

PETITIONER:
AGRICULTURAL & INDUSTRIAL SYNDICATE LTD.

Vs.

RESPONDENT:
STATE OF U.P. AND OTHERS

DATE OF JUDGMENT 04/05/1973

BENCH:
DWIVEDI, S.N.
BENCH:
DWIVEDI, S.N.
RAY, A.N. (CJ)

CITATION:
1974 AIR 1920 1974 SCR (1) 253
1974 SCC (2) 27
CITATOR INFO :
RF 1980 SC1762 (34)

ACT:
Under Pradesh Consolidation of Holdings Act. 1953. Ss. 5(2), 49, 48A--Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, Ss. 10, 12-- Objections to Statement served under s. 10 of Ceiling Act and dispute as to plots to be retained in the ceiling area-Initiation of Consolidation proceedings under the Consolidation Act-Proceedings under Ceiling Act if "in respect of declaration of rights or interest in any land lying in tire area" within the meaning s. 5(2) and therefore should abate.

HEADNOTE:
Section 5(2) of the Uttar Pradesh Consolidation Act enacts, inter alia, that upon the issuance of a notification under sub-section (2) of section 4 "every suit or proceedings in respect of declaration of rights or interest in any land lying in the area" "shall on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending, stand abated."
The appellant is the tenure holder of a large area of land. Since the appellant did not file a statement of its holding as required by s. 9 of the U.P. Imposition of Ceiling on Land Holdings Act. the Prescribed Authority under the Act served on it a statement prepared under section 10 in respect of its holdings. The appellant filed objections to the statement indicating the plots it wanted to retain as its ceiling area. The Prescribed Authority did not accept the appellant's choice wholly. While the proceedings were pending before the authorities under the Ceiling Act consolidation proceedings were initiated in respect of appellant's lands under the Consolidation Act. A large number of persons filed claims to the plots of the appellant before the consolidation authorities. The appellants thereupon filed applications before the authorities under the Ceiling Act for stay of the proceedings under the Ceiling Act. These were rejected. In- a writ petition the High Court accepted the contention of the appellant that the authorities under the Ceiling Act should have accepted entirely the choice of plots which it wanted to retain as the ceiling area and directed the authorities to decide the

matter afresh. The High Court also directed that the proceedings before the Consolidation Authorities would remain stayed during the continuance of the proceedings under the Ceiling Act. On the question whether the proceedings under the Ceiling Act are "in respect of declaration of rights or interest in any land lying in the area," within the meaning of that expression in s. 5(2), HELD : Allowing the appeal, that the proceedings under the Ceiling Act were abated under s. 5(2) of the Consolidation Act.

(i) The Prescribed Authority acting under Ss. 10(2) and 12 of the Ceiling Act is an "authority" within the meaning of that expression in s. 5(2). [256E-F]

(ii) Section 5(2) will not apply where a tenure holder voluntarily files a statement of his holdings under section 9 and there is no dispute about the right or interest in the holdings, or when the tenure holder accepts the statements sent to him by the Prescribed Authority under s. 10. But where the tenure holder does not voluntarily file a statement under s. 9 and claims that he is not the tenure holder of all or some of the plots included in the statement prepared under s. 10 there ensues a dispute about a right or interest in land and there is adversary proceedings between him and the government. The prescribed authority decides under s. 12 whether the tenure holder has any right or interest in all or some of the plots, and those plots in which he has no right or interest are excluded from the statement served on him under s. 10. This is the very question in issue before the Consolidation Authority under the Consolidation Act. If the claims made to the appellant's plots pending under the Consolidation Act are allowed a large area of land included in the statement under S. 10 of the Ceiling Act Bill have to be excluded from consideration by the prescribed Authority. Therefore, non-stay of proceedings under the Ceiling Act would cause hardship to the appellant. As soon as consolidation operations are closed the proceeding under the Ceiling Act may be resumed. [256H]

(iii) The purpose of the non obstante clause in s. 49 is to exclude the operation of any other overlapping Act. Section 5(2) and 49 indicate clearly
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that the proceedings in the instant case are to be abated under s. 5(2). Further, the absence of a provision like s. 48A in relation to the jurisdiction of the Prescribed Authority under the Ceiling Act lends support to this inference. [258A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 2043 of 1971

Appeal by Certificate from the judgment and order dated July 27, 1970 of Allahabad High Court in Writ Petition No. 1701 of 1964-.

