

Court No. - 17

Case :- WRIT - C No. - 1000054 of 1993

Petitioner :- Jeet Singh

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

Counsel for Petitioner :- Avadhesh Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Avadhesh Kumar, learned counsel for the petitioner as well as learned Standing Counsel for respondent nos. 1 to 3.

2. By means of present writ petition the petitioner has challenged the order dated 30.06.1989, passed by the Prescribed Authority as well as order dated 27.10.1992, passed by the Additional Commission, Lucknow Division, Lucknow thereby rejecting the appeal preferred by the petitioner and up holding the findings recorded by the Prescribed Authority.

3. Facts in brief of the present case are that a sale deed was executed on 14.08.1967/23.11.1967, in favour of the petitioner with regard to Plot No. 5M area 8.75 acres, situated in Village - Deep Nagar, Pargana - Khairigarh, Tehsil - Nighasan, District - Kheri. It seems that said land was included in the holdings of one Shakuntala Devi who is the original tenure holder and she was proceeded against under the Ceiling Act existing at that point of time. After following due procedure, by means of order dated 22.06.1964, passed by the Prescribed Authority, certain lands of original tenure holder were declared surplus including the disputed land as purchased by the petitioner. The petitioner moved an application before the Prescribed Authority for excluding the lands which were acquired by him through sale deed dated 23.11.1967. The said application was moved under Section 11(2) of the Imposition of Ceiling on the Land Holdings Act, 1960 (*hereinafter referred to as "the Act, 1960"*). The Prescribed Authority after considering the said application rejected the same.

4. While rejecting the application of the petitioner filed under Section 11(2) of the Act, 1960, the Prescribed Authority was of the opinion that firstly said lands belonging to original tenure holder, had already been declared surplus and have been vested in the State by order of Prescribed Authority dated 22.06.1964. Any alienation/transfer of the said land after being transferred is a nullity. The Prescribed Authority further recorded that the sale

deed executed in favour of the petitioner was executed by a minor through his guardian without there being any authority in this regard and consequently he did not rely upon the said sale deed. Another reason for not relying upon the said sale deed was inadequate consideration paid by the petitioner. The Prescribed Authority relied upon the oral evidence of one Gulzar Singh, who has stated that value of the land at the relevant time was nearly Rs.2000/- for three acres while the petitioner has purchased 8.75 acres for Rs.1000/- in the year 1967.

5. It is in the aforesaid facts, the Prescribed Authority stated that the sale deed has been entered into only with a view to escape from the clutches of the provisions of Act, 1960 and consequently, rejected the application preferred by the petitioner.

6. Aggrieved by the order of Prescribed Authority dated 30.06.1989, the petitioner preferred an appeal before the Additional Commissioner (Judicial), Lucknow Division, Lucknow. Before the Appellate Authority same grounds were taken and the Appellate Authority did not accept the contentions of the petitioner and relied upon the findings recorded by the Prescribed Authority and rejected the appeal.

7. The petitioner has assailed both the aforesaid orders in the present writ petition. It is submitted by learned counsel for the petitioner that case of the petitioner should have been considered under the U.P. Act No. 18 of 1973, where cut-off date for transfer of the land was 24.01.1971 and consider the case of the petitioner under Section 5(6) of the Act, 1960 that the said sale was bonafide and executed for adequate consideration, the land should have been excluded from the holdings of the original tenure holder and to exempt his land from ceiling operations. No other ground was urged by learned counsel for the petitioner.

8. Learned Standing Counsel on the other hand has opposed the writ petition, by submitting that both the authorities below have examined the case of the petitioner. It was found that the sale deed executed in favour of the petitioner was not bonafide, having been executed by a minor. It is further submitted that there was ample evidence available on record to indicate that sale consideration was inadequate and consequently said sale was not bonafide either for adequate consideration and even provisions of Section 5(6) of the Act, 1960 were not available and consequently both the authorities below have rejected the contention of the petitioner.

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

10. Before this Court learned counsel for the petitioner has alleged same grounds which were urged before the authorities below. It is submitted that once it is demonstrated that sale deed is executed prior to cut-off date i.e. 24.01.1971, then the land transferred on the basis of such instrument, have been excluded from the ceiling operations, the said transfer was bonafide and for adequate consideration.

11. Without entering into the controversy as raised by the petitioner with regard to the applicability of the statutory provisions, the case of the petitioner was dealt under the Act, 1960 as amended in 1973. Even if cut-off date i.e. 24.01.1971 is accepted and sale in the present case took place on 23.01.1967, even then it is noticed by means of order dated 22.08.1964, said land has also been declared surplus. Once the said land has been declared surplus and vested in the State Government, then the said land cannot be subjected to transfer in favour of petitioner. Such transfer is barred by the provisions of sub Clause 8 of Section 5 of the Act, 1960 and said instrument on the face of it would be void. There is consistent finding of fact by the authorities below that said instrument was executed by a minor without there being any authority in this regard nor prior permission of District Judge was obtained before executing the instrument and accordingly, such transfer is void.

12. It is further noticed that with regard to valuation of the land there was sufficient material in the form of oral evidence available before the Prescribed Authority being statement of Gulzar Singh , who has stated that two acres of land was purchased @ Rs.2000/- while in the present case 8.75 acres of land was purchased for sale consideration of only Rs.1000/-, this on the face of it is inadequate consideration. In the aforesaid facts this Court is of the considered view that there is no infirmity in the orders passed by the authorities below. Both the authorities have considered the material available on record and specially the fact that said land has already been declared surplus by the Prescribed Authority by order dated 22.06.1964 and vested in the State Government, same could not have been sold by the original tenure holder.

13. In the light of above, this Court is of the considered view that writ petition being devoid of merits, is **dismissed**.

Order Date :- 20.11.2023/A. Verma

(Alok Mathur, J.)