

Court No. - 17

Case :- WRIT - C No. - 3002625 of 1985

Petitioner :- State of U.P.

Respondent :- District Judge Baharich

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- A.R. Khan

Hon'ble Alok Mathur,J.

1. Heard learned Standing Counsel for the State-petitioner as well as Sri Azif Razzaq, Advocate who has appeared on behalf of private respondents.

3. By means of present writ petition, the petitioner has assailed the order dated 31.01.1985 passed by District Judge, Bahraich under Section 13 of the U.P. Imposition of Land Holding Act, 1960.

4. The brief facts of the case are that the proceedings under the Act of 1960 were initiated on issuance of a notice under Section 10(2) to one Sri Shambhu Nath Singh on 16.08.1976 whereby it was proposed that 25.693 acres of irrigated land was proposed to be declared surplus. The proceedings were concluded as the original tenure holder of the land did not appear in the said proceeding. It is subsequently on 16.10.1976, an application for recall was filed which was again rejected on 24.07.1977 against which an appeal was filed which was registered as Rent Appeal No. 56 of 1977 before the District Judge. The said appeal was allowed considering the fact that original tenure holder was not afforded an opportunity of hearing and the matter was remanded by means of order dated 13.04.1977 to the prescribed authority by the District Judge.

5. It was stated that the matter may be decided after giving opportunity to the original tenure holder to furnish evidence and give him an opportunity of hearing. The matter stood restored to the prescribed authority who gave opportunity to the original tenure holder to file his objection. The original tenure holder filed his objection stating that 2.5 acres of the land deserves to be reduced from his original holdings inasmuch as the said land was sold by a registered sale deed in favour of Gulam Rasool.

6. He has further submitted that the original tenure holder has five sons and accordingly the land has been partitioned amongst his sons and this fact has to be taken into consideration while

deciding the said objection. The prescribed authority rejected the contention of the original tenure holder.

7. With regard to sale to Gulam Rasool, it was recorded that the original tenure holder could not produce any sale deed or any order of the revenue authorities whereby the said sale was recorded in the revenue record. With regard to the second objection raised by the original tenure holder that there has been partition of the said land and a finding was returned that a decree of partition was issued on 30.10.1974 which was subsequent to the cut off date in the said act which is 24.01.1971 and consequently the benefit of the said partition could not be given to the original tenure holder and he disbelieved his contention and rejected his objection restoring his previous order.

8. The order dated 30.01.1978 passed by the prescribed authority was assailed by the original tenure holder before the District Judge. The District Judge has allowed the said appeal and returned following findings which are given below :-

i) The original tenure holder was able to demonstrate that his sons were born in 1940, 1945, 1950, 1953 & 1955 and accordingly all the sons were major on the cut off date.

ii) That a family partition had taken place between father and sons about 20 years back and also on that basis filed a partition suit in the revenue courts on 19.09.1972 which was decreed by the revenue officer on 30.10.1974 and final decree of partition was passed on 10.10.1973. On the basis of the said partition, final decree and separate kuras were formed for the original tenure holder and his 5 sons separating the holdings.

iii) It was also demonstrated that all 5 sons are major and were continuing to be in exclusive possession of their respective land in their own rights.

iv) It was also demonstrated that the said land was in fact ancestral land and as per revenue records relating to fasli 1363-1365, name of Suraj Bux Singh, father of Shambhu Nath Singh (original tenure holder) has been recorded and consequently 5 major sons of the petitioner would naturally have a share in the ancestral land.

v) before the prescribed authority, the FARDMUTABIKAT was filed which demonstrated that the land was originally recorded in the name of Suraj Bux Singh after which the land was recorded in the name of his son Shambhu Nath Singh alone.

vi) The village Lekhpal Manohar Dutt had made a statement before the revenue court on 24.09.1973 which was made during course of the proceedings relating to preparation of final decree of partition that all the parties are already in possession of the respective land that he prepared khuras also in accordance with their respective possession.

9. It is on the basis of aforesaid evidence appreciated by the District Judge that he returned a finding that the said holding which was recorded in the name of Shambhu Nath Singh had in fact been partitioned in favour of his 5 sons and there was no material on record to show that the said partition was sham or fictitious, prepared with a view to avoid the ceiling proceedings. It is in the aforesaid circumstances, he allowed the appeal and set aside the order of the prescribed authority.

10. Learned counsel for petitioner in assailing the said order has submitted that the said decree of partition was passed after the said cut off date and accordingly in terms of Section 5(7) of the Act of 1960. The benefit of said partition cannot be given in favour of original tenure holder and consequently submits that the said order deserves to be set aside.

11. Learned counsel for private respondents on the other hand has supported the impugned orders. He has submitted that the prescribed authority had not appreciated the contention raised before him and has arbitrarily rejected the objections. He has submitted that before the District Judge, the entire evidence was re-appreciated and it was demonstrated that the partition was not fictitious or merely with a view to avoid the ceiling proceedings. The land in question was the ancestral land of the original tenure holder as the name of the father of the original tenure holder was duly entered in the revenue records and the sons/grandsons of the original tenure holder had right in the said property being an ancestral land. It was further demonstrated an evidence was led that the partition had in fact taken place and all the 5 sons were cultivating their shares of land separately and also have separate living from their father. Once this evidence had come before the prescribed authority which ought to have been considered in its property prospective.

12. He submits that the District Judge has taken all the relevant facts in consideration and held that the order of the prescribe authority was illegal and arbitrary and consequently has rightly been set aside.

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

14. Considering that argument raised by learned Standing counsel that the said decree of partition could not be read in favour of original tenure holder and the land could not deemed to have been reduced taking into account the share of the sons in whose favour his decree of partition was issued. It is noticed that though in sub-section 7 of Section 5 of the Act of 1960, it is provided that it determine the ceiling area applicable to tenure holder any partition of land made after twenty-fourth day of January, 1971 which but for the partition would have been declared surplus and the land under this Act shall be ignored shall not be taken into account immediately after the main section. The aforesaid provision would not apply in case a partition of holding made in a suit or proceedings is pending on the said date.

15. The second provision to Sub-Clause 7 of Section 7 of Act of 1960 states that notwithstanding anything contained in the preceding proviso, the prescribed authority, if it is of opinion that by collusion between the tenure-holder and any other party to the partition, such other party has been given a share which he was not entitled to, or a larger share than he was entitled to, may ignore such partition. To involve aforesaid provisions, the onus lay upon the petitioner to demonstrate that the said partition was collusive and that shares were distributed in a manner that the share was larger than the person was entitled.

17. From the perusal of the writ petition or from the pleadings there is no material from which it can be inferred that the said partition was collusive or that any of the sons or the original tenure holder got a larger share of holdings than they were entitled. The said arguments accordingly does not hold any merit and is accordingly rejected. This court has gone through the judgment of the District Judge. The District Judge has taken pain and dealt with all the evidences relied by the original tenure holder in detail. He has correctly recorded a finding that all 5 sons were in possession and were cultivating their shares independently and the same has been also proved by the evidence of the concerned Lekhpal. There is no material on record to persuade us from taking any view contrary to what has been recorded by the authority below.

18. In light of the above, there is no merit in the writ petition and is accordingly **dismissed**.

(Alok Mathur, J.)

Order Date :- 12.10.2023

Ravi/