

Court No. - 5

Case :- WRIT - C No. - 41683 of 2007

Petitioner :- Smt. Sarla Devi And Others

Respondent :- The State Of U.P. Thru Collector Shahjahanpur And Others

Counsel for Petitioner :- T.S. Dabas, Arpit Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal, J.

Heard Shri Arpit Agarwal, learned counsel for the petitioners and learned ACSC for the State - respondents.

The instant writ petition has been filed against the order dated 29.05.2007 passed by the respondent no. 3 and the order dated 16.12.2004 passed by the respondent no. 2 declaring the land of the petitioners as surplus.

Learned counsel for the petitioners submits that a notice under section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as, 'the Act') was issued in the year 1974. The Prescribed Authority had initially decided the ceiling case vide order dated 10.11.1974, against which the appeal was decided on 30.12.1974 and the matter was again sent before the Prescribed Authority, who vide order dated 14.04.1976 held the sale deed dated 23.03.1971 as sham transaction, against which the petitioners preferred an appeal, which was allowed vide order dated 13.12.1976 holding the sale deed dated 23.03.1971 as valid. He further submits that the order dated 13.12.1976 had become final as the same was not challenged by the State. He further submits that on 06.06.1997, another notice under section 10(2) of the Act was issued to the petitioners, against which the petitioners filed objection, which was rejected vide order dated 24.02.1999. Against the order dated 24.02.1999, the petitioners preferred an appeal, which was allowed vide order dated 28.02.2001 remanding the matter back to the respondent no. 2. He further submits that the respondent no. 2, vide order dated 16.12.2004, rejected the objections of the petitioners declaring 7.518 hectares of land as surplus, against which an appeal was preferred, which has been dismissed vide impugned order dated 29.05.2007.

Learned counsel for the petitioner further submits that after a lapse of more than 22 years, second round of litigation was started and the notice under section 10(2) of the Act was issued on 06.06.1997. He further submits that the land of the petitioner nos. 2 & 3 purchased vide registered sale deed cannot be clubbed with the land of the petitioner no. 1 and the same cannot be said to be sham transaction as the aforesaid sale deed has been held to be valid vide order dated 13.12.1976. He further submits that the courts below have failed to consider that once the ceiling proceedings have been decided on merits against the petitioner nos. 1, 2 & 3, the

second proceedings on the same land cannot be maintainable unless further land has been acquired by the tenure holder after decision of the previous proceedings. He further submits that the sale deed executed by the petitioner no. 1 on 27.06.1980 in favour of the petitioner nos. 4 to 6 after the conclusion of the ceiling proceedings cannot be held to be barred by law and the land cannot be clubbed with the land of the petitioner no. 1.

He further submits that once the proceedings have been concluded in the year 1976 vide order dated 13.12.1976 passed in Appeal No. 113/1976, the same can only be re-initiated within two years thereafter and therefore, the subsequent proceedings initiated after 22 years are not justified. In support of his submissions, learned counsel for the petitioners has placed reliance upon the judgement of this Court in **Sadhu Singh Vs. Additional Commissioner, Executive Bareilly & Others** [Writ C No. 467 of 2004, decided on 31.07.2023]. He prays for allowing of the writ petition.

Per contra, learned ACSC submits that supports the impugned orders and submits that the proceedings has rightly been initiated against the petitioners as there was surplus land and the impugned orders have rightly been passed. He prays for dismissal of the writ petition.

After hearing the learned counsel for the parties, the Court has perused the records.

It is not in dispute that vide order dated 13.12.1976 passed in Appeal No. 113/1976, the appeal was allowed in favour of the petitioner. The said order has become final as the same was not challenged by the State in the higher court. The present proceedings under section 10(2) of the Act have again been initiated after a lapse of 22 years, which cannot be permissible. This Court in **Sadhu Singh** (supra) has held as under:-

"8. It is pertinent to mention here the relevant provisions of Section 31 of UP Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 (UP Act No. 20 of 1976); which is quoted hereunder:-

31. Transitory provisions (1) All proceedings under subsection (3) to (7) of Section 14 of the principal Act, as it stood immediately before the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Ordinance, 1976 (UP Ordinance No. 11 of 1976) pending before any Court or authority immediately before the date of such commencement shall be deemed to have abated on such date.

(2) ..,

(3) Where an order determining surplus land in relation to a tenure holder has been made under the principal Act before tenth day of October, 1975, the Prescribed Authority (as defined in the principal Act) may, at any time within a period of two years from the said date, redetermine the surplus land in accordance with the principal Act as amended by this Act, whether or not any appeal was filed against such order and notwithstanding any appeal (whether pending or decided) against the original order of determination of surplus land.

(4)...(5) ..., (6)...

9. On perusal of the aforesaid sections, it is clear that the Prescribed Authority were at liberty to

initiate proceedings for redetermination of surplus land within a period of two years from 10.10.1975. However, in the present case the proceedings has been initiated in the year 1974 and in pursuance of the said provision, the re-determination can be made only up to 9.10.1977 and after expiry of said period of two years, the proceedings for re-determination of surplus land cannot be initiated legally.

