

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3058 OF 2008

M/s. Super Cassettes Industries Ltd.

...Appellant

Versus

State of Uttar Pradesh & Anr.

...Respondents

WITH

CIVIL	APPEAL	NO.	3085	OF	2008
CIVIL	APPEAL	NO.	3068	OF	2008
CIVIL	APPEAL	NO.	3089	OF	2008
CIVIL	APPEAL	NO.	3165	OF	2008
CIVIL	APPEAL	NO.	3086	OF	2008
CIVIL	APPEAL	NO.	3082	OF	2008
CIVIL	APPEAL	NO.	3066	OF	2008
CIVIL	APPEAL	NO.	3071	OF	2008
CIVIL	APPEAL	NO.	3197	OF	2008

JUDGEMENT

R.M. Lodha, J.

This batch of ten appeals by special leave raises identical issues and emanates from a common order passed by the Additional Commissioner (Administration) Meerut Division, Meerut and, therefore, all these appeals were heard together and are being disposed of by a common judgment.

2. It is not necessary to refer to the facts of each appeal as narration of facts in Civil Appeal No. 3058 of 2008 would suffice for deciding the controversy raised in this group of appeals.

3. On January 24, 2002, the Additional Collector (Finance/Revenue) (for short, 'Prescribed Authority'), Gautambudh Nagar issued a notice under Section 9(2) of U.P. Imposition of Ceiling on Land Holdings Act, 1960 (for short, 'Act, 1960') calling upon the appellants to file details of the land held by them in Ceiling Land Holding Form No. 2 (for short, 'CLH Form-2') along with enclosures within a period of thirty days from the date of notice.

4. Pursuant to the aforesaid notice under Section 9(2), the appellants submitted its reply on February 21, 2002 raising

diverse objections, inter alia; (1) that notice under Section 9(2) could only be issued to a tenure-holder who holds agricultural land and not to one who does not hold agricultural land; (ii) that in the form annexed with the notice, the land of the objectors has been wrongly shown as irrigated. As a matter of fact, the subject land was purchased by the appellants through separate sale deeds dated March 3, 1987; March 10, 1987 and April 20, 1987; which was already recorded as 'abadi' land at the time of purchase; (iii) that the residential quarters for the labour as well as industries exist over the land, and; (iv) that the land held by them is not covered by any of the provisions of the Act, 1960. In the statement submitted by the appellant in C.L.H. Form-2, it was stated under every column 'not applicable'.

5. On May 23, 2002, the Prescribed Authority called upon the appellants to submit the details of each khata holders separately along with the chart.

6. On June 4, 2002, the appellants, pursuant to the order dated May 23, 2002, submitted the details of the holding in the chart form indicating the nature of land as 'industrial' and 'abadi'.

7. The Prescribed Authority vide his order dated December 17, 2003 cancelled the notice holding that the provisions of Section 9(2) of the Act, 1960 are applicable only in respect of the khatedars who hold agricultural land in use more than the prescribed area whereas the objectors' land is entered as industrial/abadi. He ordered that necessary endorsement to the said effect be made in the revenue record.

8. Not satisfied with the order dated December 17, 2003 passed by the Prescribed Authority, the State of Uttar Pradesh through Collector, Gautambudh Nagar preferred appeal under Section 13 of the Act, 1960 before the Commissioner, Meerut Division, Meerut. Nine other appeals also came to be filed against the identical orders of the Prescribed Authority.

9. The appellants raised preliminary objection about the maintainability of the appeals as, according to them, the orders

passed by the Prescribed Authority were not appealable.

10. The Additional Commissioner (Administration), Meerut Division (Appellate Authority) took up all the ten appeals together and, after hearing the parties, by his order dated October 29, 2004 overruled the preliminary objection raised by the present appellants regarding the maintainability of appeals and held that the appeals lay from the orders passed by the Prescribed Authority.

11. The appellants challenged the order of the Additional Commissioner, Meerut Division, Meerut by filing writ petitions before the High Court.

12. The Single Judge heard the parties and vide judgment and order dated May 24, 2007 held that the view of the Appellate Authority in holding the appeals maintainable warranted no interference. Hence, these appeals by special leave.

