**(1989) 07 AHC CK 0112**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 3334 of 1988

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| Man Singh and Another | | APPELLANT |
| | Vs | |
| Additional Commissioner, Jhansi Division and Others | | RESPONDENT |

**Date of Decision:** July 24, 1989

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Section 10, 10(2), 9, 9(2), 9(3)
- Uttar Pradesh Imposition of Ceiling on Land Holdings Rules, 1961 - Rule 8, 9

**Citation:** (1989) 2 AWC 1403

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

**Bench:** Single Bench

**Advocate:** Yatindra Singh, for the Appellant;

**Final Decision:** Allowed

**Judgement**

B.L. Yadav, J.
By means of this petition under Article 226 of the Constitution of India, the orders dated 4-12-87 and 30-4-86 passed by Respondent Nos. 1 and 2 in proceedings u/s 9(2) read with Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (for short the Act), are sought to be quashed.

2. The factual matrix of the case is that Petitioner No. 1 tiled an objection on 8-11-85 to the effect that an area of 15.29 acres of land, situate in village Lawan, has incorrectly been added in the Klrata of Malkhan Singh (not a party to the writ petition). In fact, the Petitioner alleged that he was an adopted son of Babu Kala, consequently, the land recorded in his name as tenure holder, could not be clubbed with the land of Malkhan Singh. The Petitioner ought to have been given notice as required by Section 9(2) of the

Act and Rule 9 of the rules framed there under Petitioner No. 2 claimed that she was also recorded tenure holder over an area of 2.86 acre and that area also could not have been clubbed in the name of Malkhan Singh.

3. The Prescribed Authority as well as the Addl. Commissioner, under the impugned orders, rejected the Petitioner''s objection on the ground that no notice was required. As the orders in ceiling proceedings against Malkhan Singh became final, hence the said area could not be claimed by the son of Man Singh, Petitioner No. 1, who was later on adopted by Babu Kala, and. that Petitioner No. 2 Smt. Om Kumari was the wife of Malkhan Singh, consequently, she also need not be given any notice as required u/s 9(2) read with Rule 8.

4. Learned Counsel for the Petitioner urged that Section 9(2) read with Rule 8 leaves no room for doubt that the Petitioners are recorded tenure holders and the provisions of Rule 8 along with its proviso is mandatory. Reliance was placed on a Full Bench decision of this Court in Shantanu Kumar v. State of U.P. 1979 AWC 585. The learned Standing Counsel, on the other hand, refuted the submissions made by the learned Counsel for the Petitioners.

5. Having heard the learned Counsel for the parties, I am of the view that the impugned order cannot be sustained. It is to be borne in mind that the provisions of the Act are confiscatory in nature and hence that have to be strictly interpreted against the State unless the intention of the legislature is otherwise. A bare reading of Section 9(2) along with its proviso and Section 9(3) read with Rule 8, leaves no room for doubt and makes it abundantly clear that the Prescribed Authority shall call upon every tenure holder holding land in excess of the ceiling area applicable to him on the date of enforcement of this Act, to submit within 30 days of the date of publication of this notice, a statement in respect of al'' his holdings in such form and giving such particulars as may be prescribed. Similarly, u/s 9(3) the provision is that in case the wife''s consent was not: tiled, the wife shall also be served with the notice.

6. Rule 8 along with the provisions of Sections 9 and 10 appears to be mandatory. The legislature has taken precaution under Rule 8 in using the expression "shall cause to be served upon every tenure holder, who has failed to submit the statement in C.L.H. Form 2''. A proviso has been added to ''the effect that where the statement in C.L.H. Form 3 also includes land ostensibly held in the name of any other person, the Prescribed Authority shall cause to be served upon such other person a notice in C.L.H. Form 4 together with a copy of the statement in C.L.H. Form 3 calling upon him to show cause within a period of 15 days from the date of service of the notice why the aforesaid statement be not taken as correct.

7. In the present case, the land was ostensibly recorded in the name of Man Singh, Petitioner No. 1 as separate tenure holder. -Similarly, the other area was recorded in the name of Petitioner No. 2. But these tenure holders were not given notice. In the Full

Bench of Shantanu Kumar v. State of U.P. (supra)(Para 9, page 587) it was held as follows:

It is thus evident that the notice requiring the tenure holder to show cause why the statement prepared by the Prescribed Authority be not taken as correct is to be issued to the tenure holder in respect of whose holding the statement has been prepared. Under the Proviso, the Prescribed Authority shall cause to be served a notice to the person in whose name the land included in C.L.H. Form 3 is ostensibly held. The Prescribed Authority prepares the statement on the basis of revenue records. If from the revenue records or other information, the Prescribed Authority comes to know that the land included in the statement in C.L.H. Form 3 includes land ostensibly held in the name of any other person, the Prescribed Authority is bound to serve notice on such person.

8. It is accordingly obvious that the Petitioners were recorded separately over the area claimed by them. The Petitioner No. 1 was adopted by Babu Kala and a registered deed of adoption dated 5-1-72 was executed. Petitioner No. 2, may be the wife of Malkhan Singh, but she was also required to be served with a notice u/s 9(2) and (3) and the same was not done.

The provisions of law contained u/s 9(2) and (3) read with Rule 8 and his proviso, were mandatory in nature, and notices must have been served on the Petitioners. In the impugned order it has been held that notices were not necessary. These orders are manifestly erroneous and deserve to be quashed.

9. In the result, the petition succeeds and is allowed. The impugned orders dated 4-12-87 and 30-4-86 are hereby quashed. The Prescribed Authority, Jhansi is directed to serve notices afresh on Petitioners Nos. 1 and 2 within a period of one month from the date a certified copy of this order is furnished before it, and it shall proceed to dispose of the objection of Petitioners afresh in accordance with law. The interim stay dated 1-3-88 is hereby vacated. Petition allowed.