of the petitioners, contention of Sri G. N. Varma, learned counsel for the petitioners, is that there is no provision in law for making proclamation before settling the surplus land under S. 27(3) of the Ceiling Act, and as such the lack of proclamation would not render the settlement of land in favour of the petitioner to be irregular. We are not impressed with the contention of the learned counsel for the petitioners. Assuming that there is no statutory provision requiring proclamation before settlement of the surplus land under S. 27(3) of the Ceiling Act, the rule of fair play required proclamation before the settlement of surplus land in favour of the petitioners. Distribution and settlement

of surplus land under the provisions of the Ceiling Act cannot be done without adopting a procedure which ensures the compliance of the rule of fair play. It cannot be gainsaid that in distributing the surplus land under the Ceiling Act, the order of preferences and limits, specified in sub-sections (1) and (3) of S. 198 of the U.P.Z.A. and L.R. Act, have to be considered and non-consideration thereof would render the settlement illegal. If the settlement is made without proper proclamation the persons entitled to be considered for settlement of the surplus land will not have the opportunity to raise grievance if their claim is ignored. The fact that settlement of surplus land under sub-sec. (3) of S. 27 of the Ceiling Act has been made open to scrutiny by the Commissioner of his own motion, and on the application of any aggrieved person, and liable to cancellation, if found irregular, leaves no room for doubt that proclamation before settlement of the surplus land is sine qua non. Settlement of the surplus land without prior notification may lead to arbitrary exercise of statutory power under sub-sec. (3) of S. 27 of the Ceiling Act and may frustrate the basic object of the Ceiling Act which is designed to attain the goal of distributive justice in relation to material resources of the community enshrined in Cl. (b) of Art. 39 of the [Constitution of India](#). Non-proclamation before settlement of the surplus land in favour of the petitioners under S. 27(3) of the Ceiling Act is enough to vitiate the settlement of the land in question and make it irregular as contemplated by sub-sec. (4) of S. 27 of the Ceiling Act. In this view of the matter, cancellation of the settlement of surplus land of the petitioners, by means of the impugned order, has got to be upheld and sustained.

4. Learned counsel for the petitioners has also attacked the other findings recorded in the impugned order but in view of the fact that we are inclined to sustain the cancellation of the settlement of the surplus land in favour of the petitioners for failure to make proper proclamation prior to settlement, it is not necessary to consider any other submission of the learned counsel assailing the impugned order.

5. For the reasons stated, hereinbefore, the impugned order is upheld. The petition fails and is, hereby, dismissed. However, in the circumstances of the case, we make no order as to costs.

6. Petition dismissed.

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