

Court No. - 17

Case :- WRIT - C No. - 3000032 of 2007

Petitioner :- Braj Raj Singh And Another

Respondent :- The State Of U.P.Through Secy. Revenue Lko.
And Others

Counsel for Petitioner :- Sanjeev Misra

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Sanjeev Mishra, learned counsel for the petitioners as well as learned Standing Counsel for the respondents.
2. By means of present writ petition the petitioners have assailed the order dated 31.08.2006, passed by the Prescribed Authority under Section 10(2) of the Imposition of Ceiling on Land Holdings Act, 1960 (*hereinafter referred to as "the Act, 1960"*) as well as order dated 23.02.2007, passed by the Additional Commissioner (Administration), Lucknow Division, Lucknow dismissing the appeal preferred by the petitioner under Section 13 of the Act, 1960.
3. It has been submitted by learned counsel for the petitioners that notice under Section 10(2) of the Act, 1960 was issued in the name of Natthu Singh, father of the petitioners. It is stated that father of petitioners Natthu Singh died on 07.1.1993, much prior to issuance of the said notice. Natthu Singh was survived by his two sons namely the petitioners in the present writ petition and they filed their objections before the Prescribed Authority. It was stated that the petitioners have inherited the land from their father and also that they were major on the cut-off date and consequently as per provisions contained in Section 4 of Act, 1960, being major sons on the cut-off date, land should have been excluded under Section 5(3)a of the Act, 1960.
4. It was further submitted that major portion of the said land is submerged in water and consequently would be outside the purview of Act, 1960 and also that remaining land was unirrigated and not irrigated as shown in the notice. The Prescribed Authority rejected the contentions raised by the petitioners. He recorded that the petitioners were only demonstrating that they were major on the cut-off date but no cogent evidence was produced and consequently no land can be excluded as per provisions of Section 5(3)a of Act, 1960. The petitioners have only produced family register which was not

counter signed by the Village Pradhan or any other authority and the fact that they were major on the cut-off date was disbelieved.

5. With regard to the aspect as to whether land was submerged in water, the Prescribed Authority relied upon the report of Lekhpal and the revenue record pertaining to fasli year 401, wherein it has been stated that petitioners are growing two crops on the said land and rejected the contention raised by the petitioners.

6. Aggrieved by the order of Prescribed Authority dated 31.08.2006, the petitioners preferred appeal before the Additional Commissioner (Administration), Lucknow Division, Lucknow. Before the appellate authority the petitioners reiterated their stand taken before the Prescribed Authority and the petitioners were not able to convince the appellate authority that the sons of the tenure holder were major on the cut-off date and as per provisions of Act, 1960, and therefore, two hectares of land for each of the petitioner was not excluded from the holdings of the original tenure holder i.e. father of the petitioners.

7. With regard to the dispute regarding irrigated/un-irrigated land of the holdings, the appellate authority relied upon the findings recorded by the Prescribed Authority and rejected the appeal of the petitioners.

8. Learned counsel for the petitioners before this Court has submitted that in order to assail the impugned orders only parivar register was the document produced before both the authorities according to which date of birth of petitioner no. 1 was 08.01.1951 while date of birth of petitioner no. 2 Nandan Singh is 18.01.1952 and consequently in case their age was correctly recorded in the Parivar Register they would be major on the cut-off date i.e. 08.06.1973.

9. The appellate Court while rejecting the contention of the petitioners in this regard has stated that petitioner no. 1 has studied up to Class VII and petitioner no. 2 has studied up to Class VIII and no transfer certificate has been produced before the authorities and consequently the family register cannot be demonstrative of their age without any counter sign by the village Pradhan.

10. It has been submitted by learned counsel for the petitioners that perusal of order passed by the Prescribed Authority would indicate that oral evidence of Shiv Sagar, Tehsildar, Pahara pertaining to the village in question was also recorded. He in his statement has categorically stated that the said land is between Sarayan river and major portion of the said land remains submerged in water and he has also stated that it is wrong to say

that there is cultivation activity going on on the submerged land. Relying upon the said statement learned counsel for the petitioners has submitted that perusal of order of Prescribed Authority also indicates that statement of Shiv Sagar, Lekhpal was recorded before the Prescribed Authority but his statement has not been considered in the entire impugned order. On the other hand the Prescribed Authority has rejected the contention of the petitioners. Relying upon only on the revenue entries related to fasli year 1399, 1400 and 1401, learned counsel for the petitioners submits that the said order would be perverse and contrary inasmuch as evidence to the contrary was available on record has not been considered illegally and arbitrarily.

