

Court No. - 21

Case :- WRIT - C No. - 3009690 of 1989

Petitioner :- Sikrohar Chandanpur Franciscan Brothers.

Respondent :- Prescribed Authority Ceiling Faizabad.

Counsel for Petitioner :- S.K. Mehrotra

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Pathak,J.

1. Heard Sri I.D. Shukla, Advocate holding brief of Sri S.K. Mehrotra, learned counsel for the petitioner, Sri Gopal Krishn Pathak, learned Additional Chief Standing Counsel representing State-respondents and perused the record on board.

2. Instant writ petition is being heard and decided finally with the consent of counsel for the parties after exchange of their respective affidavits.

3. Instant writ petition is arising out of notice under Section 10 (2) of UP Imposition of Ceiling on Land Holdings Act, 1960 (in brevity, 'Ceiling Act'). By way of instant writ petition, the petitioner has invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India assailing the notice under Section 10 (2) of Ceiling Act (Annexure No. 4) and the order dated 3.10.1989 (Annexure No. 6) passed by the prescribed authority.

4. Facts culled out from the pleadings as made in the writ petition are that land in question basically belongs to a society namely Franciscan Brothers, Mount Painsur, Bombay (in brevity, 'Bombay Society') which was registered on 7.10.1956. In the year 1960, Bombay Society has purchased the land measuring area 313 Bighas from Pirpur Estate of Faizabad. Later on, in the year 1973, the Bombay Society has created a new society in district Faizabad namely Sikrohar Chandanpur Franciscan Brothers Samuhik Sahkari Krishi Samiti Ltd. Sikrohar, District Faizabad (in brevity, 'Sikrohar Chandanpur Society, Faizabad') and transferred the purchased land in its favour on 22.11.1973. Ceiling authorities have issued notice in the year 1975 against Sikrohar Chandpur Society, Faizabad proposing measuring area 274 Bigha, 12 Biswa and 16 Dhur as surplus land. After contest, the prescribed authority has passed the order dated 14.1.1977 declaring 247 Bighas, 12 Biswa and

16 Dhur land as surplus land. Having been aggrieved against the order dated 14.1.1977, Bombay Society along with present petitioner have preferred a Civil Appeal No. 18 of 1977. Appellate Authority/District Judge, Faizabad, vide order dated 19.5.1977 (Annexure No. 1), has remitted the matter before the prescribed authority to redetermine the surplus land in the light of the provisions as enunciated under Section 5 (4) of the Ceiling Act. The prescribed authority, in pursuance of the remand order, has dropped the ceiling proceeding, vide order dated 22.9.1977 (Annexure No. 2), against the Bombay Society and the present petitioner.

5. As per the petitioner's case, the order dated 22.9.1977 has attained finality between the parties and has not been challenged before any court competent. At later stage, a report has been called for from the Naib Tehsildar with respect to surplus land, if any, held by the petitioner. Naib Tehsildar has submitted a report dated 28.12.1981 showing the area of land held by petitioner within the prescribed limit as permitted under the Ceiling Act, therefore, recommended not to initiate any ceiling proceeding against the petitioner. It appears that a fresh notice under Section 10 (2) of Ceiling Act was issued against the petitioner, which was received on 7.9.1982 (Annexure No. 4). The Sikrohar Chandanpur Society, Faizabad (petitioner) has filed an objection dated 20.9.1982 (Annexure No. 5) against the said notice. Prescribed authority has passed fresh order dated 3.10.1989 (Annexure No. 6) to issue fresh notices under Section 10 (2) of the Ceiling Act to both the societies namely Bombay Society and Sikrohar Chandanpur Society, Faizabad. Having been aggrieved, against the said order dated 3.10.1989 (Annexure No. 6) and the notice under Section 10 (2) of Ceiling Act (Annexure No. 4), instant writ petition has been preferred on behalf of the petitioner (Sikrohar Chandanpur Society, Faizabad).

6. Learned counsel for the petitioner submits that once ceiling proceeding had attained finality between the parties by order dated 22.9.1977, which was passed in pursuance of the remand order dated 19.5.1977 passed by the learned District Judge in an appeal, there was no occasion at later stage to issue a fresh notice under Section 10 (2) of Ceiling Act. It is further submitted that the remand order dated 19.5.1977 was already implemented and in pursuance thereof fresh order dated 22.9.1977 was passed by the prescribed authority, therefore, passing fresh order in the garb of remand order dated 19.5.1977 is not sustainable in the eye of law. It is further submitted that previous order dated 22.9.1977, which had attained finality in pursuance of the order 19.5.1977, shall create bar of res-judicata for the subsequent proceeding initiated by ceiling

authorities by issuing notice under Section 10 (2) of Ceiling Act. In support of his submission, learned counsel for the petitioner has cited the case of **Ram Babu Singh Vs. Additional Commissioner, Jhansi, Division Jhansi and others** reported in 2007 (102) RD 772, case of (Smt.) **Rani Chandra Prabha Devi Vs. Civil Judge**, reported in 1986 (4) LCD 445 and **Ram Lal Vs. State of UP and others** reported in 1978 All. L.J. 1197. It is next submitted that subsequent ceiling proceeding initiated against the petitioner is nothing but an abuse of the process of law. It is further submitted that notice under Section 10 (2) of Ceiling Act and the impugned order dated 3.10.1989 are liable to be quashed being illegal, unwarranted under law and cryptic.

