

(2002) 5 AWC 3640

Allahabad High Court

Case No: C.M.W.P. No"s. 14648 of 1995 and 16578 of 1996

Rural Trust (P.) Ltd.

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Oct. 3, 2002

Acts Referred:

Constitution of India, 1950 " Article 226#Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974 " Section 10(2), 2(1), 3(3), 3(5), 5(4)

Citation: (2002) 5 AWC 3640

Hon'ble Judges: R.H. Zaidi, J

Bench: Single Bench

Advocate: Anil Sharma and Gopal Subramaniam, for the Appellant;

Final Decision: Allowed

Judgement

R.H. Zaidi, J.

Heard learned Counsel for the Petitioner and learned standing counsel.

2. The land which is subject matter of dispute in Writ Petition No. 14648 of 1995 is also in dispute in Writ Petition No. 16578 of 1996.

Therefore, after hearing the arguments in Writ Petition No. 14648 of 1995 and as prayed by the learned Counsel for the parties, the same was

directed to be connected with Writ Petition No. 16578 of 1996, in which judgment was reserved. Questions of law and facts involved in both

these petitions are also the same, therefore, both these petitions are being disposed of by this common judgment. Writ Petition No. 16578 of 1996

shall be leading case.

3. 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 27.12.1995, passed by the Prescribed Authority declaring 338.50 acres out of the land in dispute as

surplus and the order dated 27.3.1996, passed by the Appellate Authority dismissing the Petitioner's appeal in the proceedings under the U.P.

Imposition of Ceiling on Land Holdings Act, for short "the Act". The Writ Petition No. 14648 of 1995 has been filed challenging the validity of the

order dated 5.5.1995, passed by the Prescribed Authority.

4. The relevant facts of the case giving rise to the present petition, in brief, are that the Prescribed Authority issued a notice u/s 10(2) of the Act in

the year 1974 to the Petitioner to show cause as to why the land mentioned in the notice be not declared as surplus. In the meanwhile, Act was

amended vide U.P. Act No. II of 1975 and the proceedings initiated on the basis of the aforesaid notice stood abated. Thereafter, a fresh notice

was issued u/s 10 (2) of the Act to the Petitioner on 8.6.1976. Said notice was not served upon the Petitioner but the Prescribed Authority without

affording an opportunity of being heard to the Petitioner, proceeded ex parte and vide its order dated 24.6.1976, declared according to his choice

an area as surplus land. Challenging the validity of the said order, the Petitioner filed an appeal before the Appellate Authority. The Appellate

Authority allowed the appeal and remanded the case by its judgment and order dated 28.8.1977 for decision afresh. Then the Petitioner filed a

detailed objection on 26.9.1977, a copy of which is contained in Annexure-1 to the writ petition, contending that according to the provisions of the

Act, notice could not be issued to the Petitioner in respect of the land in dispute, therefore, the notice was liable to be discharged. In the

meanwhile, one Yash Kumar Jain applied for his impleadment in the proceedings on account of interim stay orders obtained by him from this Court

and from the Hon"ble Supreme Court, the proceeding before Respondent No. 3 remained stayed till 30.7.1992. Thereafter, another application

was filed by the Rural Trust Private Limited, which also obtained stay orders which remained operative till 13.10.1995. One Smt. Chaman Rani

Jain also filed similar application, which was rejected and her appeal was also dismissed. It is not necessary to give the details of the said litigation.

It would suffice to state that after the application of the aforesaid persons were disposed of finally, the Prescribed Authority took up the matter and

without following the procedure prescribed under the law and without affording an opportunity of hearing to the Petitioner, the Prescribed

Authority by its order dated 27.12.1995 again declared an area measuring 338.50 acres out of the land in dispute as surplus simply observing that

the Petitioner was not interested in decision of the case on merits, as he was unnecessary prolonging the litigation, although the Petitioner had

absolutely no concern with the aforesaid litigation. The Petitioner, as soon as came to know about the said order, filed an appeal before the

Appellate Authority on 16.1.1996. The Appellate Authority also acted arbitrarily and dismissed the appeal by its judgment and order dated

27.3.1996 without dealing with the points raised before it, hence the present petition.

