

Ram Chandra

Vs

State of U.P. and Others

Civil Appeal No. 2793 of 1980

(N.M. Kasliwal, M.M. Punchhi JJ)

10.01.1992

JUDGMENT

1. This appeal by grant of special leave is directed against the order of the Allahabad High Court dated November 28, 1978 in proceeding under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 hereinafter referred to as the Ceiling Act.
2. The prescribed authority gave a notice to the appellant under Section 10(2) of the Ceiling Act. The appellant in reply to the notice submitted that the land occupied by the appellant was within the ceiling limit. The prescribed authority, Chail, Allahabad declared 13 bigha 7 biswas and 10 biswas is of land as surplus area. Aggrieved against the order of the prescribed authority, an appeal was filed before the Additional District Judge, Allahabad. Learned Additional District Judge, initially dismissed the appeal but on a review petition held that only 2 bigha 13 biswa 10 biswas is in terms of irrigated land was surplus. The appellant aggrieved against the aforesaid judgment of the Additional District Judge filed a writ petition in the High Court. [he High Court dismissed the writ petition and affirmed the order passed by the Additional District Judge.
3. We have heard learned counsel for the parties. Learned counsel for the appellant has submitted that as early as on 17-8-68 Tehsildar, Chail, Allahabad had included the names of the six adult sons of the appellant as co-occupancy tenants in the khata of the land in dispute. The said order passed by the Tehsildar has been submitted as Annexure 'A' which shows that Sher Khan Ziladar on behalf of the State Government had consented in recording the names of the sons as co-occupancy tenants. It has been further submitted by the learned counsel for the appellant that a suit for partition was filed in respect of the land in dispute and the Judicial Officer, Chail in case No. 5/1 under Section 49 of the U. P. Tenancy Act had passed a preliminary decree for partition on 5-12-1970. According to the said partition decree only an area of 15 bigha 15 biswas has come in the share of the appellant. The final decree for partition was also passed on 1-5-1971. It has thus been contended that the preliminary decree in the suit for partition was admittedly passed prior to the relevant date i.e. 24-1-1971. It was further contended that if the aforesaid documents are taken into consideration then the land in possession of the appellant admittedly comes within the ceiling limit and the Courts below were wrong in declaring any land as surplus.
4. Learned counsel for the State was unable to show as to why aforesaid documents were ignored by the ceiling authorities as well as by the Additional District Judge and the High Court. We have taken into consideration the entire facts and circumstances of the case and have gone through the record. In the case in hand before us a written statement was filed on behalf of the Government in

proceedings before the Tehsildar, Chail, Allahabad in which the adult sons of the appellant had claimed co-occupancy tenancy rights. The State had admitted that the applicants who were sons of Ram Chander were in possession over the land in dispute and the State had no objection in recording the names of the applicants along with Ram Chander. It may also be noted that the Tehsildar on 17-8-68 had passed an order recording consent on behalf of the Government through Sher Khan Power of Attorney holder and had directed the names of the applicants to be included in the Khata as occupancy tenants. That apart a preliminary decree for partition was passed in favour of the adult sons of the appellant prior to the relevant date i.e. 24-1-1971. There is no reason to discard the aforesaid two documents and in case the same are taken into consideration it cannot be disputed that there was no surplus land with the appellant beyond the ceiling limit. In these circumstances, we allow the appeal, set aside the judgment of the High Court as well as the other authorities and hold that the appellant has no land in surplus over the ceiling limit. No order as to costs. Appeal allowed.

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