A. H. Khwaja in person, for the appellant.

G. N. Dikshit, S. P. Singh, R. Bana and O. P. Rana for the respondent.

The Judgment of the Court was delivered by

DWIVEDI J. The appellant, the Agricultural & Industrial Syndicate Ltd., is the tenure-holder of a large area of land in two villages in the district of Saharanpur in Uttar Pradesh, Aithal Buzurg and Bukkanpur. Some of its land have been declared as 'surplus land' under the U.P. Imposition of

Ceiling on Land Holdings Act (hereinafter referred to as the Ceiling Act). It went in appeal against the order declaring surplus land to the District Judge, but without success. Its writ petition has been partly allowed and partly dismissed by the Allahabad High Court. This appeal, by special leave, is directed against the latter part of the order of the High Court.

The scheme of the Ceiling Act is to allow a tenure-holder to retain such of his plots as are assigned to him as his ceiling area and to acquire the remaining plots as surplus land. The ceiling area and the surplus land are determined by the Prescribed Authority appointed under the Ceiling Act. The Prescribed Authority issues a general notice calling upon all the tenure-holders of a village to file a statement in respect of their holdings. Under s. 9 a tenure-holder files his statement in respect of all his holdings as well as indicates the plot or plots which he would like to retain as his ceiling area. Where a tenure holder fails to file a statement or submits an incomplete or incorrect statement under s. 9, section 10 enables the Prescribed Authority to prepare a statement in regard to his holdings and serve it on him. As the appellant did not file a statement under s. 9, a statement prepared under S. 10 was served on it. An objection was filed by it. The objection indicated the plots which it wanted to retain as its ceiling area. The Prescribed Authority did not accept its choice wholly. After the decision of the Prescribed Authority, it received C. H. Form V issued under the provisions of the U.P. Consolidation of Holdings Act (hereinafter to be referred as the Consolidation Act) with respect to the land situated in village Bukkanpur. A review application was then moved before the Prescribed Authority on the ground of the pendency of consolidation operations in village Bukkanpur. The application was rejected on September 15, 1962. While the appeal against the order of the Prescribed Authority was pending, village Aithal Buzurg was also brought under consolidation operations. The appellant received C.H. Form V issued under the Consolidation Act with respect to the plots situate in village Aithal Buzurg. It made an application to the appellate authority informing him of the initiation of consolidation operations in the

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two villages. It is said that the appellate authority took no notice of the application and decided the appeal on merits. The appellate authority also did not accept wholly the choice of the appellant in regard to the plots to be retained as its ceiling area. In the writ petition before the High Court, the appellant pressed two points for consideration. First, the Prescribed Authority and the appellate authority should have accepted entirely the choice of the plots which it wanted to retain as the ceiling area; second, the two authorities should have stayed the proceedings under the Ceiling Act during consolidation operations in the said villages. The first contention was accepted by the High Court; the second was rejected. The High Court quashed the order of the appellate authority and directed it to decide the appeal in the light of its judgment. The High Court also directed that the proceedings before the consolidation authorities would remain stayed until the appeal was decided by the appellate authority under the Ceiling Act. This appeal is confined to the second point.

