

Court No. - 17

Case :- WRIT - C No. - 3000048 of 1994

Petitioner :- Mohd.Raza

Respondent :- State of U.P. and Others

Counsel for Petitioner :- N.K.Pandey,Narendra Kumar Pandey

Counsel for Respondent :- C.S.C.,Manoj Kumar Srivastava,R.P.Singh,Udai Pratap Lal

Hon'ble Alok Mathur,J.

By means of the present writ petition the petitioner has challenged the order dated 23.11.1990, passed by the Prescribed Authority (Ceiling), Sadar/ Chief Revenue Officer, Sultanpur whereby the objections of the petitioner under Section 11 (2) of the Act of 1960 have been rejected as well as the order dated 24.3.1994 passed by the learned Additional Commissioner (Judicial), Faizabad Mandal, Faizabad thereby rejecting the appeal under Section 13 of the Act of 1960 and upheld the findings recorded by the Prescribed Authority.

The facts of the case in brief are that the present dispute pertains to plot no.1402 situated in village Khedi, District Sultanpur. It has been stated that the recorded original tenure holder was one Ram Karan Singh and proceedings under Section 10 (2) of the Act of 1960 were initiated against him and order was passed by the Prescribed Authority on 11.11.1974 rejecting the objections filed by the original tenure holder.

An appeal was filed by him which was allowed and the matter was remanded to the Prescribed Authority.

Prescribed Authority in the remand proceedings by means of order dated 31.5.1976 again rejected his objections against which an appeal was preferred and was decided on 17.12.1976.

While rejecting the appeal the appellate authority had directed the original tenure holder to give his choice of the land of which he wants to be

declared surplus.

In the remand proceedings the Prescribed Authority passed an order dated 19.9.1977 against which an appeal was preferred and finally the matter concluded by passing an order dated 31.12.1977 by the Prescribed Authority and no appeal was filed against the said order.

It has been stated that amongst other plots, plot no.1402 was declared surplus by the Prescribed Authority finalizing the proceedings against the original tenure holder.

It is stated that there was dispute between Ram Karan and Ram Abhilakh. A suit was filed by Ram Abhilakh under Section 229 B of UPZALR Act on 12.4.1976 before the competent court and the said suit was finalized on 20.8.1977 in favour of Ram Abhilakh and subsequently a sale deed was executed in favour of the petitioner.

The petitioner after purchasing the said land moved an application for mutation in his name and on 29.3.1985 the name of the petitioner was mutated.

The petitioner after purchasing the said land from Ram Abhilakh moved an application under Section 11 (2) of the Act of 1960 before the Prescribed Authority with the prayer to release the said land purchased by the petitioner from the ceiling and also land which has been declared surplus at the hands of the original tenure holder.

In support of his contentions he had produced the record of the suit under Section 229 B as well as the mutation in his favour. The Prescribed Authority after considering the objections filed by the petitioner rejected his claim on the ground that merely mutating the said land which has been declared surplus, would not vest any right in him and further considered the fact that ceiling proceedings have been concluded and the said land has been taken over by the State Government and, consequently, at the stage the prayer made by the petitioner cannot be acceded to and, consequently, rejected his objections.

The petitioner preferred an appeal against the order of the Prescribed Authority dated 23.11.1990.

The Appellate Authority also dealt with the objections raised by the petitioner in detail.

He considered the fact that admittedly the sale was made in favour of the petitioner by Ram Abhilakh after the cut off date, i.e., 24.01.1971 and consequently any such sale after cut off date would not vest any right in favour of the petitioner as per the provisions contained in Section 5 of the Act, 1960.

He further considered the fact that the prayer made by the petitioner with regard to the choice made by the original tenure holder cannot be interfered with at the hands of the subsequent purchaser. Section 12 (d) of the Act of 1960 is enabling the beneficial provision where the discretion can be adequately exercised by the original tenure holder and the benefit of the Section 12 (d) cannot be exercised by any person other than original tenure holder and, consequently, the prayer of the petitioner that any other plot except plot no.1402 may be declared surplus was rejected by the appellate authority also.

He had further considered the fact that the name of the petitioner was mutated after about 7-8 years and the benefit of the said mutation will not affect the concluded proceedings under the Act of 1960 as the said transfer was hit by the provisions of the said Act itself and consequently, rejected the appeal.

Shri M.K. Pandey, learned counsel for the petitioner has vehemently submitted that the dispute between Ram Karan and Ram Abhilakh became final only on 20.8.1977 and subsequently a sale deed was entered into between the petitioner and Ram Abhilakh where he purchased the said plot.

Admittedly, the said purchase was made after 24.1.1971 which is the cut off date and by that

time the said plot had already been declared surplus by the Prescribed Authority and provision of Section 5(8) of the Act of 1960 would come into operation and any transfer made during the proceedings would be non-est and illegal.

Apart from the statutory bar in transfer of the said plot it could not be shown that the said purchase was bona fide and also for adequate consideration.

The transfer of plot in favour of petitioner could not be held to have satisfied the provision of Sections - 5 (6) or 5(8) of the Act of 1960 as it could not be proved by the petitioner before either the Prescribed Authority or the Appellate Authority that the sale was bona fide and for adequate consideration and in absence of fulfilling aforesaid conditions no order could have been passed by either of the Authorities releasing the said plot in favour of the petitioner.

In light of the above, no ground for interference by this Court under Article 226 of the Constitution of India is made out. Reasons given by the Prescribed Authority as well as by the appellate authority do not require any interference.

In light of the above petition being devoid of merits is accordingly, dismissed.

Order Date :- 8.11.2023
mks

(Alok Mathur, J.)