13. The question as to whether the appeals preferred by the State of Uttar Pradesh through Collector under Section 13 of the Act, 1960 aggrieved by the orders passed by the Prescribed Authority are maintainable or not has to be considered and decided in the light of the statutory provisions contained in the Act, 1960; rules framed thereunder and the nature of the order dated December 17, 2003. It is, therefore, appropriate that we refer to the statutory provisions first.

14. Act, 1960 was enacted to provide for the imposition of ceiling on land holdings in Uttar Pradesh and other matters connected therewith; the main objective of the Act, 1960 being to provide for more equitable distribution of land by making the same available to the extent possible to landless agricultural labourers and to provide for cultivation on cooperative basis and to conserve part of the available resources in land so as to increase the production and preserve stock of food-grains against lean years.

15. Section 3(2) defines 'ceiling area' that means the area of land not being land exempted under the Act, determined as such in accordance with the provisions of Section 5.

'Holding' under Section 3(9) means the land or lands held by

a person as a bhumidar, sirdar, asami of Gaon Sabha or an asami mentioned in Section 11 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, or as a tenant under the U.P. Tenancy Act, 1939, other than a sub-tenant, or as a Government lessee, or as a sub-lessee of a Government lessee, where the period of the sub-lease is co-extensive with the period of the lease.

'Prescribed authority' under Section 3(13) means such officer not below the rank of an Assistant Collector of the first class as may be empowered by the State Government, by notification in the Gazette, to perform the functions of prescribed authority under this Act for such area or areas as may be specified in that behalf.

'Surplus land' under Section 3(16) means land held by a tenure-holder in excess of the ceiling area applicable to him, and includes any buildings, wells and trees existing thereon.

'Tenure-holder' under Section 3(17) means a person who is the holder of a holding, but [except in Chapter III] does not include-

- (a) a woman whose husband is a tenure-holder;
- (b) a minor child whose father or mother is a tenure-holder.

16. Section 5 imposes ceiling on land holdings from the appointed date and further mandates that no tenure-holder shall be entitled to hold in the aggregate any land in excess of ceiling area applicable to him throughout Uttar Pradesh.

17. Section 6 makes a provision for exemption of certain land from the imposition of ceiling as set out therein.

18. Section 9 mandates the prescribed authority to issue general notice to tenure-holders holding land in excess of ceiling area for submission of statement in respect thereof. It reads thus

:

"9. General notice to tenure-holders holding land in excess of ceiling area for submission of statement in respect thereof.--[1] As soon as may be, after the date of enforcement of this Act, the Prescribed Authority shall, by general notice, published in the Official Gazette, call upon

every tenure-holder holding land in excess of the ceiling area applicable to him on the date of enforcement of this Act, to submit to him within 30 days of the date of publication of this notice, a statement in respect of all his holdings in such form and giving such particulars as may be prescribed. The statement shall also indicate the plot or plots for which he claims exemption and also those which he would like to retain as part of the ceiling area applicable to him under provisions of this Act.

[(2) As soon as may be after the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 the prescribed authority shall, by like general notice, call upon every tenure-holder holding land in excess of the ceiling area applicable to him on the enforcement of the said Act, to submit to him within 30 days of publication of such notice a statement referred to in sub-section (1):

[Provided that at any time after October 10, 1975, the Prescribed Authority may, by notice, call upon any tenure-holder holding land in excess of the ceiling area applicable to him on the said date, to submit to him within thirty days from the date of service of such notice a statement referred to in sub-section (1) or any information pertaining thereto.];

[(2-A) Every tenure-holder holding land in excess of the ceiling area on January 24, 1971, or at any time thereafter who has not submitted the statement referred to in sub-section (2) and in respect of whom no proceeding under this Act is pending on October 10, 1975 shall, within thirty days from the said date furnish to the Prescribed Authority a statement containing particulars of all land--

(a) held by him and the members of his family on January 24, 1971;

(b) acquired or disposed of by him or by members of his family between January 24, 1971 and October 10, 1975.]

