

Court No. - 17

AFR

Case :- WRIT - C No. - 3000059 of 1992

Petitioner :- Bachchoo

Respondent :- State of U.P.

Counsel for Petitioner :- Shafiq Mirza, Shafiq Mirza, Syed Ahmad Jamal, Vishnu Srivastava

Counsel for Respondent :- Umesh Kumar Srivastava

Hon'ble Alok Mathur, J.

1. Heard Sri Syed Ahmad Jamal, learned counsel for the petitioner as well as learned Standing counsel for the respondent. As per office report dated 04.12.2023, service of notice upon respondent no. 4/1 has been deemed to be sufficient. Despite service of notice no one has put in appearance on behalf of respondent no. 4/1.

2. By means of present writ petition the petitioner has assailed the order dated 18.08.1992, passed by the Commissioner, Faizabad Division, Faizabad whereby he allowed the appeal preferred by the State.

3. Facts in brief of the case are that present dispute pertains to the property of which respondent nos. 4 and 5 Someshwar Prasad Singh and Smt. Shanti Devi respectively were recorded tenure holders and a portion of their land was purchased by the petitioner. Proceedings under the Imposition of Ceiling on Land Holdings Act, 1960 (*hereinafter referred to as "the Act, 1960"*) were proceeded against the recorded tenure holders and notice was issued on 06.09.1974, whereby certain lands of the recorded tenure holder were declared surplus.

4. The petitioner claims that he was in possession of part of the said property on the basis of adverse possession and in this regard he had filed a suit under Section 229 of the U.P. Z.A. & L.R. Act. The said suit was decreed on 22.11.1973 and 22.05.1973 and the petitioner was declared '*Sirdar*' of the said property. After being declared as above, petitioner moved an application under Section 11(2) of the Act, 1960 before the Prescribed Authority praying that he may be given benefit of Section 12-A(d) of the Act, 1960 and his land may be excluded from the surplus land, declared surplus at the hands of the original tenure holders. The Prescribed Authority duly considered the prayer made by the petitioner and allowed his application by means of order dated 26.02.1983 and excluded

the land of which petitioner was declared "*sirdar*" and which was declared surplus at the hands of the original tenure holders.

5. The State being aggrieved by the order dated 26.02.1983, preferred an appeal before the Appellate Authority under the Act, 1960. The Appellate Authority considered the entire factual matrix and was of the view that the recorded tenure holders had not been heard while deciding the application of the petitioner under Act, 1960 and was of the view that in case application of the petitioner has to be allowed giving him benefit of Section 12-A(d) of the Act, 1960, same could be done only after giving opportunity of hearing to the recorded tenure holders and accordingly by means of order dated 04.07.1988, set aside the order of Prescribed Authority and remanded the matter to the Prescribed Authority for deciding the application afresh after giving appropriate opportunity of hearing to the recorded tenure holders.

6. The petitioner being aggrieved by the remand order dated 07.07.1988 where appeal of State was allowed, preferred a writ petition before this Court being Writ Petition No. 58808 of 1988. This Court was persuaded to interfere with the order of Appellate Authority dated 07.07.1988, observing that recorded tenure holders could have been given opportunity of hearing by the Appellate Authority itself and concluded that this reason was not sufficient for remanding the matter back to Prescribed Authority and consequently, directed the Appellate Authority to re-hear the appeal after giving opportunity of hearing to the recorded tenure holders. While allowing the writ petition the order of Appellate Authority was set aside and he was directed to decide the same in the light of directions issued by this Court.

7. The Appellate Authority in remand proceedings has again allowed the appeal of the State by means of order dated 18.08.1992, which has been assailed in the present writ petition.

8. Before the Appellate Authority the petitioner has contended that ceiling proceedings were concluded by order dated 31.10.1974 and land of which the petitioner was declared as '*sirdar*' was part of the plot which was declared surplus by the Prescribed Authority. Only ground taken by the petitioner was that in exercise of power conferred under Section 12-A(d) of the Act, 1960, his land deserves to be excluded from the lands which have been declared surplus.

9. The Appellate Authority by means of impugned order dated 18.08.1992, held that the proceedings under the Act, 1960 were concluded with regard to recorded tenure holder on 31.10.1974

and the State had also taken possession of the said land and actual physical possession of the said property was taken by the State and Form No. 6 was issued in this regard. It was further observed that the recorded tenure holder had never raised any objection before the Prescribed Authority nor do they exercise their objection under Section 12-A of the Act, 1960, for excluding the said land from being declared surplus. In the light of said finding the appellate Court allowed the appeal preferred by the State and rejected the objections preferred by the petitioner. Against the order dated 18.08.1992, present writ petition has been filed.

10. Learned counsel for the petitioner has submitted that once the Court of competent jurisdiction in exercise of power under Section 229-B of the U.P. Z.A. & L.R. Act had declared a land to be surplus the natural consequence of the same would be in exercise of power under Section 12-A(d) under which the Prescribed Authority should have excluded the said land from being declared surplus at the hand of the recorded tenure holder. It is submitted that under Section 12-A(d) clear mandate has been given to the Prescribed Authority to exclude such land which have been subject matter of transfer and which are not included in the land referred under Section 5(6) or 5(7) of the Act, 1960.

11. Per contra, learned Standing Counsel has opposed the writ petition. He submits that objections which are preferred by the petitioner under Section 11(2) and he did not seek exclusion of the said land as contained under Section 5(6) of the Act, 1960 and once the said land is acquired by the State, there is no provision under which such land can be excluded. It is submitted that in this regard there is no error in the finding recorded by the appellate Authority and consequently prays for dismissal of the writ petition.

