

PETITIONER:
MANSOOR ALI KHAN AND ORS.

Vs.

RESPONDENT:
STATE OF U.P. AND ORS.

DATE OF JUDGMENT 01/11/1991

BENCH:
RAY, G.N. (J)
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RAY, G.N. (J)
KASLIWAL, N.M. (J)

CITATION:
1992 AIR 245 1991 SCR Supl. (2) 159
1992 SCC (1) 737 JT 1991 (4) 229
1991 SCALE (2) 928

ACT:

U.P. Imposition of Ceiling on Land Holdings Act, 1960/U.P. Imposition of Ceiling on Land (Amendment) Act, 1976 (Act 20 of 1976).'

Ss. 9(2). 12/31 (3)--Determination of surplus land--Tenure holder died before notice for initial determination--Redetermination - -Notice--Whether to be sent to all the heirs--Jurisdiction of Prescribed Authority--Whether depends on issuance of notice under section 9(2).

HEADNOTE:

The tenure-holder of the land in dispute father of the appellants---died on 20.8.1974, leaving behind, besides the four appellants, three other sons, three daughters and a widow as his legal heirs and representatives. After his death a notice under s. 10 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, proposing to declare certain lands as surplus, addressed to him, was served on his son-appellant no. 1 who filed objections. The Prescribed Authority partly upheld the objections and by its judgment dated 29.4.1975 determined some land as surplus. The appellants filed an appeal before the Civil Judge.

Meanwhile the Ceiling Act was amended by the Uttar Pradesh Act 20 of 1976, s. 31 (3) whereof provided for redetermination of surplus lands within two years from 10.10.1975 in cases where orders declaring lands as surplus had been made prior to that date, notwithstanding any appeal against the original order of determination of surplus land. A fresh notice under s. 10 (2) of the Act issued to appellant no. 1 proposing to declare certain lands as surplus. After considering the appellant's objection the Prescribed Authority by its order dated 22.12.1976 determined some land as surplus, holding that the said lands were surplus which were owned by the deceased as tenure holder on the appointed day. The appeal against the said order was dismissed by the District Judge.

In the writ petition preferred by the appellants, the High Court held that previous determination of surplus lands by the Prescribed Authority did not operate as res judicata, and that the appellate

authority was justified in ignoring the sale deed dated 27.10.1971. It, however, held that the determination about some plots of lands had not been properly made, and remanded the case to the appellate authority with the direction to it to issue notice to the other brothers of the appellants. Aggrieved, the appellants filed the appeal by special leave to this Court.

It was contended on behalf of the appellants that the proceeding for re-determination of ceiling land could not have been initiated by the Prescribed Authority until notice under s. 9 (2) of the Act was issued to all the heirs of the deceased tenure holder; that since the redetermination proceedings were initiated after Act 20 of 1976 was enforced, the redetermination could only be made under the provisions of the Act as amended by Act 20 of 1976 and in view of the changes in the Ceiling Act there was no surplus land liable to be vested in the State; that as two years had elapsed from the enforcement of Act 20 of 1976, no redetermination was permissible thereafter.

Disposing of the appeal and remanding the case to the Prescribed Authority, this Court,

HELD: 1. Section 31(3) of the Uttar Pradesh Imposition of Ceiling on Land (Amendment) Act, 1976 (Act 20 of 1976) authorised the Prescribed Authority to redetermine the surplus land in relation to the tenure holder if initiated within two years from October 10, 1975. [p. 164 D-E]

In the instant case, the previous determination of ceiling was made before 10.10.1975. Accordingly, under s. 31(3) of U.P. Act 20 of 1976, the Prescribed Authority had jurisdiction to initiate the said proceedings and such jurisdiction did not depend on issuance of notice under s. 9 (2) of the Act to the tenure holder and/or his successors-in-interest. [p. 164 EF]

Shantnu Kumar v. State of Uttar Pradesh & Ors, 1977 Allahabad Law Reports p. 564, referred to.

