

Court No. - 17

Case :- WRIT - C No. - 3002638 of 1985

Petitioner :- State of U.P.

Respondent :- Jagdish Bahadur Singh And Others

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- Devendra Pratap Singh, Amit Kumar Pathak, Rajesh Trivedi

Hon'ble Alok Mathur, J.

Order on **Civil Misc. (Substitution) Application No. 1 of 2022**

alongwith **Civil Misc. (Delay Condonation) Application No. 2 of 2023**

and **Civil Misc. (Abatement) Application No.4 of 2022**

as well as

Civil Misc. (Substitution) Application No.7 of 2022

Alongwith **Civil Misc. (Delay Condonation) Application No. 6 of 2022**

and **Civil Misc. (Abatement) Application No. 5 of 2022**

1. Learned counsel for the applicant has pressed the aforesaid applications, seeking substitution of legal heirs of certain parties to the present writ petition.

2. Aforesaid substitution applications have been filed with certain delay.

3. Perused the applications.

4. The delay condonation applications are allowed. Delay in filing the substitution applications is hereby condoned.

5. Substitution applications are also allowed. Learned counsel for the applicant-petitioner shall carry out necessary incorporations in the memo of writ petition during course of the day.

6. Abatement, if any, is set aside.

Order on **Writ Petition**

1. Heard learned Standing Counsel for the petitioner as well as Sri Rajesh Trivedi, learned counsel for the respondent.
2. By means of present writ petition the State has challenged the order of Civil Judge, Gonda passed in exercise of power under Section 13 of the Imposition of Ceiling on Land Holdings Act, 1960 (*hereinafter referred to as "the Act, 1960"*) and thereby allowing the appeal preferred by the respondents.
3. It has been submitted by learned Standing Counsel that proceedings under Section 13 of Act, 1960 have been initiated against respondent no. 3 who was the original tenure holder. Notice was given in the year 1974, pursuant thereto writ petition was filed before this Court challenging vires of amendment of Act, 1960, where upon this Court in a bunch of matters pending in various Courts, under the Act, 1960, proceedings against respondent no. 3 remained stayed. In 1978, all the writ petitions were dismissed up holding validity of the amendment of Act, 1960 and consequently proceedings commenced. Objections were filed by the original tenure holder.
4. It was submitted that certain portions of Plot Nos. 384 and 385 area 125.7 were sold to respondent nos. 1 and 2 for consideration and possession of the said plots was handed over. The sale deed was registered on 17.09.1981 and therefore prayer was made to exclude said plots which have been alienated through sale of which the sellers were in actual physical possession. The Prescribed Authority did not agree with the contentions of original tenure holder as well as sellers on the ground that by oral sale the alleged plots were sold prior to the cut-off date i.e. 21.04.1971 and sale deed was infact registered only on 17.09.1981. He was of the view that said transaction has been entered into only with a view to evade the provisions of Act, 1960, and rejected the objections. The Prescribed Authority similarly rejected the objections with regard to the claim of original tenure holder that land is unirrigated.
5. Aggrieved by the order of Prescribed Authority, the original tenure holder as well as purchasers of the said plots, preferred an appeal. Before the Appellate Authority it was demonstrated that sufficvient oral evidences have been given by Abdul Wahid, Kallu, Nanmun, Ram Sewak, Karigan Prasad, Mata Prasad and the original tenure holder himself, stating that Plot No. 5915/5.59 as well as Plot No. 1257/3.76 acres were sold to one Sharda Devi as well as Jagdish Bahadur Singh for consideration of Rs.10,000/-. It was further demonstrated by oral evidence that possession of the said plots was handed over to the purchasers and they were in actual cultivatory possession

of the said plots from the date of said sale and original tenure holder did not exercise any ownership or possession over the said land and consequently for all practical reasons purchasers were owners of the said plots. It was further stated that sale deed was got registered on 17.09.1981. It was further submitted that there was no relationship between the original tenure holder and purchasers and that sale was for adequate consideration and bonafide and consequently the order passed by the Prescribed Authority deserves interference. It was further recorded that the State could not counter the said claim made by the original tenure holder as well as purchasers and there was no material to indicate that said claim was contrary to what was on record.

6. The Appellate Authority duly considered the contentions of parties and was of the view that there was sufficient material on record to demonstrate that sale had infact taken place with regard to plot no. 359/5.59 as well as 1257/3.70 acres for adequate consideration. Oral testimony of number of persons was deemed to be sufficient to indicate such factual situation.

7. In this regard is urged that sale was prior to cut-off date and therefore Explanation - II to Section 5 of Act, 1960 would come into operation. As per explanation II it is provided that in case a person continues to be in possession over the land which is recorded in the name of any other person and said person is in actual cultivatory possession, then it is presumed that he is the owner of the said plot. The said explanation applies to the facts of the present case where there is oral statement of number of persons from which it was demonstrated that sale had infact taken place on 01.09.1971, which was prior to the cut-off date and purchasers were in actual possession of the said plots. Applying sub Section 6 of Section 5, the respondents were able to prove that said sale or alienation of the plots by the original tenure holder was done for adequate consideration and hence the said plots deserves to be excluded from the ceiling proceedings.

8. It was demonstrated that there was adequate consideration paid to the original tenure holder for the said plots and the purchasers were in possession since 1971. There is no other material which has been placed by the State to contradict the findings recorded by the appellate Court or before this Court to take any other view of the matter. Accordingly, said issue is decided against the petitioner and in favour of respondents.

9. With regard to the issue as to whether said land is irrigated or unirrigated it was contended by the respondents before the appellate Court that said land does not fall into the command area and there was no tube well installed on the said plots and

hence it was unirrigated land. The Appellate Authority also considered the statement of Lekhpals Jagdish Prasad and Aditya Prasad who were Lekhpals of the areas concerned, and stated that the said lands was unirrigated and there was no provision for irrigation and no tube well was installed. Accordingly, the Appellate Court held that said lands were unirrigated. There is no material to contradict the said findings recorded by the Appellate Authority on the basis of statements of Lekhpals, and also we do not find any infirmity with the said finding which is based on adequate consideration of evidence available on record.

10. In the light of above, after hearing learned counsel for the parties and perusing the record, this Court does not find any reason to interfere with the order of Appellate Court.

11. The writ petition being devoid of merits is **dismissed**.

Order Date :- 6.11.2023

A. Verma

(Alok Mathur, J.)