

**(2022)02ILR A861**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: LUCKNOW 04.02.2022**

## BEFORE

**THE HON'BLE DINESH KUMAR SINGH, J.**

Writ C No. 3000031 of 1994

**Ajay Pratap Singh** ...Petitioner  
**Versus**  
**State Of U.P. & Ors.** ...Respondents

**Counsel for the Petitioner:**

H.S. Sahai, Jai Prakash Dubey, Onkar Nath  
Tiwari, U.S.Sahai, Shankar Sahai

**Counsel for the Respondents:**  
C.S.C.

**A. Ceiling Law – U.P. Imposition of Ceiling on Land Holdings Act, 1960 – Sections 9 and 10(2) – General Clauses Act, 1897 – Section 21 – Second notice was issued u/s 10(2) – Objection filed on the ground that it was issued against his father, who was dead – Maintainability of second notice challenged – First general notice u/s 9 was already issued – Effect – Held, the prescribed authority has not committed any error in issuing second notice – It would not be prudent to institute two separate cases inasmuch as the notices have been issued in respect of the same land holding – High Court issued direction clubbing both notices, giving the petitioner one month time to file comprehensive objection. (Para 18 and 19)**

**Writ petition disposed of. (E-1)**

**List of Cases cited:**

1. Lady Parassan Kaur Charitable Educational Trust Society, Gorakhpur Vs St. of U.P. & ors.; 2002 (93) RD 663

(Delivered by Hon'ble Dinesh Kumar Singh, J.)

1. The present writ petition under Article 226 of the Constitution of India has been filed seeking quashing of the notice dated 4.1.1989 issued by the prescribed authority under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (for short 'the Act, 1960').

2. Initially, a notice under Section 10(2) of the Act, 1960 was issued to the petitioner on 24.11.1987. This Notice was issued against Bhanu Pratap Singh, father of the petitioner, who had died when the notice was issued.

3. The petitioner had filed objection to the first notice. The petitioner said that an area 14 bigha 18 biswas situated at Village Shekhpur was exclusive holding of the father of the petitioner which was transferred by gift by his father to the petitioner prior to the cut off dated i.e. 24.1.1971 and as a result of this gift, the petitioner had come into possession of the said land and he became bhumidhar of the said land during the life time of his father. It is alleged that no objection was filed by the State to the objection filed by the petitioner. The parties lead their evidence and arguments were heard on 30.11.1988 and the next date was fixed as 14.12.1988. However, no order was passed on 14.12.1988 and, thereafter, the case was fixed for 4.1.1989 for orders. On 4.1.1989, an application was moved on behalf of the state before the prescribed authority for withdrawing the notice dated 24.11.1987 with liberty to file afresh notice. The said application was allowed on the same date i.e. 4.1.1989 by the prescribed authority and notice was allowed to be withdrawn.

4. Against the order dated 4.1.1989 passed by the prescribed authority, the petitioner filed an appeal before the Divisional Commissioner, Faizabad (Now Ayodhya Ji). The petitioner also prayed for staying further proceedings before the prescribed authority. The Divisional commissioner vide order dated 16.5.1989 directed the parties to maintain status-quo till 30.5.1989. The appeal filed by the petitioner was decided by the divisional commissioner vide order dated 11.7.1991 and set aside the order dated 4.1.1989 and remanded the matter back to the file of the prescribed authority and directed him to decide the application after inviting objection from the petitioner.

5. After remand by the Divisional commissioner to the prescribed authority, the petitioner had filed objection to the application dated 4.1.1989 filed by the State for withdrawing the first notice dated 24.11.1987. The petitioner said that application for withdrawal of the first notice did not contain any reason that why such an application was moved. The petitioner prayed for rejection of the application. However, the prescribed authority vide order dated 15.12.1993 rejected the application dated 4.1.1989 for withdrawing the first notice dated 24.11.1987.

6. On 15.12.1993, second application for withdrawing the first notice was again moved by the State. It is said that when the application dated 15.12.1993 for withdrawing the first notice dated 24.11.1987 was still pending for disposal before the prescribed authority, second impugned notice under Section 10(2) of the Act, 1960 dated 4.1.1989 was issued. The petitioner had filed objection to the second notice and the proceedings in respect of the

second notice are also pending before the prescribed authority. The petitioner thereafter has filed this writ petition challenging the issuance of the second notice.

7. The primary ground which has been urged by Sri U.S. Sahai, learned counsel for the petitioner is that there is no provision under the Act, 1960 or the rules made thereunder for issuing second notice. He further submits that second notice is wholly without jurisdiction and against law and is liable to be set aside.

8. Sri U.S. Sahai, learned counsel for the petitioner has also submitted that the first notice was later on corrected and the arguments were heard and when the judgment was to be pronounced, the State authorities came forward with an application for withdrawing the first notice.

