

Moti Lal and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Dec-08-1997

Reported in : 1998(3)AWC2324

Judge : B. Dikshit, J.

Acts : Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Sections 13, 14 and 27 (4)

Appeal No. : C.M.W.P. No. 37666 of 1997

Appellant : Moti Lal and Others

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : H.S.N. Tripathi, Adv.

Judgement :

B. Dikshit, J.

1. The questions which arises for determination in this writ petition is whether a tenure-holder is entitled for restitution of possession of land declared as surplus on his success in an appeal filed under Section 13 of Uttar Pradesh Imposition of Ceiling on Land Holdings Act. Will it make any difference where the Collector, after

taking over possession, put allottee in possession after allotting it under Section 27 (4) of the Act? As the question raised is purely question of law for which facts have been set-out in impugned order passed by prescribed authority and, whereas, the counsel for petitioners and standing counsel have been heard on merits, the writ petition is being finally disposed of at this stage of admission.

2. The facts, as set-out in impugned order, are that prescribed authority declared disputed land as surplus against which appeal was allowed and order of prescribed authority was set-aside. As the Collector took possession of disputed land after its being declared as surplus despite pendency of appeal and allottees were put in possession after its allotment, the petitioners moved an application for restitution of possession before prescribed authority. The prescribed authority rejected petitioners' application for the reason that petitioners claim themselves to be in possession and, therefore, their application is not maintainable. He also held that as name of allottees stand recorded in revenue papers, therefore, there is no force in the contention of petitioners. He held that the petitioners cannot seek any relief before him but they can initiate proceedings under Section 27 (4) of the Act before Commissioner of the Division. For said reasons, the prescribed authority rejected petitioners application for restitution giving rise to this petition.

3. The learned counsel for petitioners has argued that as Collector took over possession of disputed land treating it to be surplus during pendency of appeal, the petitioners are entitled for restitution of possession over disputed land and the allotment made cannot be impediment in way to deprive delivery of possession to petitioners. He further argued that the prescribed authority went wrong in considering petitioners to be in possession when petitioners specifically prayed for possession. The learned standing counsel opposed the arguments.

4. A copy of application moved for restitution of possession is on the record from reading of which it does not appear that petitioners have been put in possession of land or the land stands recorded in their names. The application specifically states that as land does not remain surplus, the petitioners are entitled for possession.

5. Section 14 of the Act contemplates that Collector shall take possession, in a case where an appeal is preferred under Section 13 of the Act, after date of

decision in appeal. The legislative mandate stands violated in this case as the Collector took possession and settled land with opposite parties No. 3 to 7 despite pendency of appeal against the order determining the land in dispute as surplus and allowed even recording of the name, which stands recorded, in revenue papers. As all these proceedings took place contrary to legislative mandate during pendency of an appeal, they cannot be allowed to stand. As the action of Collector is in violation of specific provision of law, the petitioners cannot be made to suffer by refusing relief sought for. Thus, the petitioners being transferees of Jagdish Narain, the original tenure-holder, they are entitled to obtain possession of disputed land and have their names recorded in revenue papers accordingly.

6. There is another reason due to which petitioners are entitled for relief prayed for. The order of prescribed authority stands reversed, therefore, it means there is no surplus land, which could be taken over by Collector. The land being settled with allottees by Collector, the allottees did not get any better title than which Collector is possessed of after decision in appeal. They stepped into the shoes of Collector during pendency of appeal. As no land of Jagdish Narain stands determined as surplus, it is obligatory for prescribed authority as well as for Collector to restore the land to Jagdish Narain bringing back same position, which was before its determination of surplus. The reason for ordering restitution is that the allottees, who entered into possession, did not remain with better rights than the Collector with the decision in appeal that the disputed land does not remain surplus and, therefore, even allottees cannot be allowed to resist restitution of possession or restoration of original entry in revenue papers which was in favour of petitioners. As the action of Collector in dispossessing Jagdish Narain and settling the land with opposite parties No. 3 to 7 and recording the names of allottees in revenue records is bad in law, the writ petition succeeds.

7. For aforesaid reason, the order dated 14.8.1997 passed by Additional Collector (Finance and Revenue) Mahrajganj is quashed and he is directed to pass appropriate orders for putting petitioners in possession of disputed land. He will put petitioners in actual physical possession of said land and will direct recording of petitioner's name in revenue papers within a period of one month from the date of production of certified copy of this order. It is open for petitioners to claim

damages, if any, by filing suit before competent court for being dispossessed during pendency of appeal against the legislative mandate.

8. The writ petition is allowed with costs.

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