2. Although the Prescribed Authority had jurisdiction to initiate the proceeding for re-determination of surplus land and he had in fact initiated such proceeding within two years as referred to in

31(3) of U.P. Act 20 of 1976, yet, such determination could not have been made without affording to the heirs and legal representatives of the tenure holder an opportunity of being heard and showing cause before the Prescribed Authority. [p. 164 FG]

The tenure holder had died in 1974 and the said fact was made known to the Prescribed Authority when the initial determination of surplus lands was made. It was unfortunate that in spite of the said fact, the Prescribed Authority failed and neglected to ascertain the names of all the legal heirs and representatives of the deceased tenure holder and did not issue notice to them for redetermination of surplus land. [pp. 164 GH; 165 A]

3. While the High Court directed to issue notice to other brothers and remanded the case to the appellate authority, it did not direct to issue notices to other heirs and legal representatives. Moreover, without giving other heirs and legal representatives an opportunity of being heard, adjudication of the case on merits by the concerned authorities or by the High Court was not warranted. [p. 165 AB]

4. The Prescribed Authority will decide the question of plus land-in accordance with the existing provisions of the Ceiling Act applicable on the relevant date, after issuing notices to the heirs and legal representatives of the tenure holder and giving them a reasonable opportunity of being

heard. [P- 165 DE]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 728 of 1980.

From the Judgment and Order dated 29.11.1978 of the Allahabad High Court in Civil Misc. Writ No. 2955 of 1977.

Satish Chandra, Ms. Abha Jain, Gaurav Jain and Ghayyute Alam for the Appellants

Ashok Kumar Srivastava for the Respot, dent.

The Judgment of the Court was delivered by

G.N RAY, J. In this appeal by grant of special leave the appellants, four in number, being sons of late Shri Wadood Ali Khan, have challenged the legality, validity and propriety of redetermination of ceiling on lands of the said Wadood Ali Khan under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Ceiling Act). The relevant facts of the case of the appellants in appeal are as follows :--

(a) The appellants are four sons and legal representatives of late Shri Wadood Ali Khan who had died on 20.8.1974. It is contended

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mat in addition to the appellants the said Wadood Ali Khan had left the other heirs and legal representatives, namely, three sons--Maskhur Ashud Khan, Mohdud Ali Khan and Mashkoor Ali Khan, widow Smt. Firdaus Begum and daughters Shabana Begum, Farzana Begum and Qaiser Jahan Begum.

(b) That after the death of Wadood Ali Khan, the Prescribed Authority under the Ceiling Act served a notice under Section 10 of the Ceiling Act proposing to declare lands to the extent of 178-15-19 bighas of irrigated land as surplus. Such notice under Section 10 was served on appellant No. 1 although the notice was addressed to the deceased Wadood Ali Khan.

(c) Appellant No. 1 filed objections before the Prescribed Authority and also participated in the proceedings for determination of ceiling. Such proceeding was decided by the Prescribed Authority by its Judgment dated 29th April, 1975, inter alia partly upholding objections of the appellant and declaring 87-1-19-19 bighas of irrigated lands as surplus and treating the late Wadood Ali Khan as the tenure holder.

(d) The appellants filed an appeal before the learned Civil Judge against the aforesaid decision of the Prescribed Authority and it is stated in the appeal petition that such appeal was pending.

(e) The Ceiling Act was amended from time to time and in 1976 the Ceiling Act was further amended by the U.P. Act No. 20 of 1976. Such Amending Act received the assent of the President on 30th April, 1976 and was published in the U.P. Gazette extraordinary dated 3rd May, 1976. Various changes in different Sections of the Ceiling Act were introduced by the said U.P. Act 1976. Section 31 (3) of the said U.P. Act 20 of 1976 provides as follows:

31.(3) Where an order determining surplus land

in relation to a tenure holder has been made under the principal Act before the tenth day of October, 1975, the Prescribed Authority (as defined in the principal Act) may, at any time within a period of two years from the said date, re-determine the surplus land in accordance with the principal act as amended by this Act, whether or not any appeal was filed against such order and notwithstanding any appeal (whether pending or decided) against the original order of determination of surplus land.

