

(1995) 08 AHC CK 0146

Allahabad High Court

Case No: C.M.W.P. No. 22135 of 1995

Vijaya Kishore Singh

APPELLANT

Vs

Addl. Commissioner, Jhansi
Division and Others

RESPONDENT

Date of Decision: Aug. 16, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1996) AWC 407 Supp : (1996) RD 123

Hon'ble Judges: S.R. Singh, J

Bench: Single Bench

Advocate: R.K. Pandey and S.K. Shukla, for the Appellant;

Final Decision: Allowed

Judgement

S.R. Singh, J.

Heard learned Counsel for the Petitioner and standing counsel appearing for the State authorities.

2. The writ petition is directed against the judgments and orders dated 28.1.1989, 25.4.1995 and 31.7.1995. The orders dated 28.1.1989 and 25.4.1995 have been passed by the prescribed authority while the order dated 31.7.1995 by the Additional Commissioner (1st), Jhansi Division, Jhansi in an appeal preferred against the order dated 25.4.1995.

3. It transpires from the record that certain land was declared surplus with the Petitioner under the provisions of U.P. Imposition of Ceiling on Land Holdings Act. By order dated 31.3.1990, the Petitioner was given three weeks time to indicate his choice. The Petitioner, it is stated, indicated his choice by means of an application, a copy of which has been annexed as Annexure 2 to the writ petition. The order determining the ceiling limit and consequential surplus land was allowed to become final, but the possession over the land declared surplus could not be taken due to

the reason that the village was under consolidation operation. After the finalisation of the consolidation scheme, the prescribed authority passed an order dated 28.1.1989 declaring gate No. 1021 area 9.50 acres (Northern Side) situate in village Pawala as surplus. The area so declared surplus was worked out in terms of the exchange ratio valuation as determined by the consolidation authorities.

4. The Petitioner moved an application dated 22.1.1994 for setting aside the order dated 28.1.1989 on the ground that It was passed ex parte and without any notice to him. The application dated 22.1.1994 met its end in being rejected by the prescribed authority vide order dated 25.4.1995. The: appeal against the said order having been rejected by order dated 31.7.1995, the Petitioner has approached this Court under Article 226 of the Constitution.

5. Learned Counsel for the Petitioner urged that during consolidation operation, the area of his holding was reduced due to deductions for public purposes and, therefore, the Petitioner became entitled to claim proportionate deduction from the land declared surplus. The argument advanced by the learned standing counsel for the Respondents is that the order determining ceiling limit had already attained finality much before commencement of the consolidation operation and by order dated 28.1.1989, the prescribed authority has only worked out 9.53 acres of land as equivalent to land already declared surplus with the tenure-holder on the basis of the reference made by the consolidation authorities in terms of exchange ratio valuation of the plots declared surplus, the Petitioner cannot claim any deduction due to reduction in the area of his holdings during the consolidation operation in that the order determining his ceiling limit had already attained finality before conclusion of the consolidation proceedings.

6. Learned Counsel for the Petitioner then urged that the order dated 28.1.1989 was passed ex parte and without any notice to the Petitioner. It has been urged by the learned Counsel that had the Petitioner been afforded opportunity of hearing, he would have given his option for plot No. 590/2 being declared as surplus Instead of plot No. 1021. According to the learned Counsel, the earlier choice Indicated by the Petitioner, vide application Annexure-2 to the writ petition, was with reference to old plot numbers while the order dated 28.1.1989 has been passed in terms of the new plot numbers without giving any notice to the Petitioner. in my opinion, if the choice already given by the tenure-holder was not accepted because of the reason that the village was under consolidation operation and so it was not possible to take possession of the old plots until after the finalisation of the scheme, he became entitled to be given a fresh opportunity to indicate his choice in terms" of new numbers assigned after rearrangement of holdings in the unit. A perusal of the appellate order dated 31.7.1995 would Indicate that it was specifically urged before the appellate authority that the order dated 28.1.1989 was passed ex parte and without affording opportunity of hearing to the Petitioner. The appellate authority does not appear to have recorded a categorical finding on the question as to

whether the Petitioner was given any notice before the prescribed authority accepted. vide order dated 28.1.1989, the reference prepared by consolidation authorities for declaration of an area of 9.53 acres of plot No. 1021 as surplus. It has come in the application for restoration and the affidavit filed in support thereof before the prescribed authority that the main chak of the Petitioner would stand disturbed and distorted If the order dated 28.1.1989 is given effect to. in the circumstance of the case, therefore. I am inclined to quash the appellate order dated 31.7.1995 and direct the appellate authority to dispose of the appeal afresh after recording a clear finding on the question as to whether the Petitioner was afforded opportunity to indicate his choice in terms of new plot numbers before the order dated 28.1.1989 was passed by the prescribed authority. It goes without saying that If the appellate authority comes to the conclusion that the order dated 28.1.1989 was passed ex parte and without notice to the Petitioner, it would remit the matter to the prescribed authority for passing fresh order after taking into consideration such options as may be Indicated by the Petitioner in terms of new plot numbers.

7. Accordingly the petition succeeds and is allowed in part. The appellate order dated 31.7.1995 is quashed. The appellate authority is directed to dispose of the appeal afresh in accordance with law and in the light of the observations made in this judgment.