3. Where the tenure-holders' wife holds any land which is liable to be aggregated with the land held by the tenure-holder for purposes of determination of the ceiling area, the tenure-holder shall, along with his statement referred to in sub-section (1), also file the consent of his wife to the choice in respect of the plot or plots which they would like to retain as part of the ceiling area applicable to them and where his wife's consent is not so obtained the Prescribed Authority shall cause the notice under sub-section (2) of Section 10 to be served on her separately.]"

19. Sections 10, 11, 12 and 13 which have bearing in this case read as follows :

"10. Notice to tenure-holders failing to submit a statement or submitting an incomplete or incorrect statement.--(1) In every case where a tenure-holder fails to submit a statement or submits an incomplete or incorrect statement, required to be submitted under Section 9, the Prescribed Authority shall, after making such enquiry as he may consider necessary either by himself or by any person subordinate to him, cause to be prepared a statement containing such particulars as may be prescribed. The statement shall in particular indicate the land, if any, exempted [under Section 6] and the plot or plots proposed to be declared as surplus land.

(2) The Prescribed Authority shall thereupon cause to be served upon every such tenure-holder in such manner as may be prescribed, a notice together with a copy of the statement prepared under sub-section (1) calling upon him to show cause within a period specified in the notice, why the statement be not taken as correct. The period specified shall not be less than ten days from the date of service of the notice.

11. Determination of surplus land where no objection is filed. --(1) Where the statement submitted by a tenure-holder in pursuance of the notice published under Section 9, is accepted by the Prescribed Authority or whether the statement prepared by the Prescribed Authority under Section 10 is not disputed within the specified period, the Prescribed Authority shall accordingly determine the surplus land of the tenure-holder.

(2) The Prescribed Authority shall, on application made within thirty days from the date of the order under sub-section (1) by a tenure-holder aggrieved by such order passed in his absence and on sufficient cause being shown for his absence, set aside the order and allow such tenure-holder to file objection against the statement prepared under Section 10 and proceed to decide the same in accordance with the provisions of Section 12.

(3) Subject to the provisions of sub-section (2) and Section 13, the order of the Prescribed Authority shall be final and conclusive and be not questioned in any court of law.

12. Determination of the surplus land by the Prescribed Authority where an objection is filed.--(1) Where an objection has been filed under sub-section (2) of Section 10 or under sub-section (2) of Section 11, or because of any appellate order under Section 13, the Prescribed Authority shall, after affording the parties reasonable opportunity of being heard and of producing evidence, decide the objections after recording his reasons, and determine the surplus land.

(2) Subject to any appellate order under Section 13, the order of the Prescribed Authority under sub-section (1) shall be final and conclusive and be not questioned in any court of law.

13. Appeals--(1) Any party aggrieved by an order under sub-section (2) of Section 11 or Section 12, may, within thirty days of the date of the order, prefer an appeal to the [Commissioner] within whose jurisdiction the land or any part thereof is situate.

(2) The [Commissioner] shall dispose of the appeal as expeditiously as possible and his decision thereon shall be final and conclusive and be not questioned in any court of law.

(3) Where an appeal is preferred under this section, the [Commissioner] may stay enforcement of the order appealed against for such time and on such conditions as may be considered just and proper:

[Provided that the enforcement of the order appealed against shall not be stayed in respect of that part of the land the surplus character of which was either not disputed in an objection under sub-section (2) of Section 10 or under sub-section (2) of Section 11 or is not disputed in the appeal and any stay order passed under this sub-section

before twenty-eighth day of September, 1970, shall, on an application being made in that behalf to the appellate Court by the State Government, be modified by that court accordingly.

Explanation -For the purposes of this proviso any dispute respecting regularity, validity or legality of a notice under Section 9 or Section 10 or of the proceedings before the prescribed authority shall not, by itself, be deemed to be a dispute respecting the surplus character of land.]