(f) The Prescribed Authority issued a notice to/he appellant No. 1 on 8th July, 1976 under Section 10(2) of the Act inter alia holding that 199-1-1 bighas of irrigated lands were proposed to be

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declared surplus. The appellants filed objections to the proposed action of redetermination of ceiling by raising various objections. The Prescribed Authority thereafter disposed of the proceeding of redetermination of ceiling by order dated 22nd December, 1976 to the effect that 125-3-8-16 bighas of irrigated lands belonging to the said Wadood Ali Khan were surplus which were owned by Wadood Ali Khan as tenure holder on the appointed day.

(g) The appellants preferred an appeal in the Court of District Judge, Saharanpur, against such order dated 22nd December, 1976, but such appeal was dismissed by the learned Additional District Judge by Judgment and Order dated 16th May, 1977. The appellants thereafter moved a Writ Petition in the Allahabad High Court being Civil Misc. Writ No. 2955/77 which was disposed of by Order dated 29th November, 1976.

(h) The Writ Petition moved by the appellants were disposed of by the Allahabad High Court inter alia to the effect that previous determination of surplus land by the Prescribed Authority did not operate as res judicata and the appellate authority was justified in ignoring the Sale Deed dated October 27, 1971. The High Court of Allahabad, however, held inter alia that the determination about some plots of lands had not been properly made. Accordingly, the case was remanded to the appellate authority with the direction to the appellate authority to issue notice to the other brothers of the appellants-

Mr. Satish Chandra, learned senior counsel appearing for the appellants, has strongly contended at the hearing of this appeal that such redetermination could only be made under the provisions of the Act as amended by U.P. Act No. 20 of 1976 in view of the fact that the initiation of the proceedings for redetermination was made after the said Act 20 of 1976 was enforced. He has also contended that the notice under Section 10(2) was deliberately issued to the appellants by ignoring the other heirs of late Wadood Ali Khan although the concerned Prescribed Authority was aware that the said Wadood Ali Khan had died in 1974. He had also contended that the notice under Section 10(2) was purported to have been issued under the Amending Act of 1975 although

the Amending Act of 1976 had come into force. Mr. Satish Chandra has also contended that if the Prescribed Authority had prima facie come to the finding that the lands indicated in the notice under Section 10(2) were surplus lands, it was his bounden duty to serve notices on all the heirs of Wadood Ali Khan and initiation of any proceeding without such notices to all the heirs was void. In support of this contention, he has relied upon a Full Bench

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decision of the Allahabad High Court made in the case of Shantnu Kumar v. State of Uttar Pradesh and Others, 1977 Allahabad Law Report p. 564. Mr. Satish Chandra has also contended that service of proper notice under Section 9(2) of the Ceiling Act on all the heirs of late Wadood Ali Khan was essential for assuming jurisdiction to redetermine the ceiling lands. Admittedly, when such notice had not been issued to all the co-sharers, no proceeding for redetermination could have been lawfully initiated. Therefore, the adjudication made by the Prescribed Authority and consequential adjudication by the appellate authority and the Allahabad High Court must be held to be illegal, void and without jurisdiction. He has contended that since two years has elapsed from the enforcement of the said Act 20 of 1976, no fresh redetermination is permissible in law at present. He has also contended that the purported initiation of the proceedings for redetermination of ceiling on lands and order passed by the Prescribed Authority and the consequential orders passed by the appellate authority and by the High Court of Allahabad on the Writ Petitions mentioned hereinbefore must be quashed.

