Court No. - 17

Case :- WRIT - C No. - 3003179 of 1984

Petitioner :- State of U.P.
Respondent :- Ajai Kumar And Others
Counsel for Petitioner :- C.S.C.
Counsel for Respondent :- C.S.C.,Devi Prasad Maurya,J.P.Maurya

Hon'ble Alok Mathur,J.

1. Heard Sri Ashok Khare, learned Standing counsel appearing for the petitioner and Sri Devi Prasad Maurya for respondent No.1.

2. By means of the present writ petition the petitioner has challenged the order dated 25.10.1983 passed by District Judge, in exercise of the powers under Section 13 of U.P. Imposition of Ceiling on Land Holdings Act,1960.

3. The facts in brief of the present case are that proceedings were initiated under Section 10 (2) of the Act of 1960 and notices were issued to one Somendra Bahadur Shah i.e. respondent No.2 who is the original tenure holder. Respondent No.1 who is the purchaser of part of the holdings of the original tenure holders had also participated in the proceedings before the Prescribed Authority and filed his objections under Section 11(2) of the Act of 1960. The Prescribed Authority by means of order dated 28.2.1981 rejected the objections filed by the original tenure holders as well as by respondent No.2 and held that 91.422 acres of un-irrigated land and 73.402 acres irrigated land of original tenure holder i.e. Somendra Bahadur Shah was declared surplus and also rejected the objection of the purchaser i.e. respondent No.1 (Ajay Kumar Misra and Kumari Lekha Raji) and declined to exclude the land purchased by Ajay Kumar Misra and Kumari Lekha Raji from the original holdings of the original tenure holders.

4. The Prescribed Authority while considering the case of the original tenure holder as well as by subsequent purchaser was of the view that with regard to purchase of the land there was an oral agreement to sell prior to cutoff date some time in 1970 whereby the land was purchased after giving consideration of Rs.3000 out of the total consideration of Rs.5000/- was received. The purchasers could not demonstrate the said agreement and payment of the sale consideration and even the

land was not mutated in the name of the vendee and the Prescribed Authority also considered the fact that the original tenure holder continued in occupation of the said land and it is for the aforesaid reasons that he rejected the objections filed opposite party No.1.

5. With regard to the aspect as to whether the land is irrigated or un-irrigated he considered the fact that there were two tube-wells existing on the land and even in the revenue records the pertaining to the fasli years 1378 and 1380 the said land was declared to be irrigated land and consequently in this regard also rejected objections filed by the original tenure holder. On both these issues the matter was dealt with by the appellate authority. With regard to exemption of the land from operation of Ceiling Act on the basis of the fact that the land had been purchased by the vendees, the Prescribed Authority considered the evidence of Amar Singh i.e. P.W.-2, the Up Pradhan. According to him, he knew the vendees i.e. respondent No.1 Ajay Kumar Mishra and Lekha Raji and stated that they were in possession since 1970 which is the date for agreement to sale after payment of part of the sale consideration and after taking over the possession of the said land the original tenure holder i.e. Somendra Bahadur Shah had ceased to cultivate the said land. It was further stated that apart from taking possession it is the vendees who were cultivating the said land and the valuation of the said land in 1970 was somewhere Rs.400/ to 500/- per acre and consequently even according to the State authorities the valuation of the land was somewhere Rs.5000/- to 6000/-. In the present case the sale consideration was received Rs. 5000 and consequently the said consideration could not be said to be inadequate as per the provisions of Section 5 sub section 6 of the Act of 1960. Further considering the fact that after purchase of the said land the vendees were in actual cultivatory possession and it cannot be said that the sale was a mere sham or was entered into to escape from the rigors of the provisions of the Act of 1960 and, hence, there was no evidence which could indicate that the sale was not valid and consequently he returned a finding in favour of the vendees and rejected the contentions of the petitioner (State).

6. With regard to the issue pertaining to irrigated or unirrigated he has duly considered the extracts of khasra dated 27.11.1980 and also relevant revenue records and returned a finding that tube wells had existed. Once a finding has been returned that tube wells was existing on the said land it was not proper for him to proceed to hold that the said land were unirrigated.

7. Learned Standing counsel while assailing the said appellate order has submitted that the findings recorded by the appellate

authority are clearly perverse as once he has considered relevant facts and evidence available on record and concluded that tube wells existed on the said land, he could not have proceeded to hold that the said land were un-irrigated. On the other hand, while assailing the findings with regard to exclusion of land in favour of the vendees he submits that as no mutation was carried out subsequent to the said sale and there was evidence available on record indicating that the vendees were not in cultivatory possession over the said land and accordingly submitted that the findings in this regard are also perverse.