5. On this petition, notices were issued to the Respondents and time was also granted to the learned standing counsel to file counter-affidavit which

was filed and in reply of which rejoinder-affidavit was also filed. Thereafter, the Petitioner filed supplementary-affidavit in reply of which learned

standing counsel filed the supplementary counter-affidavit. Thereafter, the Petitioner also filed supplementary rejoinder-affidavit.

6. Learned Counsel for the Petitioner vehemently urged that the Prescribed Authority has decided the case ex parte without affording an

opportunity of hearing to the Petitioner in contravention of the provisions of Act and that the Appellate Authority has also acted illegally, arbitrarily

in affirming the judgment of the Prescribed Authority, that the Petitioner was a private limited company and according to the Respondent No. 1, it

was a firm. In either case, it was urged that procedure prescribed under Sub-section (4) of Section 5 of the Act for determination of the ceiling

area had to be followed, which was admittedly not followed. Therefore, the orders passed by the authorities below were illegal. It was urged that

the entire land covered by the aforesaid notice was grove land, the authorities below acted illegally in treating the same as irrigated land and that the

land owned by the Rural Trust Private Limited was illegally clubbed with the land in dispute in respect of which, according to him, ceiling

proceedings were going on before the Prescribed Authority, Kashipur, district Nainital and the Trust also filed Writ Petition No. 14648 of 1995,

which is connected with this petition. It was urged that the land situated within the municipal limits of Bijnor, was also illegally included in the land in

dispute. Therefore, according to him, the impugned orders were illegal and the writ petition was liable to be allowed.

7. On the other hand, learned standing counsel supported the validity of the orders passed by the authorities below. It was urged that on the

relevant date, the Petitioner was not a private limited company but only a firm, that sufficient opportunity was afforded to the Petitioner but it did

not cooperate with the authorities, consequently the Prescribed Authority had proceeded ex parte and declared the land in dispute as surplus. It

was also urged that the authorities below did not commit any error of law or jurisdiction. The writ petition had no merit, therefore, the same was

liable to be dismissed.

8. I have considered the submissions made by the learned Counsel for the parties and also carefully perused the record.

9. It is evident from the order passed by the authorities below that the Prescribed Authority passed ex parte order and declared an area measuring

338.50 acres as surplus without affording an opportunity of hearing and to produce evidence to the Petitioner under the impression that the

Petitioner was behind the applications filed by three persons, referred to above. It was also observed by the Prescribed Authority that the

Petitioner was not interested in decision of the case on merits. The Appellate Authority also affirmed the order passed by the Prescribed Authority

and did not decide the case on merits. It is, thus, evident that the Petitioner was not given an opportunity of hearing and to produce evidence in

support of its case. On the record, there is nothing to show that the 3 applications, referred to above, were filed at the instance of the Petitioner.

Thus, the orders passed by the authorities below are ex parte and have been passed without affording an opportunity of hearing and to produce

evidence to the Petitioner contrary to the provisions of the Act and the Rules framed thereunder.

10. The crux of the matter is as to whether the procedure followed by the authorities below was in accordance with the provisions of the Act or

not. The answer of the question depends upon the answer as to whether the Petitioner was a private limited company or a firm or a public

company within the meanings of the term used under the Act. The definitions of the words "company and corporation", which are relevant for the

purposes of the present case have been given in Sub-section (3) and Sub-section (5) of Section 3 of the Act, which are quoted below:

(Only relevant quoted)

3. Definitions.-In this Act, unless the context otherwise requires-

....

(3) "Company", "Government company" and "public company" have the same meaning as in the Companies Act, 1956.

....

(5) "Corporation" means a statutory corporation, that is to say, a corporation established by or under an Uttar Pradesh Act or a Central Act.

.....

Reading the various provisions of the Companies Act, it transpires that "a private limited company" means a company incorporated/ registered

under the Companies Act, which restricts the right to transfer its shares and which limits its members upto 50 and their liability of the extent they

hold shares of the said company.

11. According to the finding recorded by the Appellate Authority, which is quoted below, the Petitioner is a private limited company:

other language

12. According to the facts stated in the supplementary counter-affidavit (paragraph No. 10), which reads as follows, the Petitioner is a firm:

The Petitioner is a firm and does not come under the definition of Company as Government company or public company.

