

Court No. - 17

Case :- WRIT - C No. - 3000043 of 1993

Petitioner :- Amar Nath

Respondent :- State Of U.P And Others

Counsel for Petitioner :- S.M. Nasir,Nagendra Kumar Dwivedi,Richa Srivastava,Shikha Srivastava,Suneel Kumar Singh Kalhans

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri S.K. Singh Kalhans, learned counsel for petitioner as well as learned Standing Counsel for respondents.
2. By means of the present writ petition, the petitioner has challenged the order of the prescribed authority dated 06.03.1993 as well as order dated 31.12.1991 passed by the appellate authority.
3. It has been submitted by learned counsel for petitioner that father of the petitioner, namely Jadu nath was the tenure holder and notice was served on him under Section 10(2) of Act of 1960. The father of the petitioner holding included 12.05 acres of irrigated land and 5.17 acres of un-irrigated land which were proposed to be declared surplus under the proceedings of the Act of 1960. Objections were filed by the father of the petitioner on various grounds.
4. During the pendency of the said notices, various writ petitions were filed by the tenure holders challenging the vires of the provisions of the Act of 1960 and during the pendency of the writ petitions, the proceedings pending before the prescribed authority were stayed. It has been submitted that all the writ petitions were ultimately dismissed and the vires of the provision of Act of 1960 were upheld and after dismissal of the said writ petitions, the prescribed authority proceeded to decide the objections filed by the tenure holders.
5. It has been submitted by learned counsel for petitioner that when the proceedings recommenced before the prescribed authority, no notice was given to the petitioner as in the meanwhile his father/Jadu Nath has died and without giving any opportunity of hearing to the petitioner by means of order dated 26.09.1986 and the land was declared surplus. The petitioner had moved an application for recall of the order dated

26.09.1986 which application was also rejected on 28.07.1989. Against both the orders, namely, 26.09.1986 and 28.07.1989, the petitioner preferred an appeal under Section 13 of the Act of 1960 before the appellate authority. The appellate authority was of the view that no proper hearing was afforded to the petitioner but considered the fact that before the prescribed authority, the option was given with regard to declaration of the surplus land and the prescribed authority had not considered said objections while rejecting the objections filed by the petitioner as well as his father.

6. Only for the limited purpose of reconsidering the option filed by the petitioner, the matter was remanded to the prescribed authority by means of his order dated 31.12.1991. The petitioner was not aggrieved by the order dated 31.12.1991 and consequently the said order was not challenged by him anytime prior to hearing before the prescribed authority. In the remand proceedings, the petitioner appeared before the prescribed authority and prayed that the surplus land be taken from other lands other than Plot No. 931 which is a public way, Plot No. 925 is grove and grave-yard, plot No. 927 is Ramlila ground and other lands of the petitioner may be included to be declared as surplus.

7. The prescribed authority by means of his impugned order dated 06.03.1993 rejected the said application of the petitioner on the ground that the land remaining with the petitioner has already been sold by him and there is no other remaining land which can be declared surplus. The remaining land has been sold by him has also been mutated in the revenue records and such land cannot be taken as surplus. He has further recorded that with regard to the option given by the petitioner land situated at gram Aalpur Dhotal has been already accepted and the land in the said village has already been declared surplus and accordingly objections were disposed of.

8. Learned counsel for petitioner submits that once a finding has been recorded by the appellate authority in his order dated 31.12.1991 that the petitioner was not granted adequate opportunity of hearing then he should have set aside the entire order of the prescribed authority rather than remanding back for a limited question for considering options to be exercised by the petitioner. He submits that in this regard, the appellate authority has acted illegally and arbitrary and consequently the order dated 31.12.1991 deserves to be set aside and once the order dated 31.12.1991 is set aside, as a natural consequences the remand proceeding stands quashed and set aside.

9. Learned Standing Counsel on the other hand has opposed the

writ petition. He has submitted that the appellate authority has clearly recorded that the grievance of the petitioner was only with regard to the option exercised by his father and himself. It is in these circumstances, he has clearly stated that the matter is remitted back for considering the option exercised by the petitioner. He further submits that the order dated 31.12.1991 has attained finality and the same was never assailed by the petitioner before any other forum. He submits that it was always open for the petitioner to challenge the legality and validity of the appellate order but instead he was fully satisfied with the order dated 31.12.1991 and duly participated in the proceedings before the prescribed authority.

10. He further submits that the order passed by the prescribed authority would indicate that he has considered all the questions raised by the petitioner before him and also duly considered the aspect relating to option exercised by the petitioner. He further submits that once the petitioner has voluntarily participated in the proceedings before the prescribed authority, it is not open for him to assail the validity of the appellate order dated 31.12.1991 at this stage.

