

**Court No. - 17**

**Case :-** WRIT - C No. - 3000073 of 1994

**Petitioner :-** State Of U.P. Thru Collector  
Lakhimpur Kheri

**Respondent :-** Subhash Chandra Bhargava And  
Others

**Counsel for Petitioner :-** C.S.C.

**Counsel for Respondent :-** Devi Prasad  
Maurya,Sandeep Kumar

**Hon'ble Alok Mathur,J.**

1. Heard learned Standing Counsel appearing on behalf of petitioner as well as Shri Sandeep Kumar, learned Counsel appearing on behalf of legal heirs of opposite party no. 2.

2. By means of the present writ petition the State has challenged the legality and validity of the order dated 20.9.2023, passed by the Additional Commissioner (Judicial) Lucknow Division, Lucknow thereby allowing the appeal under Section 13 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 and setting aside the order of the Prescribed Authority dated 09.12.1991 and excluding the land situated at plot no.259/1, rakba 8-56 acres from the holding of original tenure holder and, consequently, from the ceiling proceedings.

3. It has been submitted by the learned Standing Counsel that notices were issued to the original tenure holder namely Surath Bahadur Shah. In the said proceedings an application under Section 11 (2) of the Act of 1960 was filed by Subhash Chandra Bhargava stating that he has purchased plot no.259/1 and 17/2 from the Surath Bahadur Shah son of Bamb Bahadur Shah by means of sale deed executed on 27.5.1972. It was stated that in pursuance of the said sale deed he was in possession of the said plot and also that the said

plot has been purchased after paying adequate consideration and, consequently, prayed for removal of the said plot from the holding of the tenure holder. It is further stated that during the evidence of Subhash Chandra Bhargava the sale deed dated 05.10.1985 was produced with the prayer that the same be removed from the ceiling proceedings.

4. The Prescribed Authority by means of his order dated 09.12.1991 rejected the said objections on the ground that it was found that the purchaser, i.e., Subhash Chandra Bhargava was not in actual cultivatory possession of the said land and that the said plot was never mutated in the name of the purchaser and further the concerned 'lekhpal' has stated before the Prescribed Authority that the original tenure holder continued to utilize the said land for farming even after the sale of the said plot. It was further taken note of the fact that the said plot was included in the surplus land declared in the ceiling proceedings by the Prescribed Authority and that further pattas had been granted to the landless labourers subsequently.

5. It is in the aforesaid circumstances that the Prescribed Authority was of the view that admittedly the sale deed was after the cut off date, i.e., 24.1.1971 and, consequently, in order to claim exclusion of the said plot from the surplus land it was to be demonstrated that the conditions prescribed under Section 5 (6) of the Act of 1960 stood satisfied.

6. The Prescribed Authority in the aforesaid circumstances was of the view that neither the said sale was found to be bona fide nor it was shown that it was for adequate consideration and, even the actual cultivator possession continued to be of that of the original tenure holder rather than of the Purchaser/applicant and consequently rejected the application under Section 11 (2) of the Act of 1960.

7. The appellate authority while deciding the said appeal has held that there is no material on record to indicate that plot no.259/1, measuring 8-56 acres was part of the holding of the original tenure holder and had been declared surplus. He had further recorded a finding that plot no.259/1, measuring 8.56 acres has not been declared surplus by the Prescribed Authority. Further, he has noticed that the said plot was sold for a consideration of Rs.6,500/- on 05.10.1985 and further he has said that this aspect has to be seen as to whether the said consideration is adequate or not.

8. Without recording any finding with regard to the adequacy of the consideration he has concluded that the said plot was never part of the ceiling proceedings before the Prescribed Authority. He has not considered any material and even the statement of the 'lekhpal' which he himself has recorded previously in the said order.

9. The impugned order passed by the Additional Commissioner (Judicial) is nothing except full of contradiction in itself. There is no material for the appellate authority to conclude that either the said plot was not part of the ceiling proceedings or that conditions prescribed in Section 5(6) of the Act of 1960 stood satisfied. In the most cryptic manner without giving findings on any of the issues he has excluded the said plot from the ceiling operations. It is not expected that appellate authority would pass such an order without giving any reasons or dealing with the evidence on record.

10. It was necessary to have clearly considered the findings adduced before the Prescribed Authority as well as the material on record first to come to conclusion as to whether the said plot was part of the ceiling proceedings before the Prescribed Authority or not and secondly with regard to the adequacy of the consideration a clear finding should have been returned by him

considering the DM circle rate or exemplar demonstrating the valuation of land in the area.

11. It is in the aforesaid ground this Court is of the view that the order dated 20.9.1993 passed by the appellate authority requires interference, accordingly, the appeal is allowed. Order dated 20.9.1993 is set aside. Matter is remitted to appellate authority to pass fresh order in accordance with law and to consider necessary evidence which is on record and give his reasons for deciding the said case.

12. Considering that much time has lapsed since the proceedings were concluded by the appellate authority it is directed that let necessary order be passed by him expeditiously say within a period of three months from the date a certified copy of this order is produced before him. He shall pass a fresh order after adequately giving notice to all the concerned parties in accordance with law.

**Order Date :- 22.11.2023**

mks

(Alok Mathur, J.)

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CMA No. IA/1/2022 [Application for condonation of delay]

CMA No. IA/2/2022 [Application for setting aside abatement]

CMA No. IA/3/2023 [Application for substitution]

Learned counsel for the applicant has pressed the application for substitution of opposite party no.2 who died during the pendency of the present writ petition leaving behind the following as his legal heirs :-

2/1. Lavleena Shah (daughter in law)

2/2. Samarth Bahadur Shah (grandson)

Along with application for substitution he has also pressed the application for condonation of delay and application for setting aside abatement.

Cause shown for delay in filing the substitution application in the accompanying affidavit is sufficient.

In view of the aforesaid all the aforesaid three applications are allowed. Let necessary amendments be carried out by the learned counsel for the applicant in the memo of the writ petition during the course of the day.

**Order Date :- 22.11.2023**

mks

(Alok Mathur, J.)