13. Whether Petitioner is a private limited company or a firm, in either case, the procedure for determination of the ceiling limit as prescribed under

Sub-section (4) of Section 5 of the Act, which is quoted below, had to be followed:

(Only relevant quoted)

5. Imposition of Ceiling.-(1)

.....

(4) Where any holding is held by a firm or co-operative society or association of persons (whether incorporated or not, but not including a public

company), its members (whether called partners, share-holders or by any other name) shall, for purposes of this Act, be deemed to hold that

holding in proportion to their respective shares in that firm, co-operative society or other society or association of persons:

Provided that where a person immediately before his admission to the firm, co-operative society, or other society or association of persons, held

no land or an area of land less than the area proportionate to his aforesaid share, then he shall be deemed to hold no share, or as the case may be,

only the lesser area in that holding, and the entire or the remaining area of the holding, as the case may be, shall be deemed to be held by the

remaining members in proportion to their respective shares in the firm, co-operative society or other society or association of persons.....

14. Admittedly, the aforesaid procedure was not followed by the Prescribed Authority and the notice u/s 10 (2) of the Act was issued to the

Petitioner treating the entire land in dispute as the land owned by the Petitioner. Legally, the notices should have been issued to the shareholders

and not to the Petitioner. Similar controversy, as is involved in the present case, was involved in Writ Petition No. 3317 of 1977, wherein it was

ruled as under by this Court:

In my view, the authorities below have not treated this controversy in the correct manner. The Appellate Authority has wrongly observed that the

Petitioner had not filed the Memorandum and Articles of Association of the company before the Prescribed Authority. This statement is

undoubtedly incorrect as is clear from the order of the Prescribed Authority himself. I think in this case it is important that a clear finding should be

obtained from the Prescribed Authority on the said question and, therefore, I allow this petition and quash the judgment of the appellate court, a

true copy whereof is Annexure-5 and the order of the Prescribed Authority, a true copy whereof is Annexure-3 to the petition. The case is

remanded to the Prescribed Authority with a direction that he will allow the parties a fresh opportunity to adduce additional evidence on the

question as to how were the share holders of the company on the relevant date and what was the share holding of each of such share holders in the

total share capital of the Petitioner company. The relevant date will be 8th June, 1973, with reference to which the said facts should be ascertained.

The Petitioner company should produce its shareholders' register and a true copy thereof should be placed on the record to substantiate its

contention that there were four aforesaid shareholders in the company on the said date. The shareholdings of each of the shareholders should also

be stated and the total share capital should also be found out. The parties shall also lead evidence on the point regarding the area of land held by

each shareholder immediately before he was admitted as a shareholder of the company. The Prescribed Authority will give his finding on the said

question also before deciding the case finally. After allowing the parties to adduce fresh evidence, and in the light of the same, the Prescribed

Authority shall freshly decide the controversy .

15. The status of a co-operative society is similar to a private limited company. While dealing with a case in *Dhanwant Singh and Ors. v. State of*

U.P. and others 1978 RD 360, this Court after perusing the various provisions of the Act and the Rules framed thereunder, was pleased to hold as

under:

Reading of Section 5 (4) of the U.P. Imposition of Ceiling on Land Holdings Act together with Section 79 of the U.P. Co-operative Societies Act

gives me an idea that it is desirable that the Cooperative Farming Society as well as its members should be served with requisite notice before

determining the surplus area of a tenure-holder who is a member of any Cooperative Farming Society.

16. In the aforesaid cases, it has been ruled by this Court that in the cases of firms, cooperative societies, association of persons whether

incorporated or not but not including a public company, its members (whether called partners, shareholders or by any other name) was for the

purposes of this Act be deemed to hold that holding in proportion to their respective shares in that firm, co-operative society or other society or

association of persons subject to the exception as provided under this section. Thus, for determination of the ceiling area of the members, partners

or shareholders, the authorities will have to proceed against the members, partners or share holders and not the firm or the society or association of

persons.

