

**Court No. - 2**

**Case :-** MISC. BENCH No. - 2046 of 2021

**Petitioner :-** Raja Mohammad Amir Mohammad Khan

**Respondent :-** Commissioner/Addl.Commissioner Lko Division Lucknow & Ors.

**Counsel for Petitioner :-** Shobhit Mohan Shukla

**Counsel for Respondent :-** C.S.C.,A.S.G.,Saiyed Afzal Abbas Rizvi

**Hon'ble Devendra Kumar Upadhyaya,J.**

**Hon'ble Manish Kumar,J.**

Heard learned counsel for the petitioner, learned State Counsel for the respondent nos. 1 to 8 and Sri S.B.Pandey, learned Senior Advocate & Assistant Solicitor General of India, assisted by Sri Varun Pandey, learned counsel for the respondent nos. 9 & 10.

The petitioner has filed an appeal under section 13 of the U.P. Imposition of Ceiling on Land Holdings Act,1960 (hereinafter referred as Ceiling Act) challenging the order dated 26-12-2020 passed by the Prescribed Authority (Ceiling) under sections 10/12 of the Ceiling Act, whereby certain land belonging to the petitioner has been declared surplus. The said appeal has been filed within the limitation period.

Sri Jaideep Narain Mathur, learned Senior Advocate, assisted by Sri Shobhit Mohan Shukla, Advocate appearing for the petitioner states that before disposal of the said appeal, the Collector is proceedings to take possession of the land declared as surplus under the order passed by the Prescribed Authority.

Once any land is declared surplus under the Ceiling Act, the Collector is empowered to take possession of the said land. However, the authority to take possession of the surplus land is to be exercised in terms of Section of the Ceiling Act. Section 14 of the Ceiling Act is quoted hereunder :-

***14. Acquisition of surplus land. - (1) The Collector shall at any time after***

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***(a) in case, whether the order passed under sub-section (1) of Section 11 has become final, the date of its so becoming final; or***

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*(b) in case, where no appeal has been preferred under Section 13, the date of expiry of the period of limitation provided therefor; or*

*(c) in case, where an appeal has been preferred under Section 13, the date of its decision,*

*take possession of the surplus land determined under Section 11, Section 12 or Section 13 and also of any ungathered crop or fruits of trees, not being crops or fruits to which sub-section (1) of Section 15 applies, after evicting any person found in occupation of such land, crops or fruits and may for that purpose use or cause to be used such force as may be necessary.*

*(2) Notwithstanding anything contained in sub-section (1) a tenure-holder may, at any time, voluntarily deliver possession to the Collector over the whole or any part of the land held by him which has been or is likely to be declared surplus under or in accordance with the provisions of the Act.*

*(3) Where the Collector has taken possession of any surplus land or ungathered crops or fruits of trees under sub-section (1) or sub-section (2), such land, crops or fruits of trees shall, with effect from the date of his taking possession, stand transferred to and vest in the State Government free from all encumbrances and ail rights, title and interests of all persons in such land shall, with effect from such date, stand extinguished :*

*Provided that the encumbrances, if any, shall attach to the amount payable under Section 17 in substitution for the surplus land.*

*(4) The Prescribed Authority shall, as soon as may be after the date mentioned in clause (a), clause (b) or clause (c), as the case may be, of sub-section (1), notify in the Official Gazette every surplus land determined under this Act, or under Section 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974 or under Section 31 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1976.]*

As per the aforesaid quoted Section 14 of the Act, the Collector can take possession of the surplus land, in case, where an appeal has been preferred under section 13, only on or after the date of the decision of the appeal.

Section 14 further envisages that the possession of the surplus land can be taken, where no appeal has been preferred under section 13 of the Act, on the date of expiry of period of limitation. The limitation for preferring an appeal under section 13 as provided under the said Act is of 30 days. The order in this case was passed by the Prescribed Authority on 26-12-2020 and the appeal has been preferred on 08-01-2021 i.e. within the time limit prescribed for the said purposes. Accordingly, before disposal of the appeal preferred under

section 13, as per operation of Section 14 (c) of the Act, the possession of the surplus land cannot be taken. Accordingly, we **dispose of** the writ petition with a direction to the Collector not to take possession of the surplus land till the appeal preferred by the petitioner against the order passed by the Prescribed Authority is decided finally.

We further direct that the petitioner shall cooperate in disposal of the appeal and shall not seek any unnecessarily adjournment before the appellate court/authority.

**Order Date :-** 25.1.2021

AKS