

Court No. - 17

Case :- WRIT - C No. - 3000095 of 1995

Petitioner :- Smt.Krishna Devi

Respondent :- State Of U.P. And Others.

Counsel for Petitioner :- Ravi Singh

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Ravi Singh, learned counsel for the petitioner as well as learned Standing Counsel for the respondents.

2. By means of present writ petition the petitioner has assailed the order dated 14.06.1993 passed by the Prescribed Authority whereby rejecting the objections filed by the petitioner under the Imposition of Ceiling on Land Holdings Act, 1960 (*hereinafter referred to as "the Act, 1960"*) as well as order dated 31.03.1995, passed by the Appellate Authority thereby rejecting the appeal preferred by the petitioner and affirming the order passed by the Prescribed Authority.

3. It has been submitted by learned counsel for the petitioner that petitioner is the recorded tenure holder of land being Plot No. 1184 measuring 23 bigha 6 biswa and 9 dhur, situated in Village - Saintha, Pargana - Amethi, Tehsil - Gauriganj, District - Sultanpur. It is stated that the said land was subjected to ceiling operations by issuing notice under Section 10(2) of Act, 1960. The Prescribed Authority by means of order dated 03.11.1974, allowed the objections filed by the petitioner and held that petitioner does not have any land more than the ceiling limit and accordingly discharged the notice under Section 10(2) of the Act, 1960, issue to the petitioner.

4. It is next submitted by learned counsel for the petitioner that subsequently notice was again issued under Section 10(2) of the Act, 1960. The petitioner again filed his objections to the said notice and again by means of detailed order dated 26.06.1976, the Prescribed Authority came to the conclusion that the petitioner does not have any land in excess of the ceiling limit and again dropped the proceedings.

5. It is further submitted that on third occasion another notice was issued to the petitioner against which he filed his objections and said objections have been rejected by means of order dated

12.11.1982, against which the petitioner preferred an appeal under Section 13-A of the Act, 1960. The said appeal was partly allowed and matter was remanded to the Prescribed Authority to consider objections of the petitioner with regard to exclusion of land which has been sold by the recorded tenure holder and as to whether the petitioner is entitled for the said exclusion as per Section 5(6) of the Act, 1960.

6. In the remand proceedings the Prescribed Authority by means of impugned order dated 14.06.1993 rejected the objections and did not exclude the land sold by the petitioner. The petitioner subsequently preferred an appeal before the Appellate Authority. The Appellate Authority also considered the grounds set forth in the appeal and specifically held that though original sale deeds have not been produced before the Prescribed Authority, but only one sale deed was produced before the Appellate Authority indicating that said land measuring 13 bigha had been sold for consideration of Rs.13,000/- and which comes to equal to Rs.3000/- per bigha and came to the conclusion that said consideration was inadequate and held that benefit of Section 5(6) of the Act, 1960 would not be available to the petitioner and rejected the appeal. It is in the aforesaid proceedings, present writ petition has been filed assailing the orders of the Prescribed Authority as well as Appellate Authority.

7. The last ground raised by the petitioner is that once ceiling proceedings had concluded by means of order dated 03.11.1974 by the Prescribed Authority and yet again on the second occasion the proceedings were dropped on 26.06.1976, it was not open for the Prescribed Authority to re-initiate the proceedings for the third time, specially in the light of the fact that there was no addition by the petitioner in his land holdings nor there was any rectification of error sought under Section 13 of the Act, 1960 and none of the conditions existed before the Prescribed Authority for re-initiating proceedings under Section 10(2) of the Act, 1960.

