

Ganga Prasad Vs State of Uttar Pradesh and Another

Court: Allahabad High Court

Date of Decision: July 24, 1986

Acts Referred: Constitution of India, 1950 " Article 226

Urban Land (Ceiling and Regulation) Act, 1976 " Section 10, 11, 12, 2, 6

Uttar Pradesh Consolidation of Holdings Act, 1953 " Section 4, 4(2), 5, 5(2), 9

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 " Section 134, 135, 136, 137

Citation: (1987) 1 AWC 99 : (1987) RD 1

Hon'ble Judges: B.L. Yadav, J

Bench: Single Bench

Advocate: Shitala Prasad, for the Appellant;

Final Decision: Dismissed

Judgement

B.L. Yadav, J.

This is a petition under Article 226 of the Constitution. The relief sought is that a writ of Mandamus may be issued

commanding the consolidation authorities not to proceed with any case under the provisions of the U.P. Consolidation of Holdings Act, 1953 (for

short the Act) as in respect of the land in dispute the provisions of Urban Land (Ceiling and Regulations) Act, 1976 (for short the Urban Ceiling

Act) are also applicable.

2. Shorn of details the facts are these. Villages Ahaldpur, Nawadia Kurmian, Roopapur and Badhapura, Pargana, Tahsil and District Bareilly,

were brought under consolidation operations in view of notification issued u/s 4 of the Act. The proceedings under Sections 9 and 9-A of the Act

are pending. C.H. Form No. 5 was issued to the tenure-holders. It appears that the land of these villages came within the definition of "urban

agglomeration" as defined u/s 2(n), and "urban land" as defined u/s 2(o) of the Urban Ceiling Act. The land in these villages was having

pronounced urban characteristic and these villages were shown as constituents of the agglomeration. The proceedings u/s 6(six) etc. of the Urban

Ceiling Act are in progress and draft statements appears to have been prepared in respect of the persons who have not filed statement u/s 6 of the

Urban Ceiling Act. No details, however, have been given about the progress of the proceedings under Sections 8, 9, 10 and 11 of Urban Ceiling

Act and as to whether any appeal before the Urban Land Tribunal has been preferred u/s 12 or not.

3. As the land situate in these villages came under consolidation operations it has been prayed that these proceedings be stayed u/s 5(2)(a) of the

Act as in respect of these villages the provisions of Urban Ceiling Act have also been made applicable and these proceedings are in progress. The

learned Standing Counsel, on the other hand, urged that the consolidation proceedings need not be stayed u/s 5(2)(a) of the Act.

4. Having heard the learned Counsel for the Petitioner and the Standing Counsel, the sole point for determination is as to whether proceedings

under the U.P. Consolidation of Holdings Act must be stayed as proceedings under the Urban Ceiling Act are also in progress. In fact the U.P.

Consolidation of Holdings Act is a self-contained Act dealing with re-arrangements, in respect of the consolidation of agricultural holdings, in Uttar

Pradesh for the development of the agriculture. u/s 5(2) of the Act it has been provided as to what proceedings can be stayed. The relevant

statutory provisions of Section 5(2)(a) of the Act are fruitfully setout below:

5 (2) Under the said publication of the notification under Sub-section (2) of Section 4, the following further consequence shall ensue in the area to

which the notification relates namely:

(a) every proceeding for the correction of record and every suit and proceeding in respect of declaration of rights or interest in any land lying in the

area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before

any Court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the court or

authority before whom such suit or proceeding is pending, stand abated:

Provided that no such order shall be passed without giving to the parties notice by post or in any other manner and after giving them an opportunity

of being heard;

Provided further that on the issue of a notification under Sub-section (1) of Section 6 in respect of the said area or part thereof, every such order in

relation to the land lying in such area or part, as the case may be, shall stand vacated.

There is an explanation added to Section 5(2) which indicates that even though proceedings under the U.P. Imposition of Ceiling on Land Holdings

Act may be in progress or in an uncontested case proceedings under Sections 134 to 137 of the U.P. Zamindari Abolition and Land Reforms Act

may be pending but those proceedings would not be deemed to be proceedings in respect of declaration of rights or interest, in any land. This

explanation was added by U.P. Act No. 35 of 1976 which came into force on 13-11-1976. This reflects the wisdom of the Legislature that even

some proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 or under sections 134 to 137 may be pending but that would

not be treated for declaration of rights or interest in any land. In other words, even the proceedings under the U.P. Imposition of Ceiling on Land

Holdings Act, 1960 or the proceedings under sections 134 to 137 of the U.P. Zamindari Abolition and Land Reforms Act cannot be stayed or

abated u/s 5(2)(a) of the Act.

5. One of the important rules of construction of statutes is to act according to *Maxim Animus Imponentis* (i.e. to ascertain the intention of law

givers or the legislature). If there appears to be any gap which requires to be filled up, (i.e. *Casus Omissi*) but for that also the Court should not

endeavour, rather it should be left for legislature to rectify the mistake. In order to avoid any mistake or in other words, in case of *Casus Omissi* it

is not for courts to fill up the gap. It is useful to extract a few sentence from R.W.M. Dias on Jurisprudence (4th Edition) page 224 as follows:

Statutes of the nineteenth century came to be drafted in meticulous detail so as to provide for every conceivable contingency, since judges could

not be relied on to help out with omissions. This abundance of detail only inspired a still more restrictive attitude for Parliament was taken to have

specified every thing that needed to be covered and *Casus Omissi* was assumed to have been intentionally left out. This is probably the reason

behind judicial reluctance even now to fill in the gap in a statute.

If proceedings under the Urban Land (Ceiling and Regulations) Act were sought to be stayed the Legislature would have provided some indication

u/s 5(2) of the Act to the effect that those proceedings would also be deemed to be proceedings for declaration of rights and interest in any land. It

appears that the Legislature intentionally did not make any provision for the stay of the proceedings under the Urban Ceiling Act. In the absence of

any specific provision to the same effect the provisions of Section 5(2) of the Act cannot be extended in the said proceedings pending under the

Urban Ceiling Act. The Explanation added to Section 5 of the Act by Act 35 of 1976 provided that proceedings under the U.P. Imposition of

Ceiling on Land Holdings Act 1960 and Sections 134 to 137 of the U.P. Zamindari Abolition and Land Reforms Act shall not be taken to be

proceedings for declaration of rights etc. It means the proceedings under these provisions need not be stayed or abated. In case Legislature

intended that proceedings under the Urban Ceiling Act or that of Consolidation of Holdings Act must be stayed, it could have specifically said so.

In case it did not provide, the same cannot be assumed by implication.

6. In view of what has been stated above, unless the Legislature comes forward with a provision and amends Section 5(2) either by way of a

proviso or by adding an explanation there is no justification to stay the proceedings under the U.P. Consolidation of Holdings Act on the

commencement of the proceedings under the Urban Ceiling Act and vice-versa.

7. In view of what has been discussed above, the petition fails and is accordingly dismissed summarily.