17. In the present case, admittedly, the Petitioner is a private limited company or a firm as held by the authorities below and admitted by the

Respondents in their affidavit, therefore, notice could not be issued u/s 10 (2) of the Act only to the Petitioner. The Petitioner was incorporated as

private limited company on 31.1.1947 under the Companies Act, 1956, as it is evident from Annexure-SA 1. The list of registered shareholders is

contained in Annexure-SA 2. Had the opportunity of hearing and to produce the evidence been given to the Petitioner by the Prescribed Authority

as provided under the Act, the aforesaid documents along with other evidence, oral and documentary, would have been produced before it by the

Petitioner. Thus, the entire procedure adopted by the authorities below was wholly illegal and without jurisdiction and contrary to the provisions of

the Act and the Rules framed thereunder. The orders passed by the authorities below, thus, cannot be sustained. The authorities were bound to

follow the procedure prescribed under the Act, referred to above. So far as the question of the land being grove land is concerned, the Petitioner

relied upon the reports of the Tehsildar and other authorities from which it is prima facie proved that the land in dispute is recorded as the grove

land and on the spot also, groves exist. However, this question will also have to be decided after following the procedure prescribed under the law.

18. Rural Trust Private Limited is also a private limited company. The land owned by it was illegally clubbed in the land in dispute in the present

case. The Rural Trust Private Limited Company, as soon as came to know about the proceedings against the Petitioner, had immediately filed an

objection as its valuable property was involved in the case. It was pleaded that the property of the Trust could not be clubbed in the property of

the Petitioner and that the Prescribed Authority, Kashipur, district Nainital, has also issued notices u/s 10 (2) of the Act. Its land, therefore, was to

be excluded from the holding in dispute. It was also pleaded that the Trust and its members were necessary parties for the purposes of the case. It

was further pleaded that in the present case, there was no question of limitation involved inasmuch as there was nothing on the record to show that

the Trust had the knowledge of the proceedings against the Petitioner prior to the date indicated by it in its affidavit. The view taken by the

Prescribed Authority in its order dated 5.5.1995, Annexure-11 to Writ Petition No. 14648 of 1995, is manifestly erroneous and illegal. The said

order deserves to be quashed and the Prescribed Authority is liable to be directed to decide the question of clubbing the land of the Trust in the

holding in dispute. The learned Counsel for the Petitioner is also right in his submission that the land which is situated within the municipal limits of

Bijnor City, could not be taken into consideration and could not be clubbed in the holding in dispute according to the provisions of the Act,

inasmuch as the provisions of the Act do not apply to urban areas. A reference in this regard may be made to Clause (i) of Section 2 of the Act,

which provides as under:

2. Application of the Act to certain areas with exceptions or modifications.-The State Government may, by notification in the Official Gazette,

apply the provisions of this Act, subject to such exceptions or modifications, not affecting the substance, as the circumstances of the case may

require, to the areas mentioned below:

(i) the urban areas to which the Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1950, extends.

19. Learned standing counsel could not produce any notification as required u/s 2 of the Act which was issued according to his case, after

24.1.1971. Thus, provisions of the Act have got no application to the land situated in municipal limits of Bijnor. In the present case, it is evident

from the material on the record that certain land which is situated in municipal limits of Bijnor city were included in the notice issued to Petitioner u/s

10 (2) of the Act.

20. In view of the aforesaid discussions, both petitions deserve to be allowed.

21. The aforesaid petitions are allowed. The orders dated 27.12.1995 passed by the Prescribed Authority and 27.3.1996, passed by the

Appellate Authority in Writ Petition No. 16578 of 1996, and the order dated 5.5.1995 passed by the Prescribed Authority in Writ Petition No.

14648 of 1995 are hereby quashed. The case is remanded to the Prescribed Authority for decision afresh in the light of the findings recorded and

observations made above, in accordance with the law after affording full opportunity of hearing and to produce evidence to the parties concerned

in support of their cases.

22. It is further directed that the cheque which was deposited by the Petitioner in compliance with the order dated 8.8.2002 in Writ Petition No.

16578 of 1996 with the Registrar General, shall be returned forthwith to the Petitioner in the said case by the Registrar General.

23. No orders as to costs.

A copy of this judgment may be placed on the record of the connected petition.