The High Court has rejected the second argument for two reasons: One, there was no merit in the argument; second, the appellant had not raised the argument before the

Prescribed Authority and the appellate authority. It now transpires that while the petition was pending in the High Court, the Consolidation Officer and the Asstt. Settlement Officer had adjudicated upon the objections of a large number of persons claiming interest in the plots of the appellant. Their objections were dismissed. They filed revisions against those orders. The revisions were pending when the petition was heard by the High Court. After the decision of the High Court, the State Government has issued a notification under s. 6 of the Consolidation Act canceling the notification bringing the aforesaid villages under consolidation operations. But the High Court has admitted a writ petition of the appellant against this notification and has stayed the operation of the notification.

The second reason assigned by the High Court for rejecting the second argument of the appellant may be disposed off first. It is clear from the facts already stated that the appellant did raise at the proper time before the Prescribed Authority and the appellate authority the argument that the proceedings under the Ceiling Act should remain stayed during consolidation operations. Accordingly, we will now proceed to examine the correctness of the first reason assigned by the High Court. Its plea before the appellate authority before and after the decision in the writ petition, in effect was this: As revisions were pending under the Consolidation Act, its interest in the plots was under cloud. It might or might not be held to be the tenure-holder of all or some of the plots. If the proceedings under the Ceiling Act were not stayed, it would lose surplus land, and it might also lose some of the plots included in its ceiling area as a result of an adverse decision in the revisions under the Consolidation Act. In plain language, its argument, in the alternative, was that it might not be the tenure-holder of all the plots.

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Consolidation proceedings are started in a village by virtue of a notification issued by the State Government under s. 4 of the Consolidation Act. Section 5 specifies the consequences which follow the issuance of a notification under s. 4. Sub-section (1) of s. 5 states certain consequences with which we are not concerned in this appeal. Sub-section (2) is material for our purpose, and it materially reads as follows:

"Upon such publication of the notification under subsection (2) of section 4 the following further consequences shall ensue in the area to which the notification relates:

(a) every proceeding for the correction of records and every suit and proceedings in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any court or authority whether of the first instance or of appeal, reference, or revision, shall, on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending stand abated.

Provided further that on the issuance of a notification under sub-section (1) of section 6 in respect of the said area or part thereof, every such order in relation to the land lying in such area or part..... shall stand

vacated.

(b) such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in dispute in the said suits or proceedings before the appropriate consolidation authorities under and in accordance with the provisions of this Act and the rules thereunder."

The Prescribed Authority acting under s. 10(2) and 12 of the Ceiling Act is an authority within the meaning of that expression in s. 5(2). The proceeding before him will be a proceeding within the meaning of the said word in s. 5(2). But the proceeding before him is not a proceeding for the correctness of records or for 'declaration or adjudication of any other right in regard to which proceedings can or ought to be taken' under the Consolidation Act. So the limited question to be considered is whether the proceeding in the present case is on "in respect of declaration of rights or interest in any land lying in the area."

When a tenure holder voluntarily files a statement of his holdings under s. 9, the proceeding before the Prescribed Authority is not of this kind, because the tenure-holder admits that the holdings are his. There is ordinarily no dispute about any right or interest in the holdings before the Prescribed Authority. Again, when the tenure holder accepts the statement sent to him by the Prescribed Authority under s. 10, there is no dispute with respect to any right or interest in land. In these two instances section 5(2) will not apply. But where the tenure-holder does not voluntarily file a statement under s 9 and disputes that he is not the tenure-holder of all or some of the plots 257

