

**Court No. - 17**

**Case :-** WRIT - C No. - 3005840 of 1989

**Petitioner :-** Satya Deo Singh And Others

**Respondent :-** State of U.P. and Others

**Counsel for Petitioner :-** S.K. Mehrotra, Ishwar Dutt Shukla

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

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

1. Heard Sri I.D. Shukla, learned counsel for petitioners as well as Sri S.K. Khare, learned Standing Counsel for respondents.

2. Present writ petition has been filed by the petitioner being aggrieved by the order of prescribed authority dated 12.07.1982 whereby objections recorded by the tenure holder has been dismissed in exercise of the powers provided under Section 10(2) of the U.P. Land Ceiling Act, 1960 as well as order dated 22.04.1989 passed by the Additional Commissioner (Judicial), Faizabad Mandal, Faizabad whereby dismissing the appeal preferred by the petitioner.

3. The facts in brief of the case are that the disputed property was recorded in the name of Sri Sukhraj Kumari who was subjected to proceedings under Uttar Pradesh Imposition of Ceiling and Land Holding Act, 1960 and was issued a notice under Section 10(2) of the said Act. Proceedings against the recorded tenure holder were finalized by the prescribed authority by means of order dated 14.12.1976 and 5-03 hectare of the land was declared as surplus. The recorded tenure holder preferred an appeal under Section 13 of the Act of 1960 and by means of order dated 14.07.1977 the appeal was allowed and the matter was remanded to the prescribed authority.

4. In the appeal preferred by the recorded tenure holder, the petitioner had moved an application for impleadment stating that recorded tenure holder had sold the part of the land to the petitioner by means of registered sale deed on 05.09.1975 and 27.09.1975 for consideration of Rs. 10,000/- and Rs. 7000/- respectively. The application for impleadment was rejected by the appellate authority. Despite the fact that the matter was remanded but even in the remand proceedings the petitioner was not heard inasmuch as his application for impleadment had already been rejected by the appellate authority and the petitioner submits that petitioner was not aware of the remand order and the remand proceedings being conducted by the prescribed authority. He has fairly submitted that no application under Section 11(2) had ever been preferred by the

petitioner before the prescribed authority.

5. In the remand proceedings again the objections preferred by the recorded tenure holder were rejected by means of order dated 12.07.1982. Against the order of prescribed authority dated 12.07.1982, the petitioner had preferred an appeal before the appellate authority. It was stated before the appellate authority by the petitioner that the prescribed authority has not excluded the land of the petitioner despite the option given by the recorded tenure holder. The appeal was rejected without even considering the ground taken by the petitioner stating that the options cannot be exercised at the behest of the petitioner who had purchased the lands from the recorded tenure holder. The petitioner has approached this Court assailing the order of the prescribed authority dated 12.07.1982 as well as appellate order dated 22.04.1989.

6. It has been submitted by learned counsel for petitioner that even though he had not moved any application under Section 11(2) but he had approached the appellate authority to implement the choice given by the recorded tenure holder under Section 12 of the Act of 1960 and consequently there is no reason for the appellate authority to have not considered the limited prayer made by the petitioner in the said appeal. He submitted that two options were opened to the petitioner, one was either to stake his own claim for exclusion of the lands purchased by him from the recorded tenure holder by moving application under Section 11(2) and demonstrating before the prescribed authority that the sale was bonafide and adequate consideration and seek benefit of the Sub-Clause 6 of Section 5 of Act of 1960 and the second option available to him was to rely upon the option given by the recorded tenure holder for excluding the land of the petitioner which were sold by the recorded tenure holder.

7. He submits that the petitioner had relied upon the option given by the recorded tenure holder and sought exclusion of the lands on the basis of option given by the recorded tenure holder. He submits that there is no dispute that the option was given by the recorded tenure holder for exclusion of land sold to the petitioner. Though this aspect of the matter has been considered by the appellate authority but no weightage has been given nor has he verified from the record as to whether any option was given by the recorded tenure holder or in case the option was given then whether the same could have been accepted by the prescribed authority or not.

8. Without examining the said issue, the appeal has been dismissed which according to the petitioner is illegal and

arbitrary and the appellate authority has not exercised the jurisdiction vested in rendering the order arbitrarily.

9. Learned Standing Counsel on the other hand has opposed the writ petition and has submitted that the petitioner wanted to exclude of his lands from being declared surplus or from the holding of the original tenure holder then he had adequate remedy available under Section 11(2) of the Act of 1960 and he had never filed any application under Section 11(2) of the Act but it could not be denied that the recorded tenure holder had in fact moved an application and given his option as provided in Section 12 of the Act for exclusion of certain lands but the said application is not on record and it cannot be conclusively said that it is the very land of the petitioner that the recorded tenure holder wanted to exclude.

10. Considering the rival submission of learned counsel for parties, it is clear that the petitioner had purchased a part of holding of recorded tenure holder by means of sale deed dated 05.09.1975 and 27.09.1975. The petitioner never participated nor was he subjected to any notice by the prescribed authority during proceedings under Section 10(2) of the Act of 1960. It seems that the recorded tenure holder had given some application under Section 12 for excluding part of his holdings but the prescribed authority did not pass an order in terms of the option exercised by the recorded tenure holder.

11. On the other hand, it is only in appeal before the appellate authority that the application for impleadment was filed by the petitioner, this Court is of the considered view that petitioner was a necessary party in the said appeal and his application for impleadment could not have been rejected. It is only after allowing his application for impleadment it was open for the appellate authority to consider the case of the petitioner for exclusion of his land from the holdings of the recorded tenure holder. Even in the remand proceedings, the petitioner was never given an opportunity of hearing despite the fact that he had moved an application at the appellate stage which was rejected and consequently it was even in the knowledge of prescribed authority that part of the holdings of the recorded tenure holder has been sold to the petitioner.

12. It is in the aforesaid circumstances, this Court is of the considered view that petitioner has been deprived from agitating and canvassing his plea before the prescribed authority as well as the appellate authority and hence he has been non-suited from the aforesaid proceedings. It is in the aforesaid circumstances, this Court is of the considered view that in case the option was given by the recorded tenure holder then the

same can be rejected only after giving due reasons and even the prescribed authority in his entire order has not even dealt upon the aspect of the option exercised by the recorded tenure holder. It is in the aforesaid circumstances both the impugned orders are arbitrary and require interference by this Court in exercise of power under Article 226/227 of Constitution of India.

13. Accordingly, both the impugned orders dated 12.07.1982 and 22.04.1989 are set aside. The matter is remitted to the prescribed authority to consider the issue afresh and most specifically consider the option exercised by the recorded tenure holder. In case such option was exercised by him, let the issue be considered by the prescribed authority in accordance with law after giving due opportunity of hearing to the petitioner as well as to the recorded tenure holder. It shall be open for the petitioner if he so chooses to move an application under Section 11(2) of the Act of 1960. In case such an application is moved, the same may be decided in accordance with law.

14. Considering that much time has lapsed since pendency of the matter, let the proceedings before the prescribed authority be concluded in accordance with law expeditiously say, within a period of six weeks from the date a certified copy of this order is produced before him.

15. In view of the above, the writ petition stands allowed.

**(Alok Mathur, J.)**

**Order Date :- 13.12.2023**

Ravi/