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Date: 20/10/2025

State of U.P. Vs Additional Commissioner, Judicial (2), Gorakhpur and others

Civil Miscellaneous Writ Petition No. 17131 of 1991

Court: Allahabad High Court

Date of Decision: Oct. 5, 2010

Acts Referred:
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 â€" Section 10(2)

Hon'ble Judges: Arun Tandon, J

Final Decision: Allowed

Judgement

Arun Tandon, J.
Proceeding under Section 10 (2) of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter

referred to as "the Act") were initiated against one Smt. Nain Razi wife of Satya Deo culminating in an order of the Prescribed Authority dated

14.07.1976 wherein 10.60 acres of land was declared as surplus.

2. Not being satisfied with the order of the Prescribed Authority, the recorded tenure holder filed an appeal under Section 13 of the Act, which

was dismissed on 20.11.1976. Thereafter, the recorded tenure holder made an application on 16.08.1978, which was also rejected on

16.10.1978. Against the said order another appeal being Appeal No. 300 of 1978 was filed, which was allowed by the District Judge, the matter

was remanded for redetermination of ceiling limits.

3. The Prescribed Authority on 16.03.1981 again declared 10.60 acres of land as surplus. Applications were filed by respondents to this writ

petition before the Prescribed Authority, which were rejected vide order dated 16.02.1981. Against the said orders dated 16.02.1981 and dated

12.03.1981, appeals being Misc. Appeal Nos. 196 of 1981 and 195 of 1981 were filed before the District Judge. The District Judge allowed the

appeals, vide order dated 24.08.1981, and remanded the matter to the Prescribed Authority with a direction to afford opportunity to the objectors

to lead their evidence.

4. The Prescribed Authority under the order dated 04.04.1983 redetermined the ceiling limits and maintained his earlier order. Thereafter, Appeals

No. 201 of 1983 and 200 of 1983 were filed. The Appellate Authority allowed the appeals again on 16.10.1984 and remanded the matter to the

Prescribed Authority. On remand, the Prescribed Authority under the order dated 24th June, 1989 held that the recorded tenure holder has 9.62

acres of irrigated land as surplus.

5. Not being satisfied with the aforesaid order, recorded tenure holder filed an appeal being Appeal No. 135/291/4/M of 1990, which was

clubbed with the appeal filed by the State against the order of the Prescribed Authority being Appeal No. 142/290/3/M of 1990. Both the appeals

have been partly allowed, vide impugned order dated 17th July, 1990,

6. The present writ petition has been filed by the State of U.P. against the part of the order dated 17th July, 1990 whereunder it has been held that

in respect of the land situate in Village Kuria, total share of Smt. Nain Razi was 7 Ã¯Â¿Â½ acres only.

7. On behalf of the State, it is contended that the Prescribed Authority while deciding Issue No. 2 under his order dated 24th June, 1989 had

specifically recorded that the total area of land holding in village Kuria as mentioned in the notice issued under Section 10(2) of the Act was

mentioned as 14.29 acres. Although the recorded tenure holder had produced Khatuni entries of Fasli 1389 and 1390, which established that after

consolidation operation the recorded tenure holder had 7.5 acres of land in the said village but it has not been disclosed as to what has happened

to the balance area of the land holding because of consolidation. The Appellate Court while reversing the finding so recorded by the Prescribed

Authority, has held that since the names of Smt. Nain Razi has been mentioned as cosharer with Sri Kailash Pati in respect of Khatta No. 22 total

area of 15.1 acres, it is to be presumed that both the persons named in the joint Khatta had 7.5 acres of land each. Therefore, 7 Ã¯Â¿Â½ acres of land

shall fall in the share of Smt. Nain Razi which can be taken into consideration for determining the ceiling limits. Accordingly, Smt. Nain Razi has

been provided reduction of 7 Ã¯Â¿Â½ acres of land while determining the ceiling limits. It has been held that the tenure holder had 5 acres of irrigated

land as surplus.

8. Standing Counsel for the petitioner further contends that the findings recorded by the Appellate Authority are totally misconceived. Any

reduction in area during consolidation operations because of transfer of the share or partition in the holding during consolidation operations, will not

in any way vitiate the notice issued under Section 10 (2) of the Act nor any benefit of such reduction in area is to be provided. The said aspect of

the matter has been completely ignored by the Appellate Authority.

9. Heard counsel for the petitioner and examined the records.

10. The Prescribed Authority while dealing with the issue pertaining to the land of Village Kuria specifically held that there is absolutely no

explanation as to what has happened to the balance area of the land recorded in the name of tenure holder as per notice under Section 10(2) of the

Act.

11. It was rightly been recorded by the Prescribed Authority that the recorded tenure holder can derive benefit of reduction in area during

consolidation operations only in respect of such area of land, which is lost due to higher quality of land being provided in lieu of lower quality of

land or any land deducted for public purpose. Any area transferred otherwise or partitioned will not confer any benefit so far as ceiling proceedings

against the recorded tenure holder are concerned. All such reduction of area because of transfer/partition subsequent to notice under Section 10(2)

of the Act has to be ignored.

12. The Appellate Authority under the impugned order has completely lost sight of the aforesaid aspect of the matter when it proceeded to hold

that since Kailash Pati was recorded as cosharer with Smt. Nain Razi during consolidation operations, both of them will have half share in Khatta

No. 22, which comprised of 15.1 acres of land. There has been absolutely, no consideration of the issue as to whether the name of Kailash Pati

has rightly been recorded as cosharer along with Smt. Nain Razi over the plot in question and if so on what basis. The order to that extent is

therefore bad.

13. The order of the appellate authority dated 17.07.1990 to that extent is set aside. Writ petition is allowed with a direction to the Appellate

Authority to decide the said issued raised in the appeals afresh in accordance with law within a period of four months from the date of production

of a certified copy of this order and to determine the ceiling limits of the tenure holder accordingly.