

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No. 13150/2012

(Arising out of impugned final judgment and order dated 08/02/2012 in CMWP No. 45418/1992 passed by the High Court of Judicature at Allahabad)

RAJENDRA PRASAD & ORS.

Petitioner(s)

VERSUS

MAHABIR SARAN DAS & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date : 10/08/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) Mr. S.R. Singh, Sr. Adv.
Mr. Avnish Singh, Adv.
Mr. Ankur Yadav, Adv.
Ms. Asha Gopalan Nair, A.O.R.

For Respondent(s) Mr. Aarohi Bhalla, Adv.
Mr. Ardhendumauli Kumar Prasad, A.O.R.
Ms. Bharti Tyagi, Adv.

UPON hearing counsel the Court made the following
O R D E R

IN spite of service having been effected on all the respondents, there is no representation on behalf of the private respondents.

The State is represented by Mr. Aarohi Bhalla, learned counsel.

Heard Mr. S.R. Singh, learned senior counsel and Mr. Aarohi Bhalla, learned counsel for respondent-State.

Leave granted.

For the above said reasons, the order impugned in this appeal cannot be sustained. While setting aside the order impugned, as well as, the order dated 28th August, 1992 of the Additional Commissioner, we direct the Additional Commissioner to restore the appeal in respect of Appeal No. 29/27/G of 1992 to its original file and dispose of the same on merits after giving due opportunity to all parties concerned. No costs.

The appeal stands disposed of on the above terms.

[KALYANI GUPTA]
COURT MASTER

[SHARDA KAPOOR]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE.]

of Land Holdings Act, 1960, the appellant preferred an appeal under Section 13(1) of the said Act before the Commissioner within whose jurisdiction land in question is located which was declared surplus. While dealing with the said appeal filed by the appellant, the Additional Commissioner (Administration), Gorakhpur Division, Gorakhpur passed his orders dated 28th August, 1992.

6. To appreciate the nature of the order passed, we feel it appropriate to extract the relevant part of the order which reads as under:-

"Perused provisions of U.P. Ceiling of Holding (As amended upto date) Act carefully, herein, in Section 11 provision has been given that if any order is passed against any person under the said Act and he is aggrieved by the said order, then he can make appeal in the court of the concerned prescribed officer only and concerning prescribed officer only would be competent officer for the same. Ceiling Act happens to be a special Act. In case special provision is not available in this Act on any point, then the said provision would become effective. Civil Procedure Code happens to be a general Act and provision of Special Act remains effective on the provisions of the General Act. I do coincide with the contention put forth by Government counsel (Revenue) that the appeal in this court is still immature.

After considering the above-said trial and whole documentary and oral evidence available on record I arrive at the clear conclusion that the present appeal is not

maintainable in this court, hence, is liable to be dismissed.

Order

Appeal is rejected, accordingly, application dated 25.08.92 is rejected automatically."

7. On a reading of the said part of the order, we are not able to make out any acceptable reasoning as to why and on what grounds the challenge made by the appellant in the said appeal could not be considered on merits. In the order impugned in this appeal, the High Court took the view that the appeal was rightly dismissed on the ground of maintainability.

8. A perusal of Section 13 of the Act which provides Appellate remedy, we find that Section 13(1) reads to the effect - "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." As compared to Section 11(1) of the Act, where it relates to determination of surplus land of a person, the expression used is "tenure holder", when it comes to the question of filing of an appeal it is specifically provided that any party aggrieved as against the order passed in Section 11(2) or Section 12 can prefer an appeal within 30 days before

the Commissioner within whose jurisdiction the land is situate.

9. Therefore, when the grievance of the appellant is that his rights were lawfully determined in a civil proceedings and followed by a Civil Court decree in his favour and on that ground when he seeks to challenge the determination of surplus land made under Section 11(1) of the Act, in all fairness the Appellate Authority hearing any appeal under Section 13(1) should have entertained the appeal and decided the same on merits, instead of taking a short cut method by dismissing the same on the ground of maintainability.

10. Having regard to the position that the Statute itself uses different expressions in Sections 11 and 13(1), the intention of the Legislature can be clearly understandable. While the determination of a surplus land may be with reference to a tenure holder, the same need not be the case when it comes to the question of any aggrieved party with reference to any such determination. Therefore, the law makers themselves consciously used the expression 'any party aggrieved' in Section 13(1) to enable anyone whose rights in respect of a land is otherwise protected; like the present case where it is claimed by the appellant that his claim is

supported by a Civil Court Decree; to prefer an appeal against an order passed under Section 11(2) of the Act. Therefore, the order of the Appellate Authority dated 28th August, 1992 cannot be sustained as the appellant had every right to file an appeal under Section 13(1) of the Act as a party aggrieved in respect of the order passed under Section 11(2) of the Act.

11. For the above-said reasons, the order impugned in this appeal cannot be sustained. While setting aside the order impugned, as well as, the order dated 28th August, 1992 of the Additional Commissioner, we direct the Additional Commissioner to restore the appeal in respect of Appeal No. 29/27/G of 1992 to its original file and dispose of the same on merits after giving due opportunity to all parties concerned. No costs.

12. The appeal stands disposed of on the above terms.

.....J
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J
[UDAY UMESH LALIT]

NEW DELHI
AUGUST 10, 2015.