Kallu

Vs

State of U. P. and Others

Civil Appeal No. 3241 Of 1979

Abaran Singh

Vs

State of U. P. and Others

Civil Appela No. 4390 of 1984

Civil Appeals Nos. 3241 of 1979

(Kuldip Singh, S. Natarajan, K. N. Saikia JJ)

24.10.1989

JUDGMENT

NATARAJAN, J. –

In these appeals by special leave, the appellants assail the interpretation given to certain provisions of Section 4-A of the U. P. Imposition of Ceiling on Land Holdings Act, 1960 as amended by U. P. Acts 18 of 1973 and 20 of 1976 (hereinafter referred to as 'the Act') by the Allahabad High Court. Conflicting interpretations had been given by Single Judges on the relevant provisions and hence a reference was made in Kallu v. State of U. P. 1 to which connected writ petitions were tagged on to a Division Bench for an authoritative pronouncement on two questions, viz.

"1. What is the true scope and effect of sub-clause (b) of clause 'firstly' of Section 4-A?

2. In particular, whether the said sub-clause would take in the entire plot only if two crops were grown in every inch of the land covered by it."

The Division Bench, in its reported judgment Kallu v. State of U. P. 1. has discussed the matter and answered the two questions as under :

> "Clause 'firstly' of Section 4-A requires the Prescribed Authority to form an opinion as to whether, during the material Fasli years irrigation facilities were available from such sources as are enumerated there in respect of any crops. The relevant consideration is merely the existence of irrigation facilities and not its actual utilisation. This is understandably so because if facilities are available and yet a tenure-holder neglects to make use of them there is no justifiable reason why he should have an advantage over those who have been up and doing while he has chosen to be idle and asleep. We have already held that 'land' and 'plot' cannot be equated. If irrigation facilities of the nature mentioned in sub-clause (a) of clause

'firstly' of Section 4-A are available only to a part of the total area of which a plot is comprised it cannot be held that irrigation facilities were available for the entire plot. In such cases, the Prescribed Authority on a correct interpretation of sub-clause (a) of clause 'firstly' will have to treat only that area of a tenure holder's plot as 'irrigated land' to which irrigation facilities were available. We are consequently of the opinion that if a large plot consists partly of an area to which irrigation facilities are available as also some to which irrigation facilities are not available only that area thereof will be covered by sub-clause (a) of clause 'firstly' to which irrigation facilities were in fact available. Of course 'user land' as defined in the Act and determined in the manner provided by the Rules will have to be excluded even though irrigation facilities may have been available to it. Similarly other varieties of land exempted under Section 6 will have to be excluded from consideration.

As far as sub-clause (b) of clause 'firstly' is concerned, the requirement is 'that at least two crops were grown in such land in any one of the aforesaid years. The expression 'such land', it is obvious, means land referred to in sub-clause (a) of clause 'firstly'. The word used in sub-clause (b) is 'in' and not 'over' and consequently if two crops were grown in any portion of the area of a plot to which irrigation facility was available under sub-clause (a) of clause 'firstly', the entire area to which irrigation facility was available shall have to be treated as land in which two crops were grown. The requirement of sub-clause (b) of clause 'firstly' of Section 4-A is not that every inch of the land to which irrigation facilities were available in the material years should have grown double crops. To take a hypothetical example, if to a plot of land consisting of 50 acres irrigation facilities were available to an area of 20 acres and on any portion of such 20 acres at least two crops were grown in any of the years 1378 Fasli to 1380 Fasli, the entire area of 20 acres to which irrigation facilities were available will have to be treated as irrigated land for he purpose of sub-clause (b) of clause 'firstly' of Section 4-A. The word 'in' is one of common use. If it is said that an individual lives in a particular building or locality it does not convey that he is in occupation of the entire building or locality. Similarly when it is said that one has grown trees in piece of land or raised crops therein, it does not signify that he has grown trees or raised crops over the entire land. When the legislature by amending the Act made availability of irrigation facilities the basis for determination of the ceiling area and surplus land instead of the quality of the land it must have and some purpose in mind. During the last decade farm technology and agricultural science have made rapid progress and human ingenuity coupled with labour and application of scientific know-how has successfully converted even deserts into green belts provided water was available. Application of scientific methods has made possible improvement in soil quality and its fertility. It is not 'usar land' and in some part of it 'dofasli' crops have in fact been raised in any of the relevant 'Fasli' years a willing and hard-working tenure-holder by application of modern agricultural appliances and fertilisers can improve the productivity of the land and consequently no premium should be available to those who fail to do so. In this view of the matter, to take a concrete case to compute the area of a tenure-holder's 'irrigated land' under clause 'firstly' of Section 4-A the Prescribed Authority must find out the area of land to which irrigation facilities of the prescribed nature were available for any crop during the relevant Fasli years, exclude therefrom 'usar land' etc. and if it finds that over any part of such area at least two crops were grown it must hold the entire area as 'irrigated land'. Such an interpretation resolves the problem which the Prescribed Authority would be faced with in determination of the 'irrigated land' of a tenure-holder where records reveal the growing of two crops on varying areas of his holding during the material Fasli years.