11. It is submitted by learned counsel for the petitioners that once relevant material is placed on record either as document or as oral testimony then authority is duty bound to at least consider and analyse the said document and it is only after due consideration he can form an opinion either to rely upon the said evidence or reject the same. Non consideration of the relevant material, would indicate that the authority concerned has not applied its judicial mind and has failed to take into consideration relevant material thereby rendering the entire order arbitrary and illegal.

12. With regard to the aspect of age he has submitted that merely because the petitioners apart from oral evidence could not produce relevant documents, their contention was rejected. In case liberty would had been granted so then they may have been able to produce transfer certificate or Pariwar Register duly counter signed by the village Pradhan.

13. Accordingly, it is submitted that the matter deserves to be remanded to enable the petitioner to produce relevant record demonstrating their age so that they can be given benefit of Section 5(3)a of the Act, 1960.

14. Learned Standing Counsel on the other hand has opposed the writ petition. He does not dispute the fact that statement of Shiv Sagar, Lekhpal was duly recorded by the Prescribed Authority. He submits that the Lekhpal apart from stating that major portion of land remained submerged in water, has also stated clearly that the remaining portion of land was cultivated by the petitioners and two crops were grown on the said land. He does not dispute the fact that though Lekhpal has stated that major portion of land is submerged in water, this aspect has neither been considered by the Prescribed Authority and nor by the Appellate Authority. With regard to the age he has supported the finding recorded by both the authorities below. He submits that age mentioned in the Pariwar Register cannot be taken as conclusive proof of age, without the same being counter signed

by the village Pradhan or without examining the person who has issued such document.

15. Learned Standing Counsel does not deny the fact that in case said evidence would have been available to the petitioners they would have adduced the same and also he does not deny the fact that in case such document would have been adduced, same would have been considered by the Prescribed Authority as well as Appellate Authority.

16. Heard learned counsel for the parties and perused the record.

17. In the present writ petition the petitioners have assailed the orders passed by the Prescribed Authority as well as Appellate Authority on two grounds. With regard to aspect that Gata No. 272, area 2.816 hectares, portion of which is submerged in water or not as well as Gata No. 333, area 8.60 hectares and major portion of which has been alleged to be submerged, Statement of Shiv Sagar, Lekhpal in whose statement apart from description of land he has also stated that cops being grown on the said land. He has stated that portion of the said land is submerged under water and is unavailable for cultivation. Once these facts are on record, the Prescribed Authority ought to have duly considered the said statement alongwith other material as well as relevant revenue records and other evidence which was available on record.

18. The Prescribed Authority by not considering the aforesaid aspects of the matter, has failed to exercise the jurisdiction vested in him and accordingly he acted arbitrarily and consequently the order passed by him is liable to be set aside.

19. With regard to aspect regarding age of the petitioners, as discussed hereinabove, only Pariwar Register was adduced as evidence. The said document was not accepted by both the authorities below only because of the fact that same was not counter signed by the village Pradhan or Secretary. Undisputedly once document has been produced it is only miniature act whether same is counter signed or not and adequate opportunity shall be given by him to make it possible for an individual to produce counter signed copy of the said document and once same is produced the authorities can examine the same and determine as to whether the petitioners were major on the cut-off date or not and as to whether they are entitled to the benefit of provisions contained in Section 5(3)a of the Act, 1960.

20. This Court is of the considered view that without giving opportunity to the petitioners in this regard, would take away a right duly vested in them and accordingly they ought to have been provided opportunity for producing relevant material with

regard to their age. It is for the aforesaid two reasons that this Court is of the view that the impugned orders are illegal and arbitrary and deserve to be set aside.

21. Accordingly, impugned orders dated 31.08.2006, passed by the Prescribed Authority as well as order dated 23.02.2007, passed by the Additional Commissioner (Administration), Lucknow Division, Lucknow are hereby set aside.

22. In the aforesaid circumstances, the matter is remanded to the Prescribed Authority for fresh consideration in the light of the observations made by this Court hereinabove. Considering that substantial time has lapsed since the proceedings have commenced and also that entire material is before the Prescribed Authority, accordingly, the writ petition is allowed with direction to the Prescribed Authority to take fresh decision expeditiously, say within a period of three months from the date of production of certified copy of this order. The Prescribed Authority shall grant reasonable time to the petitioners to produce relevant material in support of their contentions before him.

22. The writ petition is allowed.

Order Date :- 18.10.2023

A. Verma

(Alok Mathur, J.)