11. I have heard learned counsel for parties and perused the record.

12. It is noticed that the petitioner not having been given adequate opportunity of hearing by the prescribed authority had preferred an appeal. The appellate court considered the fact that the petitioner was not given notice and was not heard by the prescribed authority adequately and also that the option exercised by him was not considered by him and consequently remanded the matter to be considered afresh by the prescribed authority only with regard to the option exercised by the petitioner. The petitioner never assailed the order dated 31.12.1991 passed by the appellate authority and in fact voluntarily participated in the remand proceeding before the prescribed authority.

13. The argument of the Standing Counsel with regard to the fact that order dated 31.12.1991 has attained finality and same was never assailed by the petitioner before any forum and he was fully satisfied with the order and participated in the proceeding before prescribed authority, has force and his further participated in the proceeding before the prescribed authority signifies his acceptance and acquiescence the order, therefore, he cannot renege from this as it is based on the principles of the Doctrine of Approbate and Reprobate. It is to be noted that the phrase "Approbate and Reprobate" is apparently borrowed from the Scots Law, where it is used to express the principle accepted

in the Doctrine of Election – namely, that no party can accept and reject the same instrument. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction. Our Supreme Court has time and again examined the principles relating to the Doctrine of Approbate and Reprobate.

14. The Hon'ble Supreme Court in the case **State of Punjab and Others –Vs. Dhanjit Singh Sandhu, 2014 (15) SCC144**, held that a person may be precluded, by way of his actions or conduct, or silence, when it is a duty to speak from asserting a right which he would have otherwise had. The relevant paragraphs are provided below:

"22. The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (Vide CIT v. V. MR. P. Firm Muar [CIT v. V. MR. P. Firm Muar, AIR 1965 SC 1216] .)

23. It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground. (Vide Maharashtra SRTC v. Balwant Regular Motor Service [Maharashtra SRTC v. Balwant Regular Motor Service, AIR 1969 SC 329] .) In R.N. Gosain v. Yashpal Dhir [R.N. Gosain v. Yashpal Dhir, (1992) 4 SCC 683] this Court has observed as under : (SCC pp. 687-88, para 10)

"10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'."

24. This Court in Babu Ram v. Indra Pal Singh [Babu Ram v. Indra Pal Singh, (1998) 6 SCC 358] and P.R. Deshpande v. Maruti Balaram Haibatti [P.R. Deshpande v. Maruti Balaram Haibatti, (1998) 6 SCC 507] , has observed that : (P.R. Deshpande case [P.R. Deshpande v. Maruti Balaram Haibatti, (1998) 6 SCC 507] ,SCC p. 511, para 8)

"8. The doctrine of election is based on the rule of estoppel—the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel) which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had."

25. The Supreme Court in Rajasthan State Industrial Development and Investment Corpn. v. Diamond and Gem Development Corpn. Ltd. [Rajasthan State Industrial Development and Investment Corpn. v. Diamond and Gem Development Corpn. Ltd., (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153] , made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

26. It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had."

15. The petitioner not having challenged order of appellate authority dated 31.12.1991 and on the contrary has accepted the finding and participated before prescribed authority has duly acquiesced to the said order and participated in the subsequent proceedings and consequently cannot challenge the order before this Court in the present writ petition.

16. The prescribed authority has given adequate reasons with regard to option exercised by the petitioner and he has also given reasons for not accepting the claim of the petitioner inasmuch as in case the land so sought by the petitioner to be included in the surplus land was in fact land which has already been eliminated by him by way of a sale deed and revenue entries has already been made with regard to the said land.

17. This Court is of the considered view that the order dated 31.12.1991 attained finality and could not be challenged by the petitioner after having voluntarily participated in the remand

proceeding before the prescribed authority. No person can be permitted to blow hot and cold in the same breath and as the petitioner has accepted the order dated 31.12.1991 and participated in before the prescribed authority then it would not be open for him to challenge the validity of the order dated 31.12.1991. The prescribed authority on the other hand has duly considered the case of the petition with regard to his option and given adequate reasons for not accepting the contention raised by him. I do not find any infirmity with regard to the findings returned by the prescribed authority or to hold that the order dated 31.12.1991 is illegal and arbitrary.

18. In light of the above, no interference is called for by both the orders. The writ petition is bereft of merits and is accordingly **dismissed**.

(Alok Mathur, J.)

Order Date :- 16.10.2023

Ravi/