included in the statement prepared under s. 10, there ensues a dispute about a right or interest in land. According to s. 32 of the Ceiling Act, the State Government is a party to every proceeding. So in such a case there is an adversary proceeding before the Prescribed Authority between him and the Government. The Prescribed Authority will decide under s. 12 whether the tenure-holder has any right or interest in all or some of the plots if the Prescribed Authority finds that he has no right or interest in all or some of the plots, he will exclude those plots from the statement served on him under s. 10 and determine the ceiling area and surplus land without taking into account the excluded plots. This is the, very question which is in issue before; the Consolidation authority under the Consolidation Act. Under s. 10, of the Consolidation Act-the Consolidation Officer is called upon to adjudicate upon various claims to the plots falling within the consolidation area. Take this particular case. Admittedly a large number of persons have filed claims to the plots of the appellant before the Consolidation Authorities. Their claims are pending consideration in revisions under s. 48 of the Consolidation Act. If their revisions are allowed, a large, area of land included in the statement under S. 10 of the Ceiling Act will have to be excluded from consideration by the Prescribed Authority. It is therefore obvious that the non-stay of proceedings under the Ceiling Act would cause great hardship to the appellant. Counsel for, the respondent has submitted that all those claimants before the, revising authority under the Consolidation Act can be impleaded as parties in the proceedings under the Ceiling Act.. Assuming in argument that they can be so impleaded, the question still remains whether the proceedings under the Ceiling Act can go, on while proceedings with respect to any right or

interest in the plots of the appellant are simultaneously going on before the consolidation authorities. As soon as those claimants are impleaded in the proceeding under s. 12 of the Ceiling Act, the proceeding will more pointedly become a proceeding "in respect of declaration of right or interest in any land" under s. 5(2) of the Consolidation Act.

It is true that the purposes of the two Acts are different. Under the Ceiling Act, the ceiling area and surplus land of a tenure-holder are determined; under the Consolidation Act, the holdings of a tenure holder are consolidated. But neither purpose may in a large number of cases be accomplished without first determining the right or interest of various claimants in the plots. So the crucial question for decision is as to whether the Prescribed Authority under the Ceiling Act or the Consolidation authority under the Consolidation Act has got a preemptive jurisdiction to determine rival rights and interests in the land of the appellant. We have already shown that the proceeding under s. 12 of the Ceiling Act is a proceeding within the purview of s. 5(2) of the Consolidation Act. Section 49 of the Consolidation Act materially provides :

"Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of rights of tenure-holders in respect of land lying in an area, for which a notification has been issued under subsection (2) of s. 4 shall be done in accordance with the provisions of this Act. . . . "

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Obviously the purpose of the non-obstante clause in s. 49 is to exclude the operation of any other overlapping Act. So the non-obstante clause would exclude the operation of the Ceiling Act while the Consolidation Act is in operation in a particular area. Section 5(2) and s. 49 indicate clearly that the proceedings in the instant case are to be abated under s. 5(2). Section 48A of the Consolidation Act expressly saves the jurisdiction of the Custodian of the Evacuee properties to decide claims to the plots of the evacuees during consolidation operations. The absence of a like provision in relation to the jurisdiction of the Prescribed Authority under the Ceiling Act lends support to our inference.

We do not think that the construction of s. 5(2) should be influenced by the argument that if the proceedings under s. 12 of the Ceiling Act are abated, the appellant would retain lands in its hands permanently or for a long time. As soon as the consolidation operations are closed on the valid issue of a notification under s. 6 or s. 52, the proceeding under the Ceiling Act may be resumed. In any event, it is plain from the language of ss. 5 (2), 48A and 49 of the Consolidation Act that the proceedings under the Ceiling Act cannot continue in the circumstances of this case as long as the consolidation operations are going on.

As in a fresh petition the High Court has stayed the operation of the notification under s. 6 of the Consolidation Act, it is of no avail to the respondent in this appeal.

The appeal is allowed and the judgment of the High Court is set aside. The writ petition filed by the appellant in the High Court is allowed in toto. The order of the District Judge, dated January 31, 1964, is quashed and the proceedings under the Ceiling Act are abated under s. 5(2) of the Consolidation Act. The proceedings under the Ceiling

Act may be resumed after the issue of a notification under s. 52 or after the dismissal of the writ petition challenging the notification under s. 6. In the circumstances of this case, there will be no order as to costs.

S.B.W.

Appeal allowed.

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JUDIS