8. The other ground urged by the petitioner is that impugned orders of Prescribed Authority as well as Appellate Authority are illegal and arbitrary and it is submitted that though original sale deeds could not be produced before the Prescribed Authority, but certain sale deeds were produced before the Appellate Authority and merely a finding has been recorded sale consideration was inadequate. Non recording of finding regarding inadequacy of sale consideration it was incumbent upon the Appellate Authority to consider the valuation of said land as per District Magistrate's circle rate and consider other sale deeds pertaining to the land in close proximity and in case

he was of the view that there was substantial difference in the sale considerations, he could have been recorded a finding regarding inadequacy of the sale consideration vis-a-vis valuation of land, hence the finding recorded by the Appellate Authority is illegal and arbitrary and requires interference of this Court.

9. Learned Standing Counsel on the other hand has opposed the writ petition and supported the impugned orders. He on the basis of counter affidavit could not dispute the fact that land of the recorded tenure holder was subjected to ceiling proceedings on two previous occasions.

10. Heard learned counsel for the parties and perused the record.

11. It has been argued on behalf of petitioner that petitioner who is recorded tenure holder of land being Plot No. 1184 measuring 23 bigha 6 biswa and 9 dhur, situated in Village - Saintha, Pargana - Amethi, Tehsil - Gauriganj, District - Sultanpur, the petitioner has been served with notice under Section 10(2) of the Act, 1960. The petitioner was able to demonstrate before the Prescribed Authority that holding was less than the ceiling limit prescribed under the Act, 1960 and consequently there was no land which can be declared surplus. The Prescribed Authority agreed with the assertions made by the petitioner and consequently discharged the notice by means of order dated 03.11.1974.

12. Second notice was issued to the petitioner and again he was able to demonstrate that she did not have any land in excess to the ceiling limit and the Prescribed Authority by means of order dated 26.06.1976, again discharged the notice and recorded a finding that petitioner does not have any land in excess to the ceiling limit.

13. It is after conclusion of aforesaid two proceedings that third notice was issued to the petitioner under Section 10(2) of the Act, 1960, to which the petitioner filed her objections which have been rejected and said rejection has been affirmed by the Appellate Authority in appeal against which present writ petition has been filed.

14. From the entire material available on record as well as after perusal of order of the Prescribed Authority as well as Appellate Authority, it can be concluded that nowhere any accretion of land subsequent to the proceedings before the Prescribed Authority on two occasions i.e. in 1974 and 1976. According to the Act 1960 in case any order requires revision then

proceedings can be re-opened, but there is limitation of two years from the date of notification. In the present case there is no mention of any addition of land and consequently present proceedings are under Section 13-A of the Act, 1960.

15. The proceedings can also be re-opened in exercise of power under Section 29 of the Act, 1960 for which it has been shown that some land has come to be held by the tenure holder after the previous ceiling proceedings have culminated or that nature of land has been changed from un-irrigated to irrigated. Thus no holding has been added to the original holdings of the petitioner, necessitating proceedings under Section 29 of the Act, 1960.

16. Lastly proceedings can be re-opened if any condition existed as prescribed under Section 13-A of the Act, 1960. It is not the case of the State that disputed land was close to a river or that due to change in the course of river land has been added to the holdings of the petitioner.

17. From the above, it is clear that in the present case none of the conditions exist by which the proceedings can be re-opened by the Prescribed Authority once same had been concluded on two previous occasions and specific finding has been returned that petitioner does not hold any land in excess of the ceiling limit as provided under the Act, 1960.

18. From a bare perusal of the order of the Prescribed Authority as well as appellate authority it is clear that there was no such fact for proceeding under Section 13 or 29 or 31 existing in the present case which may necessitate reopening of the proceedings. In case there was any accretion of the land then it was necessary for the same to be indicated in the notice under Section 10 (2). Even when the Prescribed Authority while passing the impugned order was mandated to discuss as to whether there was any fresh accretion of land at the hands of the tenure holder for which fresh proceedings could have been initiated under the Act of 1960. A perusal of the entire record clearly shows that there was no materiel before any of the authorities concerned to re-initiate the proceedings under the Act of 1960 when the proceedings had culminated on previous occasion by passing order by the Prescribed Authority on 5.2.1977 had become final. This aspect has also been considered by a coordinate Bench of this Court in the case of **State of U.P. through Collector, Mirzapur Vs. Additional Commissioner(J), Varanasi Division, Varanasi and others, 2009 (27) LCD 71** the relevant portion of which is quoted as under:-