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

13. As narrated above, and undisputed facts are that the said land was subjected to ceiling operations of which respondent nos. 3 and 4 were recorded tenure holders. The recorded tenure holders had not filed any objection before the Prescribed Authority and accordingly proceedings were concluded on 31.10.1974 declaring certain land to be surplus. The petitioner filed a suit under Section 229-B of the U.P. Z.A. & L.R. Act, wherein decree was passed in favour of the petitioner on 22.05.1973. The objections raised by the petitioner before the Prescribed Authority under Section 11(2) of the Act, 1960 were filed on 27.03.1989 with regard to exclusion of said land under

Section 12-A(d) of the Act, 1960. For ready reference Section 12-A(d) of the Act, 1960 is quoted herein below :-

"12-A. In determining the surplus land under Section 11 or Section 12, the Prescribed Authority shall, as far as possible, accept the choice indicated by the tenure-holder to the plot or plots which he and other members of his family, if any, would like to retain as part of the ceiling area applicable to him or them under the provisions of this Act, whether indicated by him in his statement under Section 9 or in any subsequent proceedings :

Provided that -

(a) ---

(b) ---

(c) ---

(d) where any person holds land in excess of the ceiling area including land which is the subject of any transfer or partition referred to in sub-section (6) or sub-section (7) of Section 5, the surplus land determined shall, as far as possible, be land other than land which is the subject of such transfer or partition, and if the surplus land includes any land which is the subject of such transfer or partition, the transfer or partition shall, insofar as it relates to the land included in the surplus land, be deemed to be and always to have been void, and -

(i) it shall be open to the transferee to claim refund of the proportionate amount of consideration, if any, advanced by him to the transferor, and such amount shall be charged on the [amount] payable to the transferor under Section 17 and also on any land retained by the transferor within the ceiling area, which shall be liable to be sold in satisfaction of the charge, notwithstanding any thing contained in Section 153 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950;

(ii) any party to the partition (other than the tenure-holder in respect of whom the surplus land has been determined) whose land is included in surplus land of the said tenure-holder shall be entitled to have the partition re-opened."

14. From the perusal of aforesaid provision it is clear that as per Section 12-A(d) of the Act, 1960, in case the land is more than ceiling limit then the Prescribed Authority is bound to give option to the recorded tenure holder to choose as to which land has to be declared surplus. The case of the petitioner is that land

has been devolved on him by decree of adverse possession on 22.03.1973 and accordingly it is stated that his land deserves to be excluded which has been declared surplus by the Prescribed Authority. The first question which arises for consideration is as to whether person other than the recorded tenure holder can exercise power under Section 12A of the Act or not?

15. Bare perusal of Section 12A of the Act, 1960 would indicate that it is provided that the Prescribed Authority shall accept the choice given by the tenure holder to the plot which he would like to retain as part of the ceiling area in determining the surplus land. A perusal of aforesaid provision would make it clear that choice, if any, can only be given by the recorded tenure holder, as provided under Section 12A of the Act, 1960. With regard to Section 12-A(d) of the Act, 1960 it is noticed that if any land which is in excess of the ceiling limit of the tenure holder, would have to be excluded in the light of Section 5(6) and 5(7) of the Act, 1960. In case any transfer is made after the cut-off date, is found to be bonafide and for adequate consideration, then as per provisions of Section 5(6) the same has to be excluded from the holdings of the tenure holder and similar would be the case where any decree has been passed in the matter on the cut-off date. Sub clause (d) of Section 12-A is explanatory in nature and is confined only to the land which are referred to under Section 5(6) and 5(7) of the Act, 1960, the Prescribed Authority is mandated to exclude such land which have been demonstrated to be excluded from the holdings of recorded tenure holder under Section 5(6) & 5(7) of the Act, 1960.

16. In Section 5, it is further clarified by the provisions contained in sub section (8) of Section 5 of Act, 1960 that any transfer of land executed by the tenure holder during continuance of proceedings for determination of surplus land, ought to have been declared void. It is noticed that in the present case it was not the case of the petitioner that transfer by declaratory decree by the Court of competent jurisdiction was sought to be excluded in terms of Section 5(6) and 5(7) of the Act, 1960. The petitioner merely claims that the land deserves to be excluded merely because he had got decree of adverse possession in his favour.

17. This Court is of the considered view that merely obtaining a decree from a Court of competent jurisdiction in itself would be of no consequence unless provisions of Section 5(6) of the Act, 1960 are fulfilled and if the tenure holder is able to demonstrate that his holdings are below the ceiling limit and all the conditions as prescribed under the Act are met.

18. In the present case decree was passed after the cut-off date and on 31.10.1974 the said land was declared to be surplus and consequently the said land has vested in the State Government and even possession of the same has been taken, the decree of the Court would not in itself exclude the land from the clutches of Act, 1960.

19. It was incumbent upon the petitioner to move appropriate application before the Prescribed Authority and satisfy him as to the conditions laid down in Section 5(6) and 5(7) of the Act, 1960 are fulfilled, and only then the said land could have been excluded from the ceiling operations. Apart from the above, this Court is of the considered view that there is no power vested in the Prescribed Authority to exclude the land merely on demonstration or production of decree passed by the Court of competent jurisdiction.

20. In the light of above discussion, this Court does not find any infirmity in the impugned appellate order dated 18.08.1992, accordingly, the writ petition being devoid of merit is **dismissed**.

Order Date :- 6.12.2023

A. Verma

(Alok Mathur, J.)