

Court No. - 17

Case :- WRIT - C No. - 3000037 of 1995

Petitioner :- Daya Shanker And Others

Respondent :- Addl. Comm. And Others

Counsel for Petitioner :- A.K. Jauhari, Ashok Kumar Shukla, C.B. Pandey, Chandra Bhushan Pandey, Nirmal Tewari, Umesh Chandra Pandey

Counsel for Respondent :- R.P. Mishra, Abhinav Bhattacharya, C.S.C., Chandra Bhushan Pandey, Pankaj Tewari, U.C. Joshi

Hon'ble Alok Mathur, J.

1. Heard Sri Chandra Bhushan Pandey, learned counsel for the petitioner and Sri L. M. Khare, learned Standing counsel for the State respondents.

2. The petitioner has approached this Court being aggrieved by the order of the prescribed authority dated 18.6.1993 thereby rejecting the objections filed by the petitioner under Section 11 (2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 as well as order dated 31.3.1995 passed by Additional Commissioner Faizabad Region, Faizabad rejecting the appeal of the petitioner under Section 13 of the Act of 1960.

3. Brief facts of the case are that ceiling operations were commenced with regard to the disputed land and notice under Section 10 (2) of the Act was given to the original tenure holder, namely, Rani Raj Kumari Devi who filed her objections on 4.2.1976 and the prescribed authority by means of order dated 25th February, 1976 rejected her objections and declared 363.24 acres of un-irrigated land as surplus. Aggrieved against the said order she filed an appeal before the District Judge, Gonda during pendency of which she died and her son was substituted. The said appeal was dismissed vide order dated 2.8.1977. Thereafter, against the order dated 2.8.1977 writ petition No.6959 of 1988 was filed which was allowed vide order dated 19.9.1988 directing the appeal to be decided within three months on two issues i.e. whether the land claimed to be un-irrigated is to be taken as irrigated for the purposes of determining surplus area and also as to whether the tenure holder is entitled to four hectares of land for two adult sons. After dismissal of the writ petition the appeal under Section 13 was filed before the appellate authority which was allowed and the matter was remitted back to the prescribed authority for fresh determination. In the meanwhile certain other objections were filed under Section 11 (2) by one Baby Pandey stating

therein that the original tenure holder has bequeathed half of her property and consequently moved an application for excluding half portion of the original holdings of the recorded tenure holder.

4. The petitioners who are 23 in number had also filed their objections under Section 11 (2) stating that they had purchased the said land from the original tenure holders and the said land also deserves to be excluded from the holdings of the original tenure holder and also from the ceiling operations they may be given benefit of Section 5 (6) of the Act of 1960. The claim of the petitioners was based upon the facts that on 14.1.1969 an agreement to sell was entered into between the original tenure holder and the petitioners on the basis of which they were given possession and sale deed was executed with regard to the same land after 17 years on 2.8.1986 and on the said basis they claimed that they are in possession of the said land since 1969 and claimed benefit of Explanation II of Section 5 stating that they are in actual cultivatory possession of the said land and consequently the said land deserves to be excluded from the ceiling operations.

5. The prescribed authority has dealt with the objections in detail and issue in this regard was framed as issue No.3. He had considered the fact that the petitioner was unable to demonstrate the execution of the agreement of sell in 1969 nor the original agreement to sell was filed before him and there was no explanation as to why the sale deed was executed with regard to the same land after expiry of nearly 17 years. He further considered the fact that the aspect of agreement to sale did not find mention in the sale deed and consequently he was of the view that agreement to sell was fictitious and created only to get the said land excluded from the ceiling operations and consequently did not find any material to rely upon the contentions of the petitioners in this regard.

6. With regard to the sale deed entered into in 1986 he considered the fact that the said sale deed was executed by a minor without taking any permission from the District Judge which was consequently illegal and the said sale deed was void. He further considered the fact that in 1986 the said land had already been declared surplus by the order of the prescribed authority dated 25.2.1976 and even otherwise the ceiling proceedings were pending either at the appellate stage or after the remand before the prescribed authority and such land could not be subjected to transfer by sale as per provision of Section 5 (8) of the Act of 1960 consequently disbelieved the case set up by the petitioner in this regard and rejected the objections.