10. This Court in the case of *Rajat Lal and another Vs. Commissioner, Saharanpur Division and others*, (2011) 5 AdJ 434 has held as under:-

20. This provision in our mind was introduced to achieve the object of the various amendments introduced in the Principal Act and to give effect to them. Section 38-B, in our view, contemplates that if by the amendments made in the Principal Act certain findings or decisions had become contrary to law, those findings or decisions could be reopened and the principle of *res judicata* would not bar a retrial of those issues in accordance with the provisions of the Principal Act as amended. This provision, in our opinion, did not authorise the ceiling authorities to ignore the decisions rendered or decrees passed by competent courts, tribunals or authorities in respect of matters which were not affected by the changes made in the Principal Act. Such decisions, in our opinion, would continue to be binding on the parties and would operate as *res judicata* between them, see *State of Uttar Pradesh v. Nawab Hussain*, AIR 1977 SC 1680. No change was made in the law relating to ancestral Sir and Khudkasht land of a tenure holder.

...

21. There is no dispute to this effect that authority concerned in view of amending provisions can issue a notice for redetermination but there is a rider to this effect that redetermination has to be made within a period of two years. Admittedly, that has not been done so. In *Nahar Singh vs. The Sub-Divisional Magistrate, Meerut and others*, reported in 1983 Allahabad, L.J. 391, this Court has taken a view that in view of Amending Act No.20 of 1976, Section 31(3) provides regarding redetermination of surplus land, if it has been passed after expiry of period of two years then order will be treated to be without jurisdiction. It provides that prescribed authority is to redetermine surplus land within the period of two years from the said date. This can only mean that the final redetermination should be made by the prescribed authority within a period of two years from 10th day of October, 1975. Para 5 is relevant for the said purpose. The same is being quoted below:-

"5. Now I take up the first submission of the learned counsel for the petitioner for consideration.

Sub-Sec.(3) of Section 31 reads thus:-

"Where an order determining surplus land in relation to a tenure-holder has been made under the principal Act before the tenth day of October, 1975, the Prescribed Authority (as defined in the Principal Act) may, at any time within a period of two years from the said date, re-determine the surplus land in accordance with the Principal Act as amended by this Act, whether or not any appeal was filed against such order and notwithstanding any appeal (whether pending or decided) against the original order of determination of surplus land."

....

27. In the present case also admittedly, proceeding for redetermination after amendment has been done after a lapse of two years, therefore, in view of Apex Court judgement as well as *Nahar Singh's* case of this Court it can easily be held that proceeding against petitioners was without jurisdiction.

28. In view of aforesaid facts and circumstances, the writ petition is allowed. The order dated 28.6.2006 passed by respondent No.1 (Annexure 13 to writ petition) order dated 13.9.2004 passed by respondent No.2 (Annexure 7 to writ petition) and remand order dated 25.9.1983 passed by II nd A.D.J. Muzaffar Nagar (Annexure 4 to writ petition) are hereby quashed.

11. Hon'ble the Supreme Court in the case of *State of Uttar Pradesh Vs. Mithilesh Kumari, Nahar Singh*, (1987) Sup SCC 21 has held as under :-

4. A plain reading of this transitory provision along with proviso to Section 9 (2) of the principal Act (as amended) makes it clear that what contemplated by Section 31 (3) of the Amendmetn Act was redetermination of the surplus land, that is to say, the conclusions of the proceeding initiated by the notice issued under the proviso to Section 9 (2)

of the principal Act.

(5) We do not see how any other conclusion is possible. Obviously, the legislature took notice of the fact that 17 years had already passed since the passing of the original Act, and therefore, the legislature was particular that the proceedings for redetermination of surplus land should conclude as expeditiously as possible. This was the view taken by the High Court and we see no reason to depart from it. The appeals are dismissed. There will be no order as to costs.

12. After plain reading of the aforesaid judgements of Hon'ble the Apex Court as well as this Court, it has been held that transitory provisions provides for re-determination of surplus land and same should be concluded within the time frame fixed therein. In the case in hand, in the earlier round of litigation, proceedings were initiated against the petitioner in the year 1974 and the order was passed on 31.10.1974 declaring certain land of the petitioner as surplus land, however, after lapse of more than 22 years, fresh proceedings has been initiated on 11.4.1997 and same is not justified in the eyes of law in view of the transitory provisions."

In view of the aforesaid discussions as well as the law laid down by the Apex Court as well as this Court, the impugned order dated 29.05.2007 passed by the respondent no. 3 and impugned the order dated 16.12.2004 passed by the respondent no. 2 cannot be sustained in the eyes of law. The same are hereby quashed.

The writ petition succeeds and is allowed.

Order Date :- 4.12.2023

Amit Mishra