We are, however, not inclined to accept the contention of Mr. Satish Chandra that the proceeding for redetermination of ceiling land could not have been initiated by the Prescribed Authority until Notice under Section 9(2) was issued by him to all the heirs and he could only assume jurisdiction for initiation of a proceeding for redetermination of ceiling land after serving such notices to all the heirs of late Wadood Ali Khan. Section 31 (3) of U.P. Act 20 of 1976, in our view, authorises the Prescribed Authority to redetermine the surplus land in relation to the tenure holder if initiated within two years from October 10, 1975. Admittedly, the previous determination of ceiling was made before tenth of October, 1975. Accordingly, under sub-Section (3) of Section 31 of the said U.P. Act 20 of 1976, the Prescribed Authority had jurisdiction to initiate the said proceeding and such jurisdiction did not depend on issuance of notice under Section 9(2) of the Ceiling Act to the tenure holder and/or the successors-in-interest of the tenure holder. It, however, appears to us that although the Prescribed Authority had jurisdiction to initiate the proceeding for redetermination of surplus land and he had in fact initiated such proceeding within two years as referred to in sub-section (3) of Section 31 of U.P. Act 20 of 1976, such determination could not have been made without affording to the heirs and legal representatives of Wadood Ali Khan an opportunity of being heard and showing cause before the Prescribed Authority. Admittedly, Wadood Ali Khan had died in 1974 and the said fact was made known to the Prescribed Authority when the initial determination of surplus lands was made. It is unfortunate that in spite of said fact, the Prescribed Authority failed and neglected to ascertain the

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names of all the legal heirs and representatives of Wadood Ali Khan, and did not issue notices to such heirs for rede-

termination of surplus land. The High Court of Allahabad has directed to issue notice to other brothers of Wadood Ali Khan. The High Court has also remanded the case to the appellate authority so that other brothers get opportunity to appear and make submissions. The High Court has, however, not directed to issue notices to other heirs and legal representatives. Moreover, in our view, without giving other heirs and legal representatives an opportunity of being heard, adjudication of the case on merits by the concerned authorities or by the High Court was not warranted. In the aforesaid facts, we dispose of this appeal by setting aside the order passed by the Prescribed Authority on 22nd December, 1976 and the impugned appellate orders passed by the learned Additional District Judge on 26th May, 1976 and also the impugned decision of Allahabad High Court in Writ Petition No. 2955/77. Mr. Satish Chandra has contended that in view of subsequent changes of the Ceiling Act by the Amending Act 20 of 1976, there is no surplus land liable to be vested in the State of Uttar Pradesh. It is not necessary to express any opinion on such contention of Mr. Satish Chandra in view of the fact that the Prescribed Authority will have to redetermine the case of surplus land on the basis of existing provisions of the Ceiling Act applicable on the relevant date and the parties will get opportunity to make appropriate submissions on fact and law. The Prescribed Authority is directed to issue notices to all the heirs and legal representatives of late Wadood Ali Khan including the appellants herein and the other heirs and legal representatives referred to in this judgment. The Prescribed Authority will decide the question of surplus land in accordance with the provisions of the Ceiling Act after issuing such notices to the heirs and legal representatives of late Wadood Ali Khan and giving such heirs and legal representatives a reasonable opportunity of being heard. In order to avoid any difficulty and any attempt to delay the disposal of redetermination of surplus land by the appellants or the other heirs of Wadood Ali Khan, it is directed that if there has been any change in the survivorship of legal representatives of late Wadood Ali Khan or devolution of interest of such heirs by lapse of time, the appellants should inform the Prescribed Authority within a month from today the names and other particulars including the addresses of all such heirs and legal representatives of late Wadood Ali Khan so that appropriate notices may be issued by the Prescribed Authority. If the names and particulars of the legal representatives are not furnished within a month from today by the appellants to the Prescribed Authority in terms of this direction, liberty is given to the Prescribed Authority to serve the notices to the appellants and to the other heirs mentioned in this judgment by sending such notices under the care of the appellant No. 1, Mansoor Ali Khan, village Kailashpur, Pargana Haraura,

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Tehsil and P.O. Saharanpur, UP., and it will be deemed that he is representing the interest of other heirs and legal representatives. The Prescribed Authority is directed to dispose of the proceeding for redetermination of surplus land as early as possible in view of the fact that the matter is pending determination for long. In the facts of the case, there will be no order as to costs.

R.P.

Appeal disposed

of.

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JUDIS