For the reasons given, our answer to question No. 1 posed by the learned Single Judge is as follows :

> If in any portion of an area of plot or plots to which during the Fasli years 1378 to 1380 irrigation facilities were available and over any portion of such area double crop had in fact been grown, the entire area of the plot to which irrigation facilities were available will be covered by clause 'firstly' of Section 4-A since both the conditions laid in sub-clauses (a) and (b) will be complied with.

Our answer to question No. 2 is in the negative.

> In as far as a contrary view has been taken with regard to the scope of sub-clauses (a) and (b) of clause 'firstly' of Section 4-A of the Act in Ghasi Ram v. State of U. P. 2 and similarly opinion expressed in Surajpal Singh v. State of U. P. 3 and Sitaram Tyagi v. State of U. P. 4 have not been correctly decided."

2. Thereafter, the writ petitions were placed before Single Judges for decision on merits and the petitions came to be dismissed. In Civil Miscellaneous Writ Petition No. 11370 of 1975 it was held that plot Nos. 595 and 224 belonging to the petitioner had been rightly treated as irrigated land in their entirely for purposes of computation under the Act. Against that judgment, Civil Appeal No. 3241 of 1979 has been filed. In other appeal which arises from the dismissal of Civil Miscellaneous Writ Petition No. Nil of 1984, leave has been granted confined only to plot No. 466. The writ petition was dismissed following the ratio in Kallu v. State of U. P. 1. Though the appeals are directed against the dismissal of the two writ petitions, the real challenge in the appeals is to the ratio laid down by the Division Bench in Kallu v. State of U. P. 1.

3. The appellants dispute the correctness of the view taken by the Division Bench and would contend that in order to classify a land as irrigated land, there should be evidence of 'assured irrigation' and secondly the two crops in a Fasli should have been raised on the entire extent of the land and not in a portion of the land alone.

4. The interpretation of the terms of Section 4-A of the Act assume importance because 'ceiling area' and 'surplus land' under the Act have to be computed on the basis of the 'irrigated land' held by a tenure-holder. Originally, the 'ceiling area' under the Act was to be determined on the basis of 'fair quality land'. However, by amendments introduced by U. P. Act 18 of 1973 and U. P. Act 20 of 1976, 'ceiling area' and 'surplus land' are to be determined with reference to the assured irrigation facilities available to land held by a tenure-holder.

5. We may now have a look at the relevant portions of Section 4-A of the Act. They read as under :

> "4-A. Determination of irrigated land - The Prescribed Authority shall examine the relevant khasras for the years 1378 Fasli, 1379 Fasli and 1380 Fasli, the latest village map and such other records as it may consider necessary, and may also make local inspection where it considers necessary, and thereupon if the Prescribed Authority is of opinion :-

firstly, (a) that irrigation facility was available for any land in respect of any crop in any one of the aforesaid years; by -

> (i) any canal included in Schedule No. 1 of irrigation rates notified in Notification No. 1579-W/XXIII-62-W-1946, dated March 31, 1953, as amended from time to time; or

(ii) any lift irrigation canal; or

(iii) any State tube-well or a private irrigation work; and

(b) that at least two crops were grown in such land in any one of the aforesaid years; or

secondly, that irrigation facility became available to any land by a State Irrigation Work coming into operation subsequent to the enforcement of the Uttar Pradesh Imposition of Ceiling of Land Holdings (Amendment) Act, 1972, and at least two crops were grown in such land in any agricultural year between the date of such work coming into operation and the date of issue of notice under Section 10; or

> thirdly, (a) that any land is situated within the effective command area of a lift irrigation canal or a State tube-well or a private irrigation work; and
>
> (b) that the class and composition of its soil is such that it is capable of growing at least two crops in an agricultural year;

then the Prescribed Authority shall determine such land to be irrigated land for the purpose of this Act.

