

## SUPREME COURT OF INDIA

K.P. Dwivedi

Vs.

State of U.P.

(S V.Patil and D.M. Dharmadhikari JJ.)

17.12.2003

### JUDGMENT

#### **D.M. Dharamadhikari, J.**

1. This appeal arises out of proceedings under the provisions of the Uttar Pradesh Imposition of Ceiling On Land Holdings act, 1960 [hereinafter referred to as the Act]. The appellant, who is holder of the lands involved, feels aggrieved by the order dated 29.3.1996 passed by the Prescribed Authority/Additional Collector (Supply), Gorakhpur which, it is alleged, has been wrongly confirmed by the impugned order of the High Court dated 09.5.1997.

2. The proceedings under the Act have taken a long and a winding course. Its brief survey is necessary to appreciate the challenge made by the appellant to the impugned orders of the Prescribed Authority and the High Court. The appellant has lands in two villages viz., Rampur and Raghapati. Before the Prescribed Authority, the appellant claimed exclusion of certain lands transferred bona fide by him. He also sought exclusion of certain lands covered by canal constructed by the State of U.P. He also claimed exclusion of land which he described as 'grove' land. The appellant also raised dispute about the classification of his lands by the authority as irrigated and unirrigated. His case was that some of the lands were unirrigated and cannot be treated as irrigated for working out the ceiling limit. The appellant also submitted that the lands were the joint family property and he had only 1/10<sup>th</sup> share in the same. The appellant also claimed option to surrender lands covered by the canal.

3. The Prescribed Authority by order dated 29.11.1976 rejected most of the objections raised by the appellant and declared 23.84, 12/25 acres in two villages as surplus land in terms of it being 'irrigated land' with the appellant.

4. The appellant appealed under the Act to the Court of District Judge. His appeal was partly allowed by Judgment dated 05.3.1977 holding inter alia in his favour that he has 1/10<sup>th</sup> share in the lands in question. The land treated as grove is required to be excluded. The District Judge also held that Plot No. 602 in village Raghapati, sold on 10.12.1971 for adequate consideration, was a bona fide sale and deserved to be excluded. On the classification of land into irrigated or unirrigated the objection of the appellant with regard to certain lands in two villages viz., Rampur and Raghapati, was rejected. The District Judge,

after allowing some of the objections of the appellant as mentioned above, sent -back the case to the Prescribed Authority to re-determine the surplus land of the appellant.

5. According to the appellant, the order of the District Judge passed in appeal dated 05.8.1977 has attained finality as the State did not prefer any writ petition against the same. Only appellant approached the High Court in earlier Writ Petition No. 3997 of 1977 questioning the correctness of rejection of some of his objections. The High Court in writ petition no. 3997 of 1977 by order dated 19.1.1979 rejected the appellant's contentions that some of the lands were covered by the canal and deserved to be excluded. According to the High Court, it is open to the appellant to exercise his choice and surrender such plots which according to him form part of the canal. The High Court also rejected the appellant's plea with regard to one more sale deed which the appellant wanted to be treated as a bona fide transaction. The writ petition was partly allowed by remanding the matter to the Prescribed Authority to allow parties to lead evidence and for deciding the nature of the lands involved in the two categories i.e. irrigated or unirrigated in accordance with Section 4-A of the Act. After taking evidence and deciding the nature of the lands of the two categories, the Prescribed Authority was directed to re-determine the ceiling area and the surplus land and thereafter allow the appellant fresh choice for surrendering certain lands and retaining the remaining. The High Court in its order observed that apart from the above direction regarding re-determination of nature of land, 'no other controversy shall be allowed to be raised before the Prescribed Authority and in appeal' that may be preferred against the same. Since the appellant heavily relied on the order dated 05.8.1977 of the District Judge as confirmed by the order dated 19.1.1979 of the High Court to have attained finality with regard to all other points except on the question of categorisation of the lands between irrigated and unirrigated, it is necessary to reproduce the operative portion of the order of High Court :-

"This petition accordingly succeeds in the manner that the order of the Prescribed Authority and the judgment of the appellate court are hereby is quashed so far as the aforementioned areas of land situate in the village of Rampur and in the village of Raghapati are concerned which have been treated as irrigated by the authorities below. The case is remanded to the Prescribed Authority with a direction that the parties shall be allowed fresh opportunity to lead additional evidence on the controversy as to whether that land should be treated as irrigated or unirrigated. Such evidence should be in the light of the law laid down in the said Division Bench pronouncement of this Court. The Prescribed Authority shall deal with each separate plot number an and state how both the requirements laid down in any of the three categories of Section 4-A of the Act stand satisfied or do not stand satisfied. Thereafter the plots shall be decided to be irrigated or unirrigated in the light of the law laid down in the said Division Bench pronouncement. The Prescribed Authority shall thereafter determine the ceiling area and the surplus land and allow the appellant to give in choice the aforementioned plots to be included in the surplus land of the appellant. I have already mentioned the said seven plots which the appellant have been acquired by the State for the canal purposes. No other controversy shall be allowed to be raised hereafter before the Prescribed Authority or before the Appellate

Court in case an appeal is filed against the fresh decision of the Prescribed Authority. There will be no order as to costs.

