

Mohammad Miyan Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Jul-18-2001

Reported in : 2001(3)AWC2359

Judge : R.H. Zaidi, J.

Acts : Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Sections 10(2), 13, 14(3) to (7), 27 and 27(2) and (3); Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974 - Sections 9; Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 - Sections 19(2); [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 3339 of 1985

Appellant : Mohammad Miyan

Respondent : State of U.P. and Others

Advocate for Def. : A.I. Naqvi, Adv. and ;S.C.

Advocate for Pet/Ap. : Vinai Singh, Adv.

Disposition : Petition allowed

Judgement :

R.H. Zaidi, J.

1. Heard learned counsel for the petitioner, learned standing counsel and Mr. A. I. Naqvi, who appeared for respondent Nos. 4 and 5 and also perused the record.

2. By means of this petition filed under Article 226 of the [Constitution of India](#), petitioner prays for issuance of a writ order or direction in the nature of certiorari quashing the order dated 20.11.1974 passed by the prescribed authority and order dated 30.7.1980 passed by the Additional District and Sessions Judge, acting as appellate authority under the U. P. Imposition of Ceiling on Land Holdings Act, for short 'the Act' and for an order in the nature of mandamus declaring the whole proceedings against the petitioner from the stage of prescribed authority as illegal.

3. The relevant facts of the case giving rise to the present petition, in brief, are that a notice under Section 10 (2) of the Act was served upon the petitioner on 14.3.1974. On receipt of the notice, petitioner filed an objection claiming that no land out of the holding of the petitioner was liable to be declared as surplus. The parties filed evidence in support of their cases. The prescribed authority after going through the evidence oral and documentary, on the record, dismissed the objection filed by the petitioner by judgment and order dated 20.11.1974. Aggrieved by the order passed by the prescribed authority, petitioner filed an appeal. The appeal filed by the petitioner was also dismissed on 29.7.1975 by the appellate authority. Thereafter, the petitioner filed Writ Petition No. 29161 of 1978 challenging the validity of the orders passed by the prescribed authority and the appellate authority, referred to above. The said writ petition was ultimately allowed and the case was remanded to the appellate authority by judgment and order dated 18.5.1978. On remand, the appellate authority allowed the appeal filed by the petitioner in part and declared an area measuring 7 bighas 7 biswas 10 biswansi land out of the holding of the petitioner as surplus and also directed the petitioner to give his choice, if any. Hence, the present petition.

4. No counter-affidavit has been filed on behalf of the State Government. However, a counter-affidavit has been filed on behalf of respondent Nos. 4 and 5. Buddhu and Kishan, who claimed themselves to be transferees from the petitioner. It was claimed that the said respondents were bona fide purchasers for value without notice, therefore, the land held by them is not liable to be declared as

surplus.

5. Learned counsel for the petitioner vehemently urged that during the pendency of the proceedings before the authorities below, the Act was amended twice ; firstly, by the U. P. Ordinance No. 2 of 1975 and secondly, by the U. P. Ordinance No. 20 of 1975, which came into effect on 10.8.1975 with retrospective effect. Under Section 27 of the Act, the present proceedings were liable to be abated. The appellate authority has acted illegally in proceeding with the appeal, in deciding the same and declaring 7 bighas 7 biswas 10 biswansi land out of the holding of the petitioner as surplus.

6. On the other hand, learned standing counsel has submitted that the ceiling proceedings in the case were initiated in the year 1975, therefore, the provisions of Section 27 of the Act as amended by the U. P. Ordinance No. 20 (Act No 20 of 1976) would not apply in the present case.

7. I have considered the submissions made by learned counsel for the parties.

8. Section 27 of the Act as amended by the U. P. Ordinance No. 20 of 1975, provides as under :

'27. Transitory Provisions.--(1) All proceedings under subsections (3) to (7) of Section 14 of the Principal Act, as it stood immediately before the commencement of this Ordinance pending before any Court or authority immediately before the date of such commencement shall abate.

(2) Where an order determining the surplus land in relation to a tenure-holder has been made under the Principal Act before January 17, 1975 and the prescribed authority is required to redetermine the surplus land under Section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974 (U. P. Act 11 of 1975), then notwithstanding anything contained in subsection (2) of Section 19 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 (U. P. Act XVIII of 1973), every appeal under Section 13 of the Principal Act or other proceedings in relation to such appeal, preferred against the said order on or after January 17, 1975, and pending immediately before the date of

commencement of this Ordinance shall abate.

(3) Where an order determining surplus land in relation to a tenure-holder has been made under the Principal Act before the commencement of this Ordinance, the prescribed authority (as defined in the Principal Act) may at any time within a period of two years from the commencement of this Ordinance redetermine the surplus land in accordance with the Principal Act as amended by this Ordinance, notwithstanding any appeal (whether pending or decided) against the original order of determination of surplus land.'

9. A reading of the aforesaid statutory provisions clearly reveals that all proceedings under subsections (3) to (7) of Section 14 of the Principal Act, as it stood immediately before the commencement of this Ordinance pending before any Court or authority immediately before the date of such commencement shall abate. A reading of sub-section (2) of Section 27 further reveals that where any order is passed by the competent authority under the Principal Act before January 17, 1975, determining the surplus land in relation to a tenure-holder and the prescribed authority is required to redetermine the surplus land under Section 9 of the U. P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1974 (U. P. Act II of 1975), then notwithstanding anything contained in sub-section (2) of Section 19 of the U. P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, every appeal under Section 13 of the Principal Act or other proceedings in relation to such appeal, preferred against the said order on or after January 17, 1975, and pending immediately before the date of commencement of this Ordinance shall abate.

10. In the present case, as stated above, the proceedings were initiated in the year 1974, the surplus land was determined under the Principal Act. The appeal was partly allowed on 30.7.1980, therefore, the provisions of sub-section (2) of Section 27 have got full application to the facts of the present case. The proceedings before the appellate authority after amending Act came into force were liable to abate. The appellate authority acted illegally in proceeding with the appeal and declaring 7 bighas 7 biswas 10 biswansi land of the petitioner as surplus land and in asking the petitioner to give his choice.

11. The order passed by the appellate authority is, thus, liable to be quashed.

12. In view of the provisions of sub-section (3) of Section 27 of the Act, after abatement, the prescribed authority is legally entitled to redetermine the surplus, land in accordance with the amended Act. Therefore, in view of sub-section (3) of Section 27, it will be open to the prescribed authority to redetermine the ceiling limit of the petitioner and to declare his land as surplus land, if any, in accordance with law and after following the procedure prescribed for the same.

13. Subject to what has been stated above, this petition succeeds and is allowed. The order dated 20.11.1974 passed by the prescribed authority and that of appellate authority dated 30.7.1980 are hereby quashed. So far as the claim of respondent Nos. 4 and 5 is concerned, they will be at liberty to participate in the proceedings before the prescribed authority and to show that the land held by them was not liable to be declared as surplus land.

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