

Sulkhan Singh and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Aug-18-1998

Reported in : 1998(4)AWC263

Judge : S.H.A. Raza, J.

Acts : Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Sections 3 (7) and (14), 4A, 5 to 12, 14 (1) and 29; [Code of Civil Procedure \(CPC\), 1908](#) - Order XXII

Appeal No. : Writ Petition No. 2189 of 1982

Appellant : Sulkhan Singh and Others

Respondent : State of U.P. and Others

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : Pradeep Kant, ;Dr. R.K. Srivastava, ;Avadhesh Kumar and ;Ravi Sinha, Advs.

Judgement :

S.H.A. Raza, J.

1. Notice under Section 10 (2) of the U. P. Imposition of Ceiling on Land Holdings Act, 1960 was issued to the tenure-holder Sri FaujaSingh. Notice was served on

Fauja Singh and he filed an objection before the Prescribed Authority. Fauja Singh left for his heavenly abode in the month of August, 1975. The petitioner Nos. 1 to 6 are the sons of late Sri Fauja Singh while the petitioner No. 7 is the grandson of late Sri Fauja Singh.

2. The main contention of the petitioners before the Prescribed Authority was that after the death of Sri Fauja Singh, the land devolved upon them and they became independent tenure-holder and the land held by them separately and independently should have been taken into account by the ceiling authorities and the land of which late Sri Fauja Singh, the tenure-holder should not have been clubbed together to determine as to whether late Sri Fauja Singh held the land in excess of ceiling area applicable to him, because after the death of late Sri Fauja Singh, the petitioners became independent tenure-holders.

The contention of the petitioners was repelled by the Prescribed Authority who rejected the objections preferred by the petitioners and held that 17-0-42 of land was declared surplus. Being aggrieved against the said order an appeal was preferred. The appellate authority on 20.4.1982 rejected the appeal.

3. The learned counsel for the petitioners emphasised before this Court that if the land of the tenure-holder even after service of the notice was in excess of the ceiling limit and such a tenure-holder dies during the pendency of the proceedings, his heirs become independent tenure-holders and hence it is incumbent upon the ceiling authorities to determine the question as to whether heirs held excess of land or not. In that regard he placed reliance on the decision of a Division Bench of this Court in *Horam Singh and others v. District Judge, Moradabad and others*, 1979 ALJ 85.

4. In that case before the issuance of notice under Section 9 of the Act a tenure-holder expired. In the light of the aforesaid fact it was held that in case where a tenure-holder who on 8th June, 1973, held land in excess of ceiling area applicable to him dies before Issue of a general notice under Section 9 (2) and hence no question of following the procedure for determination of ceiling area applicable to him on that date, under Sections 10 to 12 arises. The Legislature has not provided any other method for determination of the surplus land of such

tenure-holder, as on 8th June, 1973. Consequently, a tenure-holder who dies after 8th June, 1973 but before the issue of general notice under Section 9 (2) does not fall within the purview of the U. P. Imposition of Ceiling on Land Holdings Act.

5. But dealing with the case where a tenure-holder dies after issue of notice under Section 9 (2) of the Act, the Division Bench held as under :

'In case, when a recorded tenure-holder dies soon after publication of general notice in the Official Gazette, it is not necessary for the prescribed authority to reissue a notice under Sections 9 (1) and 9 (2) of the Act. It will be sufficient, if the prescribed authority proceeds to serve the notice on an executor, administrator or other legal representative of the tenure-holder with the statement prepared by him under Section 10 (2) in accordance with Rules 9 (3) and 19 (4) of the Rules framed under the Act.'

It was further observed that :

'It means that notwithstanding the provisions contained in Sections 5 to 12 of the Act. whereunder a tenure-holder becomes disentitled to hold land in excess of ceiling area applicable to him on 8th of June, 1973. his title to the surplus land continues to be affected till the notification for requisition of surplus land is Issued under Section 14 (1) of the Act,'

From the aforesaid observations of the Division Bench, it is obvious that the provisions of Sections 5 to 12 have not been disturbed by the announcement of this Court.

6. Section 5 (1) of the Act provides that on and from the commencement of the Amended Act. 1972 no tenure-holder shall be entitled to hold in the aggregate, throughout Uttar Pradesh, any land in excess of ceiling area applicable to him.