"8. From the perusal of the Act it also appears that there is no

provision for second notice under Section 10 (2) of the Act and for the re-determination of surplus land except Section 13-A, 29, 30 and 31 of the Act. The scope of Section 13-A came to be considered before the Apex Court in *Devenddra Nath Singh and others v. civil Judge and others* (2000 (91) RD 28 (SC)). In the aforesaid case the Apex Court has held as under:- Having examined the provisions of Section 13-A and Section 38-B of the Act, we are of the considered opinion that under Section 13-A the Prescribed Authority has the power to reopen the mater within two years from the date of the notification under sub-section (4) of Section 14 to ratify any apparent mistake which was there on the face of the record. That power will certainly not include the power to entertain fresh evidence and re-examine the question as to whether the two sons, namely, Hamendra and Shailendra were major or not. The power under Section 38-B merely indicate that if any finding or decision was there by any ancillary forum prior to the commencement of the said sections in respect of a matter which is governed by the Ceiling Act, then such findings will not operate as res-judicata in a proceeding under the Act. That would not cover the case where findings have already reached its finality in the very case under the Act. In this view of the mater we have no hesitation to come to the conclusion that the Prescribed Authority has no jurisdiction to reopen the question of majority of the two sons in purported exercise of the power under Section 13-A. If the authority had no jurisdiction, question of waiver of jurisdiction does not arise, as contended by the learned Counsel for respondent.

In the aforesaid premises, the impugned order of the Prescribed Authority as well as that of the High Court are st aside and it is held that in the computation of the ceiling Hamendra and Shailendra will be treated as two major sons."

19. In **Prakash Singh v. Prescribed Authority , Bilaspur and another, 1985 (11) ALR 772 (FB)**, this Court has observed as under:-

"It is only in those cases where the amendments require the Prescribed Authority to redetermine surplus land that the notice under Section 10 (2) be issued. It is, therefore, obvious that there may be cases where the earlier decision as a whole may not require modification at all, or there may be cases where only partial modification may become necessary. For example, if the question is as to whether a particular plot of land is irrigated or not has been determined and does not call for any fresh decision. Since there is no amendment to the relevant provisions in this regard by the 1976 Amendment there would be no necessity of the Prescribed Authority embarking on a fresh enquiry as to whether the said plots are irrigated or not.

In such an event the previous order of the Prescribed Authority made before 10th October, 1975 will neither stand annulled nor be non-est."

20. Even from the aforesaid judgment it is clear that it is only under certain specific circumstances as stated under the Act itself that the proceeding can be re-initiated and in the present case none of these facts exist for re initiation of the proceedings. Both the impugned orders are accordingly illegal and deserve to be set aside.

21. From the above, this Court is satisfied that notice of Prescribed Authority was clearly beyond jurisdiction once the ceiling proceedings had culminated after recording finding that petitioner does not hold any land in excess of the ceiling limit, then such proceedings could not have been re-opened subsequently, unless specific condition has prescribed in Section 13-A, 27, 17 of Act, 1960 exist and accordingly both the impugned orders as well as proceedings initiated for third time was beyond jurisdiction and is held to be illegal and arbitrary and is accordingly set aside.

22. Holding the proceedings to be illegal and arbitrary this Court will not be entering into the question of inadequacy of consideration.

23. Accordingly, impugned orders dated 14.06.1993 passed by the Prescribed Authority as well as order dated 31.03.1995, passed by the Appellate Authority, are hereby set aside.

24. The writ petition is **allowed**.

Order Date :- 29.11.2023

A. Verma

(Alok Mathur, J.)