9. On the other hand, Sri J.P. Maurya, learned Additional Chief Standing Counsel has submitted that adjudication has not taken place in respect of the first notice and if the authority concerned finds that first notice was defective or incorrect facts were mentioned in the first notice, therefore the authority can issue second notice. He also submits that Section 21 of the General Clauses Act provides power to issue, amend, vary or rescind notifications, orders, rules or bye-laws. Section 21 of the General Clauses Act, 1897 reads as under :-

***“21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.?Where, by any 1 [Central Act] or Regulations a power to 2 [issue notifications,] orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and***

*subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any 3 [notifications,] orders, rules or bye-laws so 4 [issued].?*

10. It is further submitted that it is the primary duty of the tenure holder to submit the statement in respect of the excess ceiling area of his land holding and this duty has been prescribed in Section 9 of the Act, 1960, which provides that 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. Sub-section (1) of Section 9 of the Act, 1960 prescribes that statement should also indicate the plot or plots for which the land holder claims exemption and also those which he would like to retain as part of the ceiling area applicable to him under the provisions of this Act. Section 9 of the Act, 1960 reads as under:-

**“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 the 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 said Act, to submit to him within 30 days of publication of such notice a statement referred to in sub-section (1)]:*

*[Provided that 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],*

(2A) 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-holder's 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 I Authority shall cause the notice under sub-section (2) of Section 10 to be served on her separately]."*

11. He further submits that if the land holder fails to perform his duty after publication of the notice under Section 9 of the Act, 1960, then notice under Section 10(2) of the Act, 1960 is issued for determination inviting the objections. He, therefore, submits that even if the first notice was issued since adjudication did not take place before issuing second notice, there is nothing in the Act which bars issuing the second notice.

12. Nowhere it is provided that in the provisions of the Act, 1960 that second notice can not be issued if the first notice is defective or some area is left out in the first notice. The only bar is that first notice ought not to have been adjudicated before issuing the second notice. He, therefore, submits that the judgment in the case of **Lady Parassan Kaur Charitable Educational Trust Society, Gorakhpur vs. State of U.P. and others, 2002 (93) RD 663**, is not applicable to the facts of the present case inasmuch as in that case second notice was issued after adjudication of the first notice and, therefore, this court relying upon the said judgment held that after adjudication of the first notice, there is

no provision in the Act, 1960 to issue second notice to a tenure holder.

13. I have considered the submissions advanced on behalf of the learned counsel for the petitioner as well as by the learned Additional Chief Standing Counsel.

14. The scheme of the Act, 1960 provides that after the date of enforcement of the Act, the prescribed authority is required to issue a general notice to be published in the Official Gazette calling upon every tenure holder holding land in excess of the ceiling area as applicable to him on the date of enforcement of the Act, to submit to him within 30 days from the date of publication of the notice, a statement in respect of his all land holdings. The tenure holder is also required to indicate the plot or plots for which he would claim exemption and also those which he would like to retain as part of the ceiling area applicable to him under the provisions of the Act.

15. It is further provided that at any point after 10.10.1975, 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 30 days from the date of service of such notice a statement as required to be submitted in sub-section (1) of Section 9 of the Act, 1960. In case the tenure holder does not submit the statement or submits any incomplete or incorrect statement under Section 9 of the Act, 1960, the prescribed authority after making an inquiry, prepare a statement containing such particulars regarding the excess area of the tenure holder and indicate the land, if any, exempted and the plot or plots proposed to be declared as surplus land. The prescribed

authority shall thereupon cause to be served upon every such tenure holder a notice along with copy of the said statement for his reply if any. Thereafter, the prescribed authority is required to adjudicate the notice for declaring the surplus area as contained in the statement of the notice.

16. Thus, from the reading of Sections 9 and 10 of the Act, 1960, it is evident that there is duty cast upon the tenure holder to give correct statement of his land holding and excess area in the prescribed form after publication of the notice in the Official Gazette by the prescribed authority after enforcement of the Act. In case the tenure holder fails to declare or submits incorrect statement, then only proceedings under Section 10(2) of the Act, 1960 would be initiated against him.

17. In the present case, the first notice was issued against the father of the petitioner, who was no more. It is always open to the competent authority to correct the mistake as the notice could not have been issued against a dead person and that was precise objection of the petitioner in his objection to the first notice.

18. Considering the provisions of Section 21 of the General Clauses Act, I do not find that the prescribed authority has committed any error in issuing second notice. However, it would not be prudent to institute two separate cases inasmuch as the notices have been issued in respect of the same land holding. Anyway, the petitioner is not prejudiced by the second notice, if both the notices are clubbed together and a comprehensive objection is filed by the petitioner and, thereafter, the prescribed authority decides the objection in accordance with law after giving due opportunity to the petitioner.

19. In view thereof, let both notices dated 24.11.1987 and 4.1.1989 be clubbed together and the petitioner be given one month time to file comprehensive objection in respect of both the notices and the case be treated as one in respect of both the notices.

20. Let prescribed authority decide the case within a period of six months in accordance with law after giving due opportunity for leading evidence by the petitioner and by the State authorities.

21. With the aforesaid observation and direction, the present writ petition stands disposed of.

**(2022)02ILR A865**

## ORIGINAL JURISDICTION

## CIVIL SIDE

**DATED: LUCKNOW 15.02.2022**

## BEFORE

**THE HON'BLE DINESH KUMAR SINGH, J.**

Writ-A No. 755 of 2022

**Sumit Kumar Verma** ...Petitioner  
**Versus**  
**State of U.P. & Ors.** ...Respondents

**Counsel for the Petitioner:**  
Ashish Kumar Pathak

**Counsel for the Respondents:**  
C.S.C., Shubham Tripathi

**A. Service Law - The U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974-Challenge to-appointment-petitioner had obtained appointment illegally on compassionate ground in KGMU, Lucknow after death of his father-the petitioner mother was employed in the University itself as female sick attendant-Petitioner deliberately concealed this fact in his application form-**