[Emphasis added by underlining]

6. After the remand by the High Court to the Prescribed Authority, the latter passed a fresh order on 29.3.1996 and, according to the appellant, without appreciating that the order of the remand was restricted to the examination of categorisation of the lands. The Prescribed Authority in his order passed after the remand has assumed that both orders earlier passed by the Prescribed Authority and the District Judge in appeal were set aside by the High Court to allow him to decide the whole ceiling case afresh.

7. In the impugned order dated 29.3.1996, the Prescribed Authority at one place observes:-

"The Hon'ble High Court quashed the orders of the prescribed authority and the appellate court and sent back the file before the court of prescribed authority with the direction that the parties should be allowed to adduce new additional evidence in respect of the irrigated and non-irrigated lands in village Rampur and Raghavpatti."

8. The Prescribed Authority observing thus, proceeded to examine only the question of categorisation of the lands in two villages as irrigated or unirrigated. He, thereafter, re-determined the same extent of 32.87 acres in general terms and 23.84/12/25 acres in terms of irrigated as surplus land and thus confirmed his initial order dated 29.11.1976.

9. The appellant again approached the appellate authority under the Act which was Additional Commissioner, Judicial, Gorakhpur Division. The appellate authority by its order dated 18.03.1997 confirmed the last order of the Prescribed Authority dated 29.3.1996 mentioned above.

10. We have heard learned counsel appearing for the parties. On the resume of the contents of various orders passed by the Prescribed Authority, the Appellate Authority and the High Court, we find that the grievance raised on behalf of the appellant has great justification. The Prescribed Authority, in carrying out the limited remand, for re-examination of the categorisation of land as irrigated or unirrigated, could not have disturbed the order dated 05.8.1977 of the District Judge passed in appeal and confirmed on 19.1.1979 by the High Court in respect to the appellant's objections which were allowed to the extent of accepting his case of his share to be 1/10<sup>th</sup> in joint family property, the exclusion of the 'grove' land, sale deed dated 10.12.1971 being bona fide and grant of fresh option to him to surrender land which may have been covered by the canal.

11. In our considered opinion, there is a glaring mistake in the impugned order dated 29.3.1996 of the Prescribed Authority passed after remand in treating the earlier order dated 05.8.1977 passed in appeal by the District Judge to have been totally set aside by the earlier order of the High Court dated 19.01.1979 passed in writ petition against the order of the District Judge dated 05.8.1977. From the order of the High Court extracted, it is clear that the

whole order of the District Judge was not set aside. It was set aside only with respect to categorisation of lands in the two villages and the remand was restricted to fresh determination of the same. The observations that 'no other controversy shall be allowed to be raised hereafter' before the Prescribed Authority or before the appellate authority' only meant that the remand would be restricted to re-determination of the nature of the land and all other issues decided which have not been disturbed of the order of the District Judge in appeal shall not be allowed to be re-agitated.

12. From the contents of the order of the High Court, we have no manner of doubt that the writ petition of the holder of the land against the judgment of the District Judge had only succeeded with an order of the remand limited to re-examination of the nature of the lands. In all other respect, the order of the District Judge was confirmed prohibiting reopening of the same. We have already mentioned above that the order of the District Judge passed in appeal dated 05.8.1977 was not challenged by the State of U.P. and therefore, that order to the extent it was in favour of the appellant, had attained finality and could not have been disturbed. The Prescribed Authority and the Appellate Court in their orders passed on 29.3.1996 and 13.3.1997 respectively, overlooked this aspect of the case of the finality of the order of the District Judge dated 05.8.1977. They misdirected themselves by assuming that the whole case was open before them for reconsideration and re-determination of the ceiling area. In the second writ petition filed by the appellant to the High Court against the orders passed by the Authorities under the Act after remand, the learned Single Judge took no care to re-examine the contents of the orders previously passed and which had attained finality to the extent indicated in those orders. The High Court by the impugned order dated 09.5.1997 cursorily examined the case and wrongly dismissed it as being without merit.

13. As a consequence of discussion aforesaid, the impugned orders dated 29.3.1996 of the Prescribed Authority; dated 18.3.1997 of the Additional Commissioner, Judicial, Gorakhpur Division and dated 09.5.1997 of the High Court to the extent of adversely affecting the finality of the judgment dated 05.8.1977 of the District Judge in appeal are, hereby, set aside. The course now available to us is to allow this appeal and send back the case to the prescribed Authority. It is accordingly so ordered and the case is remanded. The prescribed Authority shall re-determine the ceiling limit and declare the surplus land, if any, of the appellant on the basis of the judgment of the District Judge dated 5.8.1977, to the extent it has attained finality by its affirmance by order dated 19.1.1979 of the High Court. In so re-determining the ceiling area of the appellant, the nature of land and its categorisation, as irrigated or unirrigated, shall be made In accordance with the order dated 29.3.1996 of the prescribed Authority which we do not intend to disturb to that extent as categorisation of land under Section 4-A of the Act, is essentially a question of fact, to be determined on the basis of evidence led by the parties. After re-determination of the ceiling limit and extent of surplus land, if any of the appellant, a fresh opportunity shall be given to the appellant to exercise his option for surrender of surplus land of his choice in accordance with the provisions of the Act.

14. In the result the appeal succeeds, by remanding the case to the prescribed Authority, with the directions made above. In the circumstances, we make no order as to costs.