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SooperKanoon Citation : sooperkanoon.com/488033

Court : Allahabad

Decided On : Jul-03-2009

Reported in : 2010(1)AWC290

Judge : Rajes Kumar, J.

Appellant : Ganesh Datt Singh and ors.

Respondent : State of U.P. and ors.

Disposition : Petition allowed

Judgement :

ORDER

Rajes Kumar, J.

1. By means of present writ petition, the petitioners are challenging the order of the Additional Commissioner (Judicial), Gorakhpur Mandal, Gorakhpur dated 12.1.1999 by which he has rejected Ceiling Appeal No. 79/63/36/M-1996 filed by the petitioners against the order of the prescribed authority dated 30.3.1996 declaring the surplus land.

2. Heard Sri A.P. Tiwari, learned Counsel appearing on behalf of petitioners and learned standing counsel.

3. Learned Counsel for the petitioners submitted that in reply to the notice under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the 'Act') the petitioner filed objection which is Annexure-1 to the writ petition. In the objection it was stated the land mentioned in List-A was unirrigated land inasmuch as there was no facility of irrigation; the land mentioned in List-B various persons have constructed their houses, therefore, it is a abadi land; the land mentioned in List-C on the spot in bhita, road, banjar, public and khalikan which have been shown as irrigated land; the land mentioned in List-D has been taken for the Harijan residence in the year 1975 on which the Scheduled Caste persons are living and the same did not belong to the petitioners; the lands shown in the Schedule-E have been transferred in favour of various persons; the land mentioned in List-F is grove land. He submitted that despite the aforesaid objection, no spot inspection was made. Therefore, the petitioners have moved application on 10.9.1990 for the spot inspection for the purposes of verification and further an application was moved on 18.7.1992. Despite the aforesaid two applications, no spot inspection was made and the prescribed authority illegally treated unirrigated land as irrigated land and has not excluded those lands which did not belong to the petitioners. He submitted that before the appellate authority it was also submitted that in the consolidation proceeding, the land of the petitioners has been substantially reduced and therefore, such lands which have been excluded in the consolidation proceeding should not be considered for the ceiling purposes. To verify the claim whether the land was irrigated or non-irrigated, spot inspection was necessary, he relied upon the decisions of this Court in the case of Chhabilal v. State of U.P. and Ors. 1994 RD 474, in the case of Ramadhar v. State of U.P. and Ors. 1994 RD 479 : 1994 (3) AWC 1640, in the case of Swamidin v. State of U.P. and Ors. 1996 RD 320 : 1996 (2) AWC 843, in the case of Chandra Bhan v. State of U.P. and Ors. 1995 RD 410 : 1995 (2) AWC 1130 and contended that the land which has been excluded in the consolidation proceeding should also be reduced in the ceiling proceeding. He also relied upon the decision of this Court in the case of Mahesh Prasad Awasthi v. State of U.P. and Ors. 1993 AWC 666.

4. Learned standing counsel relied upon the order of the appellate authority and prescribed authority.

5. Having heard learned Counsel for the parties, I have gone through the impugned order and the order of the prescribed authority.

6. In my view both orders cannot be sustained. This Court has consistently held that to verify the claim whether the land is irrigated or unirrigated, spot inspection is necessary before arriving to any conclusion. In the present case when the objection was filed by the petitioners claiming that particular land was unirrigated land, in such a situation before treating such land as irrigated land the spot inspection was necessary which could not be made. Further in the case of Mahesh Prasad Awasthi v. State of U.P. and Ors. (supra) it has been held that reduction in area brought about in a consolidation proceeding should be considered in a ceiling proceeding.

7. In this view of the matter, I am of the view that the matter requires reconsideration by the prescribed authority.

8. In the result, writ petition is allowed. The impugned order dated 12.1.1999 is set aside. The matter is remanded back to the prescribed authority to decide the matter afresh in the light of the law laid down by this Court referred hereinabove after giving opportunity of hearing. The petitioners are directed to file certified copy of the order before the prescribed authority within a period of three weeks and the prescribed authority is directed to decide the matter within a period of three months thereafter.