

ALLAHABAD HIGH COURT

Ghasi Ram

Vs.

State (Allahabad)

Writ No. 38 (C) of 1977

(R.M. Sahai, J.)

20.05.1977

ORDER

R.M. Sahai, J.

1. In response to the notice issued under Section 10 (2) of the U. P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Act), the petitioner raised a number of objections. One of the objections was that Plot Nos. 1674, 1679, 1714 and 1717 of village Rajpur were not irrigated land.

2. The prescribed Authority examined the revenue extracts and held that two crops appeared to have been grown on the plots in dispute. On the basis of oral statement of Naib-Tahsildar he held the land in dispute to be irrigated. The Appellate Court dismissed the appeal on the finding:-

"I have gone through the copies of Khasras for the years 1378 to 1380 Fasli on the record. In the aforesaid plots the source of irrigation recorded is tube-well boring, well and tube-well. Further in the Khasras two crops have been recorded in the fields."

3. The basis for determination of ceiling area is the nature of the land. In 1960 Act it was fair quality land and since 1973 it became irrigated land. To ensure uniformity and equality amongst the tenure-holders the Legislature itself laid down the basis for determining the fair quality of irrigated land. Considering the non-availability of irrigation facilities in undeveloped areas or hilly tracts it laid the manner of determination by inserting Section 4-A by U. P. Act (Amending) Act II of 1975 with effect from 8-6-1973. The anxiety to reduce element of guess work is exhibited in sub-clauses (14) and (15) of Section 3 read with Sub-

section (i) of Section 4 and Section 4-A.

4. In what manner the prescribed Authority has paid lip service to these provisions is manifestly = illustrated by this case. The order passed by the Appellate Court is, still, more surprising.

5. The laudable objective of the Act is frustrated by the authorities empowered to implement these provisions in haste and hurry. They should not ignore for reaching consequences on a tenure-holder. The proceedings are in nature of forcible acquisition. They have to be interpreted strictly and implemented carefully. The manner in which this case has been decided not only increases litigation and multiplies arrears but defeats the purpose due to delay.

6. Section 4-A casts a duty on the prescribed Authority to - (a) examine relevant Khasras for the years 1378 to 1380 Fasli (b) latest village map (c) such other records as it may consider necessary (d) and may make local inspection if he considers necessary. As the Act was amended drastically by Act XVIII of 1973, the revenue extracts of three years preceding this Act have been adopted as basic records. But the prescribed authority has been empowered to examine other records as well. The Act purposely has omitted oral evidence of any official - Lekhpal or Naib-Tahsildar - and has preferred to go by the records and opinion of the prescribed authority based on material mentioned in the section.

7. The oral evidence of the Naib-Tahsildar cannot be a substitute for the record mentioned in the section. Admittedly no local inspection was made nor did the authorities examine any other record. The only evidence, therefore, on which the case could be decided and which has been examined by subordinate authorities is the Khasre extract for 1378 to 1380 Fasli.

8. The petitioner and the respondents have filed these revenue extracts. The entries are not disputed

.

9. Before examining the entries an argument raised on behalf of the State may be considered. On the strength of para 5 of the counter-affidavit it is argued that the land is capable of growing two crops. The argument, apart from being new, is on a complete misunderstanding of the provisions contained in the Act.

10. Section 4-A contemplates three types of situations when land can be said to be irrigated. They do not overlap. In the first category irrigation facility and growing of two crops in any of three years (i.e. 1378 to 1380). The second category is where irrigation facilities became available by State Irrigation work after 1972 and growing of two crops was shown in any agricultural years between date of work and issue of notice under Section 10. And for the last category land should be situated within effective command area of lift irrigation canal, tube-well a private irrigation work and class and composition of soil may be such that it may be capable of growing two crops.

11. The attempt of State to bring this case in category three can succeed only if the land is found to be situated in effective command area. There is no such finding. The mere statement in counter-affidavit, in my opinion, falls short of the requirement contemplated in this section.

12. The Khasra extracts of 1378 to 1380 Fasli reveal that no two crops were shown to have grown in Plot Nos. 1679 and 1717.

13. In Plot No. 1714 in 1380 Fasli two crops were grown. But no source of irrigation is entered in 1378 and 1379 Fasli. In 1380 Fasli well (Vernacular Matter Omitted.) is mentioned. But well can be covered only in 'private source of irrigation.' Private source of irrigation has been defined in Clause 14 of Section 3. It does not satisfy any of these tests. Nor is there any finding on this aspect. Even in the counter-affidavit there is no averment.

14. Regarding Plot No. 1674, it is not denied that two crops were grown in this plot and there was source of irrigation. But what is urged is that the action of authorities has caused substantial injury by taking entire area of plot to be irrigated when, admittedly, only a portion of it was found to be irrigated.

15. Sub-section (2) of Section 3 defines ceiling area. The Act uses the words area, land and holding. Even Section 4-A provides, that only that land shall be considered as irrigated land regarding which irrigation facilities are available and at least two crops were grown. Land and plot are not synonymous. Even in the Khasra there is a column for each plot. In different columns area, crop,

nature of land, irrigated or unirrigated is shown. What is to be ascertained is how much land is irrigated. It may be that a plot may have a very large area but only on a portion of it the irrigation facilities may be available and crops may be grown. In order to avoid hardship in such cases the Legislature used the word 'land' and not 'plot' or 'holding' . The subordinate authorities have taken the entire plot as irrigated land only because on a portion of it two crops were grown or the irrigation facilities were available.

16. For the reasons stated above, this petition is allowed. The orders passed by the respondent Nos. 2 and 3 are quashed. Respondent No. 3 is further directed to decide the objection of the petitioner in the light of the observations made above. The petitioner shall be entitled to his costs.

Petition allowed.