7. Per contra, learned standing counsel has contended that nothing has been decided finally against the petitioner by order under challenged. The prescribed authority has simply issued a direction for issuance of notice under Section 10 (2) of the Ceiling Act against both the societies namely Bombay Society and Sikrohar Chandanpur Society, Faizabad. The petitioner has still an opportunity to contest the notice if issued in pursuance of the order dated 3.10.1989 and take defence as being raised before this Court. It is further submitted that the instant writ petition is not maintainable being filed against the notice under Section 10 (2) of the Ceiling Act. It is next submitted that the instant writ petition is liable to be dismissed being misconceived and devoid of merits.

8. Having considered the rival submissions advanced by the learned counsel for the parties and perusal of record, it reveals that the petitioner has assailed the notice under Section 10 (2) of the Ceiling Act and order dated 3.10.1989 passed by the prescribed authority by which fresh notices were ordered to be issued to both the societies namely Bombay Society and Sikrohar Chandanpur Society, Faizabad. The final observation made by the prescribed authority, vide order dated 3.10.1989, is quoted hereinebelow:

"अतः उपरोक्तानुसार दोनों हो सोसाइटी को धारा १० (२) जोत सीमा आरोपण अधिनियम के अन्तर्गत पुनः नोटिस जारी करते हुये जवाब प्राप्त होने के उपरान्त बाद का निर्णय नियमानुसार किया जाय।"

9. The prescribed authority, vide its order dated 3.10.1989, has clearly observed that the matter shall be decided after inviting the objections on the fresh notices to be issued against both the societies under Section 10 (2) of the Ceiling Act. Meaning thereby, the prescribed authority is intended to issue fresh notices to both the societies namely Bombay Society and Sikrohar Chandanpur Society, Faizabad and decide the matter

after inviting the objections of the concerned parties. In my opinion, in view of the order dated 3.10.1989 passed by the prescribed authority, earlier notice, which was received on 7.9.1982 (Annexure No. 4) has become redundant and it has no legal sanctity in the eye of law. So far as the short objection dated 20.9.1982 (Annexure No. 5) filed by the petitioner against the previous notice (Annexure No. 4) is concerned, the presiding officer has not adverted to the same in his judgment and nothing has been whispered about the contents of the said objection. In the light of the direction for issuance of fresh notices under Section 10 (2) of the Ceiling Act, which was directed to be issued against both the societies, the previous notice and objection filed on behalf of the petitioner vanished and, accordingly, the prescribed authority has deemed it fit to decide the matter afresh after inviting objections of the parties concerned. So far as the point of res-judicata, as advanced by the learned counsel for the petitioner, is concerned same is still open for him to raise before the prescribed authority, in case, present petitioner and Bombay Society receives fresh notice under Section 10 (2) of the Ceiling Act. In the light of the order impugned dated 3.10.1989 nothing has been decided finally against the petitioner which may cause prejudice to its interest. It is open for the petitioner to raise all possible objections before the prescribed authority, in case, it receives any notice under Section 10 (2) of the Ceiling Act in pursuance of the order impugned dated 3.10.1989. Therefore, it would not be befitting, at this juncture, to address the merits of the case as advanced by the learned counsel for the petitioner in the instant writ petition. The point of res-judicata can more appropriately be addressed by the prescribed authority on the objection to be filed by the petitioner, in case, notices are issued against both the society under Section 10 (2) of the Ceiling Act.

10. In this conspectus, as above, I did not find any illegality, perversity or ambiguity in the impugned order dated 3.10.1989 passed by the prescribed authority and the notice under Section 10 (2) of Ceiling Act (Annexure No. 4) amounts to be withdrawn in the light of order impugned dated 3.10.1989. There is nothing on record to demonstrate as to how the petitioner is prejudiced, or if there is any likelihood of causing miscarriage of justice to the petitioner, owing to the order impugned.

11. Resultantly, the instant writ petition, being misconceived and devoid of merits, is dismissed with no order as to the costs.

12. It is made clear that observation, if any, made by this Court in the order of the date will not affect the merits of the case if same is initiated before the prescribed authority in pursuance of

the order under challenge and petitioner will be at liberty to raise point of maintainability of notice under the Ceiling Act.

Order Date :- 25.5.2023

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