7. Section 9 (1) of the Act also provides that a general notice to be published in the Official Gazette to tenure-holders holding land in excess of ceiling area calling upon them to submit within thirty days from the date of publication of the notice, a statement in respect of all their holdings in such form and giving such particulars as may be prescribed.

8. Section 9 (2) of the Act provides that the Prescribed Authority shall by like general notice, call upon every tenure-holder holding land in excess of the ceiling area applicable to him on the enforcement of the said Act, to submit to him within thirty days of the publication of the such notice, a statement referred to in sub-section (1).

9. Sections 10, 11 and 12 of the Act deal with the procedure for determination of the surplus land. Rule 19 prescribes the procedure of service of notice on the tenure-holder or on his heirs after death of tenure-holder for the purposes of taking proceedings regarding the determination of surplus area of a tenure-holder at the relevant date when the Act comes into force.

10. If after publication or issuance of the notice, the tenure-holder dies then the provisions of Order XXII, C.P.C. would be applicable and the Executor, Administrator or other legal representative of the tenure-holder may be brought on record but it cannot be said that such tenure-holder shall be entitled to hold in aggregate in excess of ceiling area applicable to him.

11. The learned counsel for the petitioners again referred to the decision of this Court in the case of State of U. P. v. Second Additional District Judge, Farrukhabad and others, 1980 ALJ 844, where the following observations were made by an Hon'ble single Judge of this Court :

'The mere fact that the land of the members of the family stands clubbed with the holding of the tenure-holder, does not mean that after the death of a tenure-holder, such members cannot become themselves independent tenure-holders. This interpretation of Section 29 of the Act is wrong.' The members of the family of the deceased tenure-holders could themselves be treated as independent tenure-holders. But, this could be done only if it could be shown that any member of the family succeeded to certain land left by the late tenure-holder and that together with the land already held by him he came to hold land in excess of the ceiling area. This is evident from the definition of 'family' in Section 3 (7) and that of 'tenure-holder' in Section 3 (7) and from the language of Section 29 itself.

12. The proposition of law as laid down by Hon'ble, the single Judge is not applicable to the present case. In that case, proceedings under Section 29 of the Act were initiated for re-determination of the tenure-holders' land, after the death of their father, whose land was clubbed with the holding of the deceased tenure-holder. The facts of the present case are distinguishable, hence the precedent which has been cited cannot be made applicable to the present proceedings.

13. The other contention of the petitioners is that for requirement of Section 4A of the Act that two crops should have been grown in any of the respective years mentioned in sub-clauses (1), (2) and (3), the class, of composition of the soil should be such that it is capable of growing the crops in an agricultural years/and (ii) that there should be source of irrigation in the manners described in various clauses of Section 4A, the requirement of Section would not be complete and in absence of any such eventuality, the land cannot be treated as irrigated. It was asserted that a tenure-holder may irrigate his land by a private tube-well or any other source but that would not render the land irrigated under Section 4A of the Act which-shows that 'a private irrigation work' must be completed before August 15, 1972. It was submitted that in the instant case, the State failed to prove that the private tube-well was in existence on that date, merely growing of two crops would not give rise to the presumption that the private tube-well was in existence on that date.

14. This contention was repelled by the Prescribed Authority as well as by the appellate authority, on the basis of the evidence on record, which shows that the respondents State had established the existence of private irrigation work, namely, the tube-well on the relevant date as mentioned in Section 3 (14) of the Act which is also evident from the Khasra of 1378 Fasli, from which it transpired that the entire land was irrigated and it was having two crops. The Lekhpal was examined before the Prescribed Authority who proved C. H-2. i.e., Chittha Partali and in its column 12 a tube-well and another well has been mentioned. In 1378 Fasli, a tube-well in Khasra 1378 Fasli has been shown in column 6 as source of irrigation which was in existence prior to 1377 Fasli, much prior to 1970, which has been prescribed under Section 3 (14) of the Act.

15. In view of the aforesaid finding of fact which, has been recorded by the Prescribed Authority as well as the appellate authority, this Court in exercise of power under Article 226 of the Constitution cannot intervene, to disturb the finding of facts.

16. In view of what has been indicated above, the writ petition is devoid of merits and is accordingly dismissed.

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