

The Agricultural and Industrial Syndicate Ltd.

Vs

State of U.P. and Others

Civil Appeal No. 2043 Of 1971

(CJI A.N. Ray, S.N. Dwivedi JJ)

04.05.1973

JUDGMENT

DWIVEDI, J. -

1. The appellant, the agriculture and Industrial Syndicate Ltd., is the tenure holder of a large area of land in two villages in the district of Saharanpur in Uttar Pradesh; Aithal Buzurg and Bukkanpur. Some of its lands have been declared as 'surplus land' under the U.P. Imposition of Ceiling on Land Holdings Act (hereinafter referred to as the Ceiling Act.) It went in appeal against the order declaring surplus land to the District judge, but without success. Its writ petition has been partly allowed and partly dismissed by the Allahabad High Court.

The appeal, by special leave, is directed against the - of the High Court.

2. The of the Ceiling Act is to allow a tenure-holder to retain such of his plots as are assigned to him as his ceiling area and to acquire the remaining plots as surplus land. The ceiling area and the surplus land are determined by the Prescribed Authority appointed under the Ceiling Act. The Prescribed Authority issues a general notice differ upon all the tenure-holders of a village to file a statement in respect of their holdings. Under Section 9 a tenure-holder files his statement in respect of all his holdings as well as indicates the plot or plots which he would like to retain as his ceiling area. Where a tenure-holder fails to file a statement or submits an incomplete or incorrect statement under Section 9, Section 10 enables the Prescribed Authority to prepare a statement in regard to his holdings and serve it on him. As the appellant did not file a statement under section 9 a statement prepared under section 10 was served on it. The objection indicated the plots which it wanted to retain as its ceiling area. The prescribed Authority did not accept its choice wholly. After the decision of the Prescribed Authority, it received C.H. Form V issued under the provisions of the U.P. Consolidation of Holdings Act (hereinafter to be referred as the Consolidation Act) with respect to the land situated in village Bukkanpur. A review application was then moved before the Prescribed Authority on the ground of the pendency of consolidation operation in village Bukkanpur. The application was rejected on September 15, 1962. While the appeal against the order of the Prescribed Authority was pending, village Aithal Buzurg was also brought under consolidation operations. The appellant received C.H. Form V issued under the Consolidation Act with respect to the plots situate in village Aithal Buzurg. It made an application to the appellate authority informing him of the initiation of consolidation operations in the two villages. It is said that the authority took no notice of the application and decided the appeal on merits The appellate authority also did not accept wholly the choice of the appellant in regard to the plots to be retained as its ceiling area In the writ petition before the High Court, appellant pressed two points for consideration. First, the Prescribed Authority and the appellate authority should have accepted

entirely the choices of the plots which it wanted to retain as its ceiling are; second, the two authorities should have stayed the proceedings under the ceiling Act during consolidation operation in the said villages. The first contention was accepted by the High court; the second was rejected. The High court quashed the order of the appellate authority and directed. The High court quashed the order of the appellate authority and directed it to decide the appeal in the light of its judgment. The High court also directed that the proceeding before the consolidation authorities would remain stayed until the appeal was decided by the appellate authority under the Ceiling Act. This appeal is confined to the second point.

3. The High Court has rejected the second - argument for two reasons : One, there was no merit in the argument; second, the appellant had not raised the argument before the Prescribed Authority and the appellate authority.

4. It now transpires that while the petition was pending in the High court, the consolidation officer and the Asstt. Settlement Officer had adjudicated upon the objections of a large number of persons claiming interest in the plots of the appellant. Their objections were dismissed. They filed revisions against those orders. The revisions were pending when the petition was heard by the High court. After the decision of the High court, the state Government has issued a notification under Section 6 of the Consolidation Act cancelling the notification bringing the aforesaid villages under consolidation operations. But the High court, has admitted a writ petition of the appellant against this notification and has stayed the operation of the notification.

5. The second reason assigned by the High court for rejecting the second argument of the appellant may be disposed of first. It is clear from the facts already stated that the appellant did raise at the proper time before the Prescribed Authority and the appellate authority the argument that the proceedings under the ceiling Act would remain stayed during consolidation operations. Accordingly, we will now proceed to examine the correctness of the first reason assigned by the High court. Its plea before the appellate authority before and after the decision in the writ petition, in effect was this : As revisions were pending under the Consolidation Act, its interest in the plots was under cloud. It might or might not be held to be the tenure holder of all or more of the plots. If the proceedings under the Ceiling Act were not stayed, it would lose surplus land, and it might also lose some of the plots included in its ceiling area as a result of an adverse decision in the revisions under the Consolidation Act. In plain language, its argument, in the alternative, was that it might not be the tenure holder of all the plots.

6. Consolidation proceedings are started in a village by virtue of a notification issued by the state Government under Section 4 of the Consolidation Act. Section 5 specifies the consequences which follow the issuance of a notification under Section 4. Sub section (1) of Section 5 states certain consequences with which we are not concerned in this appeal. Sub section (2) is material for our purpose, and it materially reads as follows :

Upon such publication of the notification under subsection (2) of Section 4 the following further consequences shall ensure in the area to which the notification relates :

(a) every proceeding for the correction of records and every suit and proceedings 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 proceeding 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.

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Provided further that on issuance of a notification under sub-section (1) of the 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 .... shall stand vacated.

(b) such abatement shall be without prejudice of the rights of the persons affected to agitate the right or interest in dispute in the said suits or proceedings before the appropriate consolidation authorities under and in accordance with the provision of this Act and the rules thereunder.

