

Court No. - 17

Case :- WRIT - C No. - 3000109 of 1996

Petitioner :- Qaiyum Ali

Respondent :- State of U.P. and Others

Counsel for Petitioner :- M.A.Khan, Mohammad Adil Khan

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Mohd. Arif Khan, Senior Advocate assisted by Sri Akbar Ali Khan for the petitioner and Sri S. K. Khare, learned Standing counsel for the respondents.

2. By means of the present petition the order of the Prescribed Authority dated 31.3.1995 passed under Section 10 (2) of U.P. Imposition of Ceiling on Land Holdings Act, 1960 as well as order dated 26.8.1996 passed in appeal against the order of Prescribed Authority have been assailed.

3. The facts in brief are that a notice under Section 10 (2) of the Act of 1960 was issued to Madad Ali, the recorded tenure holder. Prior to issuance of the said notice Madad Ali had died and the notice was received by his legal heirs including the petitioner who is son of Madad Ali. The proceedings continued as per the provision of Rule 9 (3) which provides as under:-

(3) Where a tenure-holder dies before he is served with a notice under sub-section (2) of Section 10, the Prescribed Authority may serve such notice on his executor, administrator or other legal representatives, and may proceed to determine the ceiling area applicable to the deceased person as if such executor, administrator or other legal representatives were the tenure-holder for the purposes of service of such notice.]

4. Notices were accordingly duly served upon the petitioner and the prescribed authority had declared 22.851 hectares irrigated land as surplus. The petitioner had raised various objections including the fact that if proceedings in relation to the recorded tenure holder who died and where he is represented by his legal heirs and all the proceedings continued as per Rule 9 (3) of the Rules of 1961 then only land of the recorded tenure holder has to be considered by the prescribed authority for determination under the Act of 1961. It was submitted that the authorities have acted arbitrarily by considering and adding land beyond the land described in the notice or by adding land of the legal representative which cannot be done by the prescribed authority. It is in aforesaid circumstances that the petitioner has

sought the land to be excluded from the operation of the Act of 1960 as the same were not recorded in the name of recorded tenure holder. The prescribed authority rejected the contentions of the petitioner in this regard. It was also stated that gata No.1933 has been shown to be 15 acres while in fact its area was only 1.5 acres. Even this ground was rejected by the prescribed authority.

5. Against rejection of the contentions of the petitioner the benefit was exclusion of the land for the major sons of the recorded tenure holder was upheld and it was found that at that time only one son was major and consequently 2 hectare land was released.

6. Against the said judgment of the prescribed authority dated 31.3.1995 the petitioner had filed an appeal before the appellate authority. The appellate authority returned finding in favour of the petitioner with regard to plot No.1933 which was 1.5 acres rather than 15 acres as indicated in the notice under Section 10 (2). It is in this regard that the court was of the view that 13.5 acres of excess land has been added to the holding of the recorded tenure holder which deserves to be rectified with regard to exclusion of the said land. It is in aforesaid facts that while partially allowing the appeal the order of prescribed authority was set aside and the matter was remitted back to the prescribed authority to give benefit to the petitioner as stated in the appellate order and pass fresh orders taking into account the findings recorded by the appellate authority. It is against the aforesaid order that the petitioner has filed present writ petition.

7. The main ground submitted by the petitioner is that the prescribed authority as well as the appellate order have included the land which was not in the name or in possession of the recorded tenure holder, namely Madad Ali on the cutoff date and consequently the said lands which were independently held by the petitioner or by the grand children of Madad Ali could not have been included in the holdings of the recorded tenure holder in light of the evidence which may be adduced by the petitioner.

8. Learned Standing counsel, on the other hand, has opposed the writ petition. He submits that the appellate authority has given benefit of an area of of plot No. 1933 and the same has been held to be 1.5 acres rather than 15 acres as shown in the notice issued under Section 10 (2) of the Act of 1960. He submits that with regard to the other lands which the petitioner seeks to be excluded and lands which were in fact in the name of the recorded tenure holder and they have been partitioned only in 1986 by recorded tenure holder. He submits that the said

partition was carried out only to protect the said land from the operation of the Act of 1960. The said partition cannot be accepted by the authorities.

9. This Court has given anxious consideration to the arguments raised by the petitioner.

10. It is noticed that the law in this regard is clear that during the proceedings under Section 10 (2) pursuant to the notice the prescribed authority is required only to adjudicate upon the holding which are recorded in the name of the recorded tenure holder. The prescribed authority cannot take into account the other holdings which are not included in the notice and declare the same as surplus. It is further noticed that this aspect of the matter requires reconsideration and in this regard also it is left open for the prescribed authority to pass fresh orders after looking into various relevant records and evidence adduced by the petitioner as well as by the State.

11. The petitioner has vehemently submitted that the independent holding of the petitioner who is the son of recorded tenure holder and even lands of his son have been added to the holding of recorded tenure holder. Considering the above submissions, this Court is of the considered opinion that the lands of the recorded tenure holder alone as per the notice can be considered for being declared surplus under the Act of 1960. In case, any other lands are sought to be added then fresh notice is required to be given under Section 10 (2) of the Act of 1960 and consequently the arguments of the petitioner have force and there is infirmity in the impugned orders to the extent that other lands have been subjected to ceiling proceedings.

12. Accordingly, the writ petition is **allowed**. Order of the Prescribed Authority dated 31.3.1995 passed under Section 10 (2) of U.P. Imposition of Ceiling on Land Holdings Act, 1960 as well as order dated 26.8.1996 passed in appeal against the order of Prescribed Authority are set aside.

13. The matter is remitted back to the prescribed authority for passing fresh order. While doing so he shall give benefit to the petitioner with regard to plot No.1933 by which the area has been determined as 1.5 acres rather than 15 acres as per the order passed by appellate authority. He shall also consider the objections of the petitioner with regard to exclusion of the lands which according to the petitioner were independently held by the petitioner as well as grandsons of Madad Ali.

14. Considering the fact that much time has lapsed, let such exercise be conducted afresh expeditiously say within a period

of six months from the date a certified copy of this order is placed before him.

15. The petitioner undertakes to cooperate in the said proceedings and file all the evidences within a maximum period of two months from today. The Prescribed Authority shall proceed to decide the objections / evidence expeditiously in accordance with law and as per the directions of this Court.

(Alok Mathur, J.)

Order Date :- 8.12.2023

RKM.