20. Section 29 makes a provision for subsequent declaration of further land and surplus land and Section 30 provides for determination of surplus land regarding future acquisition. These provisions are :

"29. Subsequent declaration of further land as surplus land.--Where after the date of enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972--

- (a) any land has come to be held by a tenure-holder under a decree or order of any court, or as a result of succession or transfer, or by prescription in consequence of adverse possession, and such land together with the land already held by him exceeds the ceiling area applicable to him; or
- (b) any unirrigated land becomes irrigated land as a result of irrigation from a State irrigation work or any grove-land loses its character as grove-land or any land exempted under this Act ceases to fall under any of the categories exempted--

the ceiling area shall be liable to be re-determined [and accordingly the provisions of this Act, except Section 16, shall mutatis mutandis apply]

30. Determination of surplus land regarding future acquisition.
--(1) Where any land has become liable to be treated as surplus land [* * *] under Section 29, the tenure-holder shall, within such period as may be prescribed, submit a statement to the Prescribed Authority in the form and in the manner laid down under Section 9 indicating in the statement the plot or plots which he would like to retain as a part of his ceiling area.

(2) (a) Where the statement submitted under sub-section (1) is accepted by the Prescribed Authority, it shall proceed to determine the surplus land accordingly.

(b) Where a tenure-holder fails to submit a statement required to be submitted under sub-section (1) or submits an incomplete or incorrect statement the Prescribed Authority shall proceed in the manner laid down under Section 10.

(c) The provisions of this Act in respect of declaration, acquisition, disposal and settlement of surplus land, shall, mutatis mutandis, apply to surplus land covered by this section."

21. In exercise of the powers conferred under Act, 1960

rules have been framed called Uttar Pradesh Imposition on Ceiling of Land Holdings Rules, 1961 (for short 'Rules, 1961'). Rule 6 provides that the general notice to be published in pursuance of Section 9 and the statement required to be submitted thereunder by every tenure-holder holding land in excess of the ceiling area applicable to him in the State shall be in CLH Forms - 1 and 2 respectively.

22. Rule 8 reads thus :

"8. As soon as may be, after the expiry of thirty days from the date of publication of the general notice in C.L.H. Form 1 in the official Gazette, the Prescribed Authority shall cause to be served upon every tenure-holder, who has failed to submit the statement in C.L.H. Form 2 or has submitted an incomplete or incorrect statement, a notice in C.L.H. Form 4 together with a copy of the statement in C.L.H. Form 3, prepared under Rule 6 calling upon him to show cause within a period of fifteen days from the date of service of the notice why the aforesaid statement be not taken as correct :

Provided that where the statement in C.L.H. Form 3 also includes land ostensibly held in the name of any other person, the prescribed authority shall cause to be served upon such other person a notice in C.L.H. Form 4 together with a copy of the statement in C.L.H. Form 3 calling upon him to show cause within a period of fifteen days from the date of service of the notice why the aforesaid statement be not taken as correct :

Provided further that in the case of a tenure-holder who is a member of the Armed Forces (Military, Naval or Air Force) of the Union of India, the period within which he will be called upon to show cause why the statement in C.L.H. Form 3 be not taken as correct, shall be ninety days from the date of service (of the notice in C.L.H. Form 4.)"

23. Rule 12 provides that objections filed under Sections 10 and 11 shall be entered in Misalband Register in C.L.H. Form-5. The various forms are appended to Rules, 1961.

24. In D.N. Taneja v. Bhajan Lal, a three-Judge Bench of this Court observed that the question whether there is right of appeal or not will have to be considered on an interpretation of the provision of the statute and not on the ground of propriety or any other consideration.

In V.C. Shukla v. State through C.B.I.2, this Court while dealing with the submission that right of appeal should be liberally construed referred to the observations of Crawford : The Construction of Statutes, ".....Moreover, statutes

pertaining to the right of appeal should be given a liberal construction in favour of the right, since they are remedial. Accordingly, the right will not be restricted or denied unless such a construction is unavoidable" and held:

1 (1988) 3 SCC 26

2 1980 suppl SCC 92

"There can be no dispute regarding the correctness of the proposition mentioned in the statement extracted above, but here as the right of appeal is expressly excluded by providing that no appeal shall lie against an interlocutory order, it is not possible for us to stretch the language of the section to give a right of appeal when no such right has been conferred. Even the statement extracted above clearly says that "the right will not be restricted unless such a construction is unavoidable". In the instant case, in view of non-obstante clause, Section 11(1) of the Act cannot be construed to contain a right of appeal even against an interlocutory order and, therefore, the present clause falls within the last part of the statement of the Crawford, extracted above".