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6. On a reading of Section 4-A, it may be seen that the legislature has prescribed different kinds of tests on the basis of which the authorities have to determine whether a land is irrigated land or not for the purpose of determining the ceiling area of a tenure-holder. The two broad tests are (1) availability of irrigation facilities and (2) the factum of raising the capacity of the soil for raising at least two crops in an agricultural year.

7. We may now examine the merits of the appellant's contentions. The statute has been enacted "to provide for the imposition of ceiling on land holdings in Uttar Pradesh and certain other matters connected therewith." The preamble to the Act reads as under :

> "Whereas it is necessary in the interest of the community to ensure increased agricultural production and to provide land for landless agricultural labourers and for other public purposes as best to subserve the common good;

And whereas a more equitable distribution of land is essential.

> And, therefore, it is expedient to provide for the imposition of ceiling on land holdings in Uttar Pradesh for the aforementioned purposes."

8. The Act is thus a piece of social legislation for achieving the several objectives set out in the preamble. In order to give greater thrust to the objects underlying the Act, the legislature has changed the basis for reckoning the ceiling area from that of 'fair quality land' to that of "assured irrigation facilities" available to a land.

9. Coming now to the specific provisions of Section 4-A dealt with by the High Court, it may be seen that in order to form an opinion whether irrigation facility was available for any land from one of the sources mentioned in sub-clauses (i), (ii) and (iii) in respect of any crop in any one of the

aforesaid years viz., Faslis 1378 to 1380, the Prescribed Authority is enjoined to examine the khasras for those three Fasli years, the village map, other relevant records considered necessary and also to make a local inspection whenever it is necessary. Hence there is no scope for contending that a Prescribed Authority may form his opinion without reference to relevant material, in an arbitrary or capricious manner, to the detriment of a land from one of the enumerated sources. Consequently, there is no merit in the first contention of the appellant that in addition to the materials and records set out in the sub-clause, there must be independent evidence of assured irrigation facility before ever a Prescribed Authority can form an opinion about a land having assured irrigation facility.

10. As regards the second contention relating to sub-clause (b), the clause refers only to the growing of at least two crops in a land found to be having assured irrigation facility in any one of the relevant years. The sub-clause does not contemplate the raising of two crops on the entire extent of land. The classification has to be made with reference to the potentiality of land to yield two crops in one Fasli year and not on the basis of the actual raising of two crops on the entire extent of the land. Therefore, sub-clause (b) cannot be read so as to mean that two crops should have been grown on the entire extent of a land having irrigation facility for classifying the land as 'irrigated land' as it would have the effect of limiting the operation of the sub-clause contrary to the legislative intent. The High Court has taken the view that when the legislature made amendments to the Act, it must have had in mind the advancement that has been made in agricultural science and farm technology and by reason of it a tenure-holder can overcome hurdles and raise two crops in a year over the entire extent of a land having irrigation facility. We need not go as far as that. The normal presumption, in the absence of contra-material, would be that the quality and content of soil of a land would be uniform throughout its extent. Such being the case, if a tenure-holder is able to raise two crops in a year in a portion of the land, then it would be logical to hold that the other portions of land also would have the capacity to yield two crops if the tenure-holder had utilised the entire extent to raise two crops instead of utilising a portion of the land alone. The raising of two crops even on a portion of the land will prove, in the absence of material to show poor quality of soil in portions of the land due to salinity etc., the uniform nature and content of the soil of the entire land. The High Court was therefore right in holding that the Prescribed Authority can treat a land, having assured irrigation facility, as 'irrigated land' if the tenure-holder had raised two crops even in a portion of land during any one of the prescribed years and that it is not necessary that the raising of the two crops should have been made on the entire extent of the land in order to classify the land as 'irrigated land'

11. As the learned Single Judges have dismissed the writ petitions on the ground that the lands in question satisfy the tests laid down by the Division Bench in Kallu v. State of U. P. 1, we do not find any merit in these appeals. Consequently, both the appeals are dismissed but there will be no order as to costs.

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