7. The matter was carried to the appellate stage at the behest of the petitioners. The appeal of the petitioners was heard along with the appeal preferred by Baby Pandey. Baby Pandey did not appear before the appellate authority her case was not considered. The appellate authority also considered in detail the contentions raised by the petitioner. It was further contended on behalf of the petitioners that the agreement to sell was executed in January, 1969 and the first order was passed on 25.2.1976 where the order of the prescribed authority was passed declaring certain land of the original tenure holder to be surplus. The reason given by the petitioners for delay in execution of the sale deed is that the original tenure holder i.e. Rani Raj Kumari Devi died in 1975 and there was dispute amongst the legal heirs and only when the said dispute was resolved the sale deed was entered in 1986. He confirmed the findings recorded by the prescribed authority holding that the agreement to sale is not reliable and no rights passed on to the petitioners with regard to the land held by the original tenure holder. There was no evidence led by the petitioners to indicate that they were in actual cultivatory possession of the said land and in case it was so then his name would have figured in the relevant khasras indicating that they were the holders of the land after getting the possession of the same in 1969.

8. The second ground for disbelieving the version of the petitioners was that the sale deed of 1986 did not make any reference to the agreement to sell and in case any agreement to sell, in fact, was entered into, then the same would have found mention in the subsequent sale deed. It is on the aforesaid facts that the prescribed authority did not agree with the contentions raised by the petitioners.

9. Before this Court the petitioners have raised the same submission as raised before both the authorities. Counsel for the petitioners submits that the petitioners are in possession of the said land since 1969 on the strength of the agreement to sell and the sale deed was subsequently entered into in 1986. He submits that these documents are sufficient to demonstrate that the petitioners were in possession of the said land also that the said sale deed are bonafide and for adequate consideration and consequently they deserve to be excluded considering the proviso of sub section 6 of Section 5 of the Act of 1960. It is on the aforesaid facts that he submits that both the authorities have not dealt with the case in the manner presented by the petitioners and consequently they deserve interference of this Court.

10. Learned Standing counsel, on the other hand, has opposed the writ petition. He submits that both the authorities have

adequately dealt with the evidence available on record sufficiently. He submits that there was no material placed by the petitioners which can demonstrate execution of agreement to sell in 1969. There was no material either before the prescribed authority or before the appellate authority which can demonstrate that the petitioners were in actual cultivatory possession of the said land consequent to the agreement to sell in 1969 and hence it cannot be said that benefit of Explanation II of Section 5 can be given to them holding that they are in possession of the said land prior to the cutoff date i.e. 24.1.1971. With regard to the sale deed of 1986 it has been submitted that the same is squarely hit by the provisions of Sub section 8 of Section 5 of the Act of 1960, as such, it cannot be held to be bonafide once the said land has already been declared to be surplus under the Act of 1960 and, hence, the said land cannot be excluded from the ceiling operations. He has further submitted that after the ceiling operations pattas have been granted to the landless labourers.

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

12. One of the main contentions raised by the petitioner is that agreement to sell of 1969 ought to have been duly considered by both the authorities and from the said agreement it was clear that the petitioner is in possession of the said land from 1969 which is prior to cutoff date and as a result thereof the said land should have been excluded from the ceiling operations. It is noticed that there is concurrent finding of both the authorities that the petitioner was unable to place original copy of the agreement to sell before the authorities and there is no mention as to whether any adequate consideration was paid by him at the time of entering into agreement to sell. This fact has neither been dealt with by the Prescribed Authority nor by the appellate authority. There is no material either filed by the petitioner that he was in actual cultivatory possession of the said land after entering into agreement to sell. There is no material on record in the nature of revenue records which could demonstrate that the petitioners were in cultivatory possession of the said land. Even if this fact was correct then evidence to this effect have been adduced before the Prescribed Authority or at the appellate stage by the Tehsildar or by other revenue authorities. It is submitted that the petitioners are in actual cultivatory possession but no such material is available before any of the authorities and consequently there is no material to upset the findings recorded by both the authorities with regard to existence of valid agreement to sell of 1969 or that the petitioners were in actual cultivatory possession since 1969. With regard to the validity of agreement to sell or sale deed

1986 it is noticed that the prescribed authority has held that the said sale deed was executed by a minor in favour of the petitioners without obtaining any approval by the District Judge. The said sale deed also does not inspire confidence.

