

Smt. Ganeshi Devi and anr. Vs. iind A.D.J. and ors.

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Court : Allahabad

Decided On : Mar-18-2005

Reported in : 2005(3)AWC2982

Judge : Krishna Murari, J.

Acts : Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Sections 4A, 10(2) and 29

Appeal No. : C.M.W.P. No. 11623 of 1985

Appellant : Smt. Ganeshi Devi and anr.

Respondent : iind A.D.J. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Jayant Mehta, ;Narendra Singh Kirar, ;K.N. Saxena, ;S.J. Shandilya and ;Vivek Shandliya, Advs.

Disposition : Petition allowed

Judgement :

Krishna Murari, J.

1. In response to a notice issued under Section 10 (2) of the U. P. Imposition of Ceiling on Land Holdings Act (for short 'the Act') the petitioner filed objection

denying having any surplus land on the ground infer alia that her plots have wrongly been shown as irrigated and she is entitled for benefit of the area reduced during consolidation operation while determining the ceiling area. Objection as well as appeal filed by her was dismissed. Feeling aggrieved she filed Writ Petition No. 2631 of 1977 which was allowed by this Court vide judgment dated 1.3.1979 and the case was remanded back to the appellate authority to re-determine the twin questions whether the land was irrigated or not in accordance with the provision of Section 4A of the Act and whether the petitioner is entitled for the benefit of the area reduced during consolidation, afresh.

2. After remand by this Court, the appellate authority also remanded the matter back to the prescribed authority. The prescribed authority vide order dated 25.10.1982, held that only plot Nos. 150, 326 and 335 were unirrigated while rest of the plots were irrigated. The prescribed authority also held that area of the petitioner which was reduced during consolidation operation is liable to be excluded from her holding while calculating the ceiling limits and accordingly, determined 0.24 acres in terms of irrigated land as surplus in the hands of the petitioner. The State of U. P. went up in appeal. The appellate authority vide impugned judgment dated 10.5.1985, allowed the appeal and declared 4.05 acres in terms of irrigated land as surplus. Aggrieved the petitioner has approached this Court by means of instant writ petition.

3. I have heard Sri Jayanta Mehta, learned counsel for the petitioner and learned standing counsel.

4. It has been urged by learned counsel for the petitioner that prescribed authority after considering the relevant material as prescribed by Section 4A of the Act, i.e., khasra Nos. 1378, 1379 and 1380 fasli came to the conclusion that plot Nos. 150, 326 and 335 are unirrigated. The appellate authority has reversed the said findings misreading the documents. The finding of the appellate authority that two crops have been shown to be grown in 1380 fasli on the said plots and they are situate in the command of Betwa canal which is of Schedule-I is based on total misreading of record. It has further been contended that appellate authority wrongly refused to extend the benefit of the area reduced during consolidation on

the ground that since the reduction of area is not due to taking out land for any public purpose as such the said area is not liable to be excluded.

5. In reply learned standing counsel has tried to justify the impugned order passed by the appellate authority.

6. I have considered the contention advanced on behalf of the rival parties and perused the record of the writ petition.

7. The prescribed authority after examining the khasra of the relevant years, as prescribed by Section 4A of the Act, found that plot Nos. 150, 326 and 335 are recorded in the said khasra as unirrigated. For the rest of the plots, the prescribed authority held that they are irrigated by Betwa canal. The copies of the said khasra have been filed as Annexures-3, 4 and 5 to the writ petition. A perusal of the same goes to show that there is no source of irrigation mentioned against the said plots. Thus, the finding of the appellate authority that these plots are in the command area of Betwa canal is based on total misreading of the documents. As a matter of fact, the relevant khasras indicate about the other plots to be irrigated by Betwa canal which were not in dispute before the appellate authority. Since the plots in dispute namely, plot Nos. 150, 326 and 335 are not shown to be irrigated in the said khasra by any source of irrigation the prescribed authority rightly held the said plots to be unirrigated. It appears that the appellate authority misread the khasras and held that these plots are in the command of Betwa canal. There was no basis or evidence before the appellate authority for recording the said finding and the same cannot be sustained.

8. With regard to other issue, the benefit of the area reduced during consolidation has not been given to the petitioner by the appellate authority on the ground that reduction was on the basis of the valuation and not as a result of taking of the land for public purpose. While considering the question 'whether the reduction in area brought about by consolidation proceedings in the holdings of a tenure holder after 8.6.1973 can be taken into account while determining the ceiling area applicable to him on the said date?' a Division Bench of this Court in the case of Satya Pal Singh v. State of U. P. and Ors., 1979 ALJ 1259, has observed as under :

'3. Another learned single Judge felt that these observations in Jhandoo's case were rather too wide. He mentioned in the referring order an illustration that the reduction of area may be as a result of the valuation made under the U. P. Consolidation of Holdings Act because of which the tenure-holder may be entitled to a lesser area than originally held by him. In such a case, the variation will be more apparent than real and so there can be no justification for making allowance in such a case. In this case also, the reduction in area took place as a result of valuation of the land originally held by the petitioner and of the land subsequently allotted to him. It appears that higher valuation land was allotted to the petitioner and so the area obtained by him was lesser.

4. This result is due to operation of law. The proceedings under the Consolidation of Holdings Act are based upon the system of valuation of land prescribed by that Act. The proceedings under the Ceiling Act are founded on area. The system of valuation provided by the Consolidation of Holdings Act is not recognized by the Ceiling Act for determining the ceiling area as prescribed by the Ceiling Act. The method of calculation given in the Ceiling Act alone has to be followed. The burden of the Ceiling Act is that after June 8, 1973 no tenure holder should continue to possess more than the ceiling area. Under Section 29 of the Ceiling Act, there is a specific provision for adjustment of ceiling area in case the tenure-holder acquires some more land. It is implicit in the provision that because of operation of law the tenure-holder's holding gets reduced, that also should be taken into account.'

9. In view of the law laid by the Division Bench in the case of Satya Pal (supra) any variation of area during consolidation operation on account of change in valuation is also to be taken into account while determining the ceiling limit. Since the area of the petitioner was reduced during consolidation, the same was liable to be excluded from her holding while determining the ceiling area. The appellate authority wrongly and illegally failed to extend the said benefit to the petitioner to which she was entitled and which was rightly allowed by the prescribed authority.

10. As a result, the writ petition succeeds and is allowed. The impugned order of the appellate authority dated 10.5.1985 is quashed.

11. In the facts and circumstance, there shall be no order as to costs.

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