25. It is well known that right of appeal is not a natural or inherent right. It cannot be assumed to exist unless expressly provided for by statute. Being a creature of statute, remedy of appeal must be legitimately traceable to the statutory provisions. It is true that mere omission or error in quoting the provisions would not affect the maintainability of appeal, if otherwise, the order impugned is amenable to appeal.

26. In the light of the legal position noticed above, we may now turn to the nature of the order dated December 17, 2003 passed by the prescribed authority which admittedly is the culmination of the proceedings pursuant to the notice issued to the appellants under Section 9(2) of the Act, 1960.

27. Pertinently, by a notice issued to the appellants on January 24, 2002 under Section 9(2) of the Act, 1960 that they were called upon to submit the details of the land in excess of the ceiling limits. In response thereto, the appellants filed objections bringing to the notice of the Prescribed Authority that the land purchased by them was already recorded as 'abadi/industrial' land under the provisions of U.P. Zamindari Abolition and Land Reforms Act, 1950 (for short 'Act, 1950'). The

appellants, thus, submitted that the land held by them was not

covered by the Act, 1960.

They submitted a statement in C.L.H.

Form-2 stating under each column, 'not applicable'. The he

Prescribed Authority accepted the objections of the appellants and

cancelled the notice issued to them under Section 9(2).

In the

e

circumstances, the order dated December 17, 2003 cannot be said to

be an order under Section 11(1). The question is : is that order

an order under Section 12 read with Section 11(2)? Or, in other

words, whether the objections filed by the appellants on February

21, 2002 and the subsequent statement in the form of chart

pursuant to the order dated May 23, 2002 are objections under

Section 10(2) of the Act, 1960?

28. The scheme of the statutory provisions contained in

Sections 9, 10, 11 and 12 is that once the Prescribed Authority

issues general notice to tenure-holders or specific notice to a

tenure-holder holding land in excess of ceiling area for or

submission of statement in respect thereof, a tenure-holder is

required to file statement within the time prescribed in the t

notice. Where a tenure-holder fails to submit a statement or he

submits a statement which is incomplete or incorrect, the t

Prescribed Authority, after making necessary enquiry either by

himself or by a subordinate officer, cause a statement prepared in

C.L.H Form-3 indicating therein the particulars of the land

exempted under Section 6 and the land proposed to be declared as surplus. The Prescribed Authority, under Section 10(2) then serves

upon such tenure-holder a notice in C.L.H. Form-4 together with

the copy of statement prepared in C.L.H. Form-3 calling upon him

to show cause why such statement prepared in C.L.H. Form 3 be not

taken as correct. The provision contemplates

tenure-holder to

be given at least 10 days from the date of service of notice for

his response. The tenure-holder may either accept such statement or file objections thereto. If he accepts that statement, the Prescribed Authority determines the surplus land. Such order is an order under Section 11(1). If the tenure-holder files objections to such statement, the Prescribed Authority then proceeds to determine the surplus land under Section 12. In the present case, the exercise contemplated under Section 10(1) and (2) has not at all been done by the Prescribed Authority. Neither any statement under C.L.H. Form 3 has been prepared under Section 10(1) nor any notice under Section 10(2) along with such statement has been served upon the appellants. The notice dated January 24, 2002 is a notice under Section 9(2) simplicitor and not a notice under Section 10(2) at all.

29. Section 12 contemplates proceedings pursuant to a notice to the tenure-holder under sub-Section (2) of Section 10 or sub-Section (2) of Section 11 or because of any appellate order under Section 13 and then determination of the surplus land by the Prescribed Authority after objections have been filed by the tenure-holder to such notice. There has been no notice issued to the appellants by the Prescribed Authority under sub-Section (2) of Section 10 nor any notice came to be issued to the appellants under sub-Section (2) of Section 11. The matter was also not taken up by the Prescribed Authority because of any appellate order under Section 13. The appellants filed their objections to the notice under Section 9(2). In the circumstances, therefore, the order dated December 17, 2003 cannot be held to be an order under Section 12. It is neither an order under Section 11(2) nor an order under Section 12 but plainly an order canceling notice issued under Section 9(2) after objections were filed by the appellants.

