

Court No. - 17

Case :- WRIT - C No. - 1001081 of 1995

Petitioner :- Kasimullha

Respondent :- State Of U.P. And Other

Counsel for Petitioner :- Shafiq Mirza,Alok Kr. Misra

Counsel for Respondent :- C.S.C.,V K Pandey

Hon'ble Alok Mathur,J.

1. Heard Sri Alok Kumar Mishra, 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 of Prescribed Authority dated 20.07.1989, whereby the application was moved by the petitioner for exclusion of his land situated at Gata Nos. 419/0.48 and 422/0.33, situated at Village - Bhurwara, Pargana – Paila, Tehsil - Gola, District - Kheri. The petitioner had preferred an appeal against the order dated 20.07.1989, passed by the Prescribed Authority which has also been rejected by the Additional Commissioner (Judicial), Lucknow Division, Lucknow by means of order dated 30.03.1995. Against both the above orders the petitioner has preferred present writ petition.

3. Facts in brief of the present case are that notice under Section 10(2) of the Imposition of Ceiling on Land Holdings Act, 1960 (*hereinafter referred to as "the Act, 1960"*) was issued to the original tenure holder i.e. Kamar Ahmad Khan. The proceedings with regard to Kamal Ahmad Khan were concluded by the Prescribed Authority by means of order dated 30.06.1988 and certain land from the holdings of the original tenure holder were declared to be surplus. It seems that land of Gata Nos. 491 and 422 had been sold to the petitioner by sale deed of which mutation was never carried out. After the land of the original tenure holder was declared, notification under Section 14 was also issued and lands were mutated in the name of State Government.

4. It seems that it is after the above mutation, an application was preferred by the original tenure holder before the Prescribed Authority for excluding plot nos. 419 and 422 for which the sale deed was executed in favour of petitioner. The Prescribed Authority while rejecting the application of the original tenure holder considered the fact that proceedings under the Act, 1960 had been concluded and lands have been vested in the State

Government and at this stage no application would be maintainable at the behest of original tenure holder for release of such land in favour of petitioner and accordingly rejected the application.

5. An appeal was preferred against the said order by the petitioner though it seems that application was preferred by the original tenure holder where it seems that petitioner was not party, but still he preferred an appeal against the order dated 20.07.1989. The Appellate Authority duly considered the facts raised in the said appeal, he had also perused the order of Prescribed Authority dated 30.06.1988 and was of the view that option in the present case has already been exercised by the original tenure holder and land had been declared surplus and there is no provision which repeals the given option. It is in the aforesaid facts that the appeal was also dismissed.

6. Before this Court it has been submitted that the petitioner purchased the said land from the original tenure holder. The date of sale deed has not been disclosed by the petitioner either in the application preferred before the Prescribed Authority neither in the appeal and nor before this Court. From the aforesaid facts it cannot be ruled out that said purchase was made during pendency of the ceiling proceedings before the authorities and would be hit by sub Clause 8 of Section 5 of the Act, 1960. Even otherwise, option which has to be exercised by the original tenure holder under Section 12A of the Act, 1960 have already been exercised by him before the Prescribed Authority and same fact finds mention in the order of the Appellate Authority dated 30.03.1995.

7. Undoubtedly it is mandatory for the Prescribed Authority to give due weightage to the options given by the original tenure holder and law in this regard has been settled by this Court in numerous cases where in case original tenure holder gives option same has to be considered by the Prescribed Authority and declare remaining part of his holdings to be surplus. No such right vests in the petitioner who is subsequent purchaser to exercise option has provided under Section 12A of the Act, 1960. Even in the facts of the present case option has already been exercised by the original tenure holder.

8. It is further noticed that in case petitioner had purchased the said land either prior to cut-off date or prior to initiation of proceedings under the Act, 1960, then it was always open for him to move appropriate application before the Prescribed Authority to exclude the land from the holdings of the original tenure holder, but the petitioner never participated in the proceedings, and he did not move any application for excluding his land from the land of original tenure holder.

9. This Court is of the considered view that the order passed by the Prescribed Authority as well as appellate dated 20.07.1989 and 30.03.1995, respectively do not suffer from any infirmity. This Court does not find any merit in the writ petition and same stands dismissed.

Order Date :- 17.11.2023

A. Verma

(Alok Mathur, J.)