7. The Prescribed Authority acting under Section 10(2) and the 12 of the Ceiling Act is an authority within the meaning of the expression in section 5(2). The proceeding before will be a proceeding within the meaning of the said word in section 5 (2). But the proceeding before him is not a proceeding for the correctness of records or for 'declaration or adjudication of any other right in regard to which proceedings can or ought to be taken' under the consolidation Act. So the limited question to be considered is whether the proceeding in the present case is one "in respect of declaration of rights or interest in any land lying in the area".

8. When a tenure-holder voluntarily files a statement of his holdings under section 9, the proceeding before the prescribed Authority is not of this kind, because the tenure-holding admits that the holdings are his. There is ordinarily no dispute about any right or interest in the holdings before the prescribed Authority. Again, when the tenure-holder accepts the statement sent to him by the Prescribed Authority under section 10, there is ordinarily no dispute-holding with respect to any right or interest in land. In this two instance Sections 5(2) will be not apply. But where the tenure-holder dose not voluntarily file a statement under section 9 and disputes that he is not the tenure-holder of all or some of the plots included in the statement prepared under section 10 there ensues a dispute about right or interest in land. According to section 32 of the ceiling Act, the state government is a party to every proceeding. So in such a in case there is an adversary proceeding before the Prescribed Authority between him and the government. The prescribed Authority will decide under Sec 12 whether the tenure holder has any right or interest in all or some of the plots. If the Prescribed Authority finds that he has no right or interest in all or some of the plots, he will exclude those plots from the statement served on him under Section 10 and determine the ceiling area and surplus land without taking into account the excluded plots. This is the very question which is in issue before the Consolidation Authority under the Consolidation Act. Under Section 10 of the Consolidation Act the Consolidation Officer is called upon to adjudicate upon various claims to the plots falling within the consolidation area. Take this particular case. Admittedly a large number of persons have filed claims to the plots of the appellant before the Consolidation before the Consolidation Authorities. Their claims are pending consideration in revisions under Section 48 of the Consolidation Act. If their revisions are allowed a large area of included in the statement in the Statement under Section 10 of the Ceiling Act will have to be excluded from consideration by the Prescribed Authority. It is therefore obvious that the non-stay of proceedings under the Ceiling Act would cause great hardship to the appellant. Counsel for the respondent has submitted that all those claimants before the revising authority under the Consolidation Act can be impleaded as parties in the proceedings under the Ceiling Act. Assuming in arguendo that they can be so impleaded, the question still remains whether the proceedings under the Ceiling Act can go on while proceedings with respect to any right or interest in the plots of the appellant are simultaneously going on before the Consolidation Authorities. As soon as those claimants are impleaded in the proceeding under

Section 12 of the Ceiling Act, the proceeding will more pointedly become a proceeding "in respect of declaration of right or interest in any land" under Section 5(2) of the Consolidation Act.

9. It is true that the purpose of the two Acts are different. Under the Ceiling Act the ceiling area and surplus land of a tenure-order are determined; under the Consolidation Act the holdings of a tenure-holder are consolidated. But neither purpose may in a large number of cases be accomplished without first determining the right or interest of various claimants in the plots. So the crucial question for decision is as to whether the Prescribed Authority under the Ceiling Act or the Consolidation Authority under consolidation Act has got a pre-emptive jurisdiction to determine rival rights and interest in the land of the appellant. We have already shown that the proceeding under Section 12 of the Ceiling Act is a proceeding within the purview of Section 5(2) of the Consolidation Act. Section 49 of the Consolidation Act materially provides :

Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of rights of tenure-holders in respect of land lying in an area, for which a notification has been issued under sub-section 4 shall be done in accordance with the provisions of this Act .....

10. Obviously the purpose of the non obstante clause in Section 49 is to exclude the operation of any other overlapping Act. So the non obstante clause would exclude the operation of the Ceiling Act while the Consolidation Act is in operation in a particular area. Section 5(2) and Section 49 indicate clearly that the proceedings in the instant case are to be abated under Section 5(2). Section 48A of the Consolidation Act expressly saves the jurisdiction of the Custodian of the Evacuee properties to decide claims to the plots of the evacuees during consolidation operations. The absence of a like provision in relation to the jurisdiction of the Prescribed Authority under the Ceiling Act lends support to our inference.

11. We do not think that the construction of Section 5(2) should be influenced by the argument that if the proceedings under Section 12 of the Ceiling Act are abated, the appellant would retain lands in its hands permanently or for a long time. As soon as the consolidation operations are closed on the valid issue of a notification under Section 6 or Section 52. the proceeding under the Ceiling Act may be resumed. In any event, it is plain from the language of Sections 5(2), 48A and 49 of the Consolidation Act that the proceedings under the Ceiling Act cannot continue in the circumstances of this case as long as the consolidation operations are going on.

12. As in a fresh petition the High Court has stayed the operation of the notification under Section 6 of the Consolidation Act, it is of no avail to the respondent in his appeal.

13. The appeal is allowed and the Judgment of the High Court is set aside. The writ petition filed by the appellant in the High Court is allowed in toto. The order of the District Judge, dated January 31, 1964, is quashed and the proceedings under the Ceiling Act are abated under Section 5(2) of the Consolidation Act. The proceedings under the Ceiling Act may be resumed after the issue of a notification under Section 52 or after the dismissal of the writ petition challenging the notification under Section 6. In the circumstances of this case, there will be no order as to costs.

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