30. Significantly in the matters of future acquisition, the procedure as provided in sections 9 to 12 has to be followed as well.

31. Section 13 provides a right of appeal to a party aggrieved by an order under sub-Section (2) of Section 11 or

Section 12 and no other. In other words, any order passed by the Prescribed Authority other than the order under-Section (2) of Section 11 or Section 12 is not appealable. From any reckoning, the order dated December 17, 2003 is neither an order under sub-Section (2) of Section 11 nor an order under Section 12. Act

1960 does not make the order of the Prescribed Authority canceling the notice issued under Section 9(2) amenable to appeal.

Such order does not fall within the ambit of Section 13. The

position is no different for the orders passed by the prescribed authority in other nine matters.

32. The High Court held that appeals were maintainable because notice under Section 9(2) is akin to a notice under

Section 10 and if the matter is disputed by either party and the Prescribed Authority adjudicates the dispute either in favour of State or tenure-holder, the order falls under Section 11(2) and,

therefore, appealable under Section 13. The reasoning of the

High Court is fallacious for more than one reason. In the first

place, it is not correct to say that notice under Section 9(2) is

akin to a notice under Section 10 of the Act. In the next place,

Section 10 applies where pursuant to the notice under Section 9,

the tenure-holder fails to submit a statement or submits any incomplete or incorrect statement and the Prescribed Authority

causes a statement prepared in the prescribed form (C.L.H.Form-3)

and then issues a notice upon such tenure-holder together with a

copy of statement so prepared in C.L.H. Form-3 to show cause why

that statement be not taken as correct. We have already noticed

that in the present case, the exercise required under Section

10(1) and (2) has not at all been done by the Prescribed

Authority. In the circumstances, the orders passed by the

Prescribed Authority neither fall under Section 11(2) nor Section

12 of the Act, 1960.

33. For the foregoing reasons, these appeals must succeed

and are allowed. The impugned judgment of the High Court as well

as that of the Additional Commissioner are set aside. It is,

however, clarified that it will be open to the Respondent No. 1

to assail the legality and correctness of the order passed by the

Prescribed Authority in appropriate proceedings as may be advised
and in that event the period from the date of the filing appeals

by the Respondent No. 1 before the Additional Commissioner, Meerut

Division, Meerut until date shall not come in their way in
pursuing such remedy. Parties will bear their own costs.

.....J
(Tarun Chatterjee)

.....J
(R. M. Lodha)

New Delhi
September 17, 2009.

ITEM NO.1A
(For Judgment)

COURT NO.4

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 3058 OF 2008

M/S SUPER CASSETTES INDUSTRIES LIMITED

Appellant (s)

VERSUS

STATE OF U.P.& ANR.

Respondent(s)

WITH Civil Appeal NO. 3085 of 2008
Civil Appeal NO. 3068 of 2008
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Civil Appeal NO. 3086 of 2008
Civil Appeal NO. 3082 of 2008
Civil Appeal NO. 3066 of 2008
Civil Appeal NO. 3071 of 2008
Civil Appeal NO. 3197 of 2008

Date: 17/09/2009 These Appeals were called on for Judgment today.

For Appellant(s) Mr. P.V. Yogeswaran,Adv.

For Respondent(s) Mr. Shrish Kumar Misra,Adv.

Mr.Ravindra Kumar, Adv.

Hon'ble Mr.Justice R.M.Lodha pronounced the Judgment of the
Bench comprising Hon'ble Mr.Justice Tarun Chatterjee and His
Lordship.

The appeals are allowed in terms of the signed Judgment. The
impugned judgment of the High Court as well as that of the
Additional Commissioner are set aside. It is, however, clarified
that it will be open to the Respondent No. 1 to assail the legality
and correctness of the order passed by the Prescribed Authority in
appropriate proceedings as may be advised and in that event the
period from the date of the filing appeals by the Respondent No. 1
before the Additional Commissioner, Meerut Division, Meerut until
date shall not come in their way in pursuing such remedy. Parties
will bear their own costs.

In view of the Judgment passed in these appeals, application
for impleadment is disposed of.

(Satish K.Yadav)

(Phoolan Wati Arora)

Court Master

Court Master

(Signed reportable Judgment is placed on the file)