13. Hon'ble Supreme Court in the case of **Rajendra Singh v. State of U.P., (1998) 7 SCC 654** at page 660 has held as under:-

10. The relevant date under the Act which constitutes the basis for determining the ceiling or surplus area of a tenure-holder is 24-1-1971. Whatever land was held by a tenure-holder on that date will have to be indicated by him in the statement required to be submitted under Section 9 of the Act.

11. It is with reference to this date that it has been provided that in determining the ceiling or surplus area of a tenure-holder, the sale deed, if any, executed by the tenure-holder after 24-1-1971 shall be ignored. The proviso to sub-section (2) of Section 5, however, carves out an exception in favour of transfers which are proved to the satisfaction of the prescribed authority, to have been made in good faith and for adequate consideration and not for any immediate or deferred benefit of the tenure-holder or other members of his family. It is on the basis of this provision that it is contended by the learned counsel for the appellants that since the sale deeds in question were executed in their favour for valuable consideration and they had not obtained the land "benami" nor were they holding the land for any immediate or deferred benefit to the tenure-holder, they are entitled to hold the land covered by the said sale deeds in their own independent rights and, therefore, the said land could not have been treated as the land of the tenure-holder, namely, Respondent 4, for purposes of determining his ceiling or surplus area. This contention is wholly without substance. The proviso cannot be read in isolation. It has to be read along with sub-section (8) of Section 5 which provides as under:

"5. (8) Notwithstanding anything contained in sub-sections (6) and (7), no tenure-holder shall transfer any land held by him during the continuance of proceedings for determination of surplus land in relation to such tenure-holder and every transfer made in contravention of this sub-section shall be void.

Explanation.—For the purpose of this sub-section, proceedings for determination of surplus land shall be deemed to have commenced on the date of publication of notice under sub-section (2) of Section 9 and shall be deemed to have

concluded on the date when an order in relation to such tenure-holder is passed under sub-section (1) of Section 11 or under sub-section (1) of Section 12, or as the case may be, under Section 13."

12. The prohibition contained in this sub-section that during the pendency of proceedings under the Act, there cannot be any transfer, is absolute. This prohibition is contained in the first part of sub-section (8) while in the second part, the consequence thereof is indicated by providing that every transfer made in contravention of this provision shall be void. The Explanation appended to this sub-section creates a legal fiction by saying that the proceedings for determination of surplus land shall be deemed to have commenced on the date of publication of notice under sub-section (2) of Section 9 and they shall be deemed to have concluded when an order is made under sub-section (1) of Section 11 by the prescribed authority in a case where either the statement submitted by the tenure-holder under Section 9 is accepted by the prescribed authority or the statement prepared by the prescribed authority under Section 10 is not disputed by the tenure-holder. But in a case where these statements are contested, the proceedings shall be deemed to have concluded when an order is made by the prescribed authority under Section 12(1) of the Act. If, however, an appeal has been filed against the order of the prescribed authority, the proceedings shall be deemed to have concluded on the disposal of the appeal under Section 13 of the Act.

14. The prohibition on transfer of land during the pendency of the proceedings was introduced in the principal Act by U.P. Act 20 of 1976 with retrospective effect from 10-10-1975, that is, with effect from the date on which U.P. Ordinance 31 of 1975 was issued. This prohibition was introduced with the object of facilitating an early disposal of the proceedings for determination of surplus land as also for preventing the tenure-holder from disturbing the status quo of his holding as existing on the date of the notification under Section 9 of the Act by making transfers of land in favour of other persons which obviously would have the effect of complicating the process of determination of surplus land."

14. Apart from the fact that the said land had already been declared to be surplus by the orders of the prescribed authority on 4th February, 1976 and also that the ceiling operations were pending before one authority or the other during this period, Sub clause 8 of Section 5 of the Act of 1960 clearly provides

that during continuance of the proceedings under the present Act any transfer made shall be void. According to sub clause 8 of Section 5 no benefit of the sale deed can be given to the petitioners as at the time when the sale deed was executed the ceiling proceedings were pending and the land had already been declared surplus and for the aforesaid reasons this Court does not find any infirmity in both the orders. Accordingly, the petition being devoid of merits is **dismissed**.

(Alok Mathur, J.)

Order Date :- 28.11.2023

RKM.