8. Learned Standing counsel, on the other hand, has opposed the writ petition He submits that there was adequate material in the shape of evidence of Amar Singh who was UP Pradhan who has deposed that he was aware of the said sale deed and also confirmed that the vendees were in possession of the said land and they were also cultivating the said land. He further submits that he has given his evidence with regard to valuation of the land from which also it is not borne out that the sale consideration was inadequate. With regard to the aspect as to whether the land were irrigated or unirrigated, he does not dispute the fact that the appellate authority has returned a finding with regard to existence of tube-wells.

9. I have heard learned counsel for the parties and perused the record.

10. The controversy in the present case centers around only on two points. The first point is as to whether the sale deeds were legal and bonafide and for adequate consideration so that the vendees may be given benefits of the provisions of subsection 6 of Section 5 of the Act of 1960. In case, he has been able to demonstrate that the said sale deeds were bonafide and for adequate consideration then the same were liable to be exempted from the holdings of the original tenure holders. The Prescribed Authority has returned a finding that agreement to sale was entered into in 1970 i.e. prior to cut off date while the sale deed were registered only on 1.4.1971 just after the cutoff date. It is noticed that in case the land is deemed to have been transferred prior to the cutoff date then according to Explanation II of Section 5 it was to be demonstrated that the vendees were in actual cultivatory possession of the said land while in case the land was transferred after the cut off date then it is to be seen that the said sale deed was bonafide and for adequate consideration. In this regard evidence was led by the revenue officials as well as by private individuals. There is varying evidence available on record on both the sides but this Court has considered that the evidence of Up Pradhan, namely

Amar Singh which seems to be reliable, who has stated that he knew the vendees and he has confirmed the fact that the sale was entered into in 1971 by oral agreement and immediately after the said sale the land was transferred to the vendees and they are in possession and also cultivating the said land on their own and had further stated that the the original tenure holder is not cultivating the said land after the sale deed.

11. We have gone though the record from which it is evident that there is no infirmity in the order of appellate authority relying upon the evidence of Amar Singh, Up Pradhan.

12. The second aspect raised by learned counsel for the petitioner is relating to nature of the land. According to the records the said land was shown to be unirrigated land but there was evidence available on record indicates that there were tube wells and even in the evidence it was indicated that sugar cane crops were also grown on the said land .

13. In any view of the matter, the said evidence has been recorded and duly considered by the Prescribed Authority as well as by the appellate authority with respect to confirming the fact of existence of two tube wells on the said land. Once the appellate authority has returned a finding that two tube-wells existed on the said land then there was no occasion for him to hold that the said land were un-irrigated. The findings recorded by the appellate authority in this regard are clearly perverse and contrary to his own conclusions and, hence, require interference.

14. Considering the fact that the Prescribed Authority has already considered the entire evidence as well as appellate authority and confirmed that there were means of irrigation and accordingly the only findings which could have been returned is that the said land was irrigated.

15. In this regard a perusal of Section 4 (iii) of the Act of 1960 reveals that one of the relevant considerations is with regard to operation of private irrigation works and also with regard to Explanation III — Where sugarcane crop was grown on any land in any of the years 1378 Fasli, 1379 Fasli and 1380 Fasli, it shall be deemed that two crops were grown on it in any of these years, and that the land capable of growing two crops in an agricultural year.

16. According to the aforesaid provisions, when confronted with the question that for providing irrigation network in the form of tube-wells which had existed on the said land also that sugar cane was grown the only finding which could have been

returned is that the said area would be deemed to be irrigated rather than un-irrigated. This finding recorded by the appellate authority is set aside. In light of the above, the writ petition is **partially allowed.**

17. The matter is remitted back to the Prescribed Authority to pass fresh orders in compliance of the findings recorded here-in-above.

18. Let necessary orders be passed by the Prescribed Authority expeditiously, say within a period of two months from the date a certified copy of this order is produced before him after giving opportunity of hearing to the concerned parties.

(Alok Mathur, J.)

Order Date :- 23.11.2023
RKM.

Digitally signed by :-
RAKESH KUMAR MAURYA
High Court of Judicature at Allahabad,
Lucknow Bench