

Court No. - 17

Case :- WRIT - C No. - 3000030 of 1991

Petitioner :- Sushil Kumar Singh

Respondent :- Additional Commissioner And Others

Counsel for Petitioner :- Shafiq Mirza, Syed Ahmad Jamal

Counsel for Respondent :- C.S.C., Arvind Kumar
Jauhari, Ashuja Gupta, Balak Ram, J.N. Mathur

Hon'ble Alok Mathur, J.

1. Heard Sri Syed Ahmad Jamal, learned counsel for the petitioner as well as learned Standing Counsel for respondent nos. 1 and 2 and Sri Arvind Kumar Jauhari, learned counsel has filed vakalatnama on behalf of private respondents.

2. By means of present writ petition the petitioner that challenged the order dated 04.07.1991, passed by the Additional Commissioner, Faizabad Division, Faizabad thereby allowing the appeal preferred by the private respondents and remanding the matter back to the Prescribed Authority to pass fresh order. While allowing the appeal the Appellate Authority has considered the fact that choice of the original tenure holder is liable to be considered and benefit of Section 12-A of the Imposition of Ceiling on Land Holdings Act, 1960, shall be given.

3. It has been submitted by learned counsel for the petitioner that notice under Section 10(2) of the Act, 1960 was issued to the petitioner who is the original tenure holder. The petitioner has filed objections before the Prescribed Authority stating that certain alienation of the land has been done prior to the cut-off date and accordingly the said land ought to have been excluded from the holdings of original land holdings of the petitioner.

4. The Prescribed Authority rejected the objections of petitioner and proceeded to finalise the proceedings holding certain land of the petitioner to be surplus. The private respondents in whose favour decree under Section 229(b) of the U.P. Z.A. & L.R. Act was passed, being aggrieved by the order of the Prescribed Authority dated 11.09.1980, appeal was preferred before the Appellate Authority. The Appellate Authority also concurred with the findings recorded by the Prescribed Authority and dismissed the appeal preferred by the private respondents.

5. In the aforesaid circumstances, the respondents had

challenged the order of Appellate Authority passed under Section 13 of the Act, 1960, before this Court by filing Writ Petition No. 6018 of 1981, which was decided by means of judgment and order dated 06.05.1987. Before this Court the private respondents had asserted their rights which were curtailed by the order passed by the competent authority under Section 229(b) of the U.P. Z.A. & L.R. Act and this Court had also taken into account the fact that a person whose rights have been curtailed, such issue has to be decided under Section 12(d) of the Act, 1960 and it would be incumbent upon the Prescribed Authority to exclude such land from the lands which have been declared surplus.

6. The Prescribed Authority in the remand proceedings while considering the judgment of this Court, passed an order dated 11.09.1990, stating that fresh order would be passed after taking into consideration the order of the High Court to exclude the lands of the respondents. Against the said order appeal was filed and the appellate Court has allowed the said appeal and remanded the matter back to the Prescribed Authority. Main reason for allowing the said appeal was the order of High Court has not been complied with and consequently it was stated that the Prescribed Authority has erred in not complying with the directions of the High Court in its order.

7. Grievance of the petitioner in the present writ petition is only with regard to the aspect that he may be permitted to give his options in terms of Section 12A of the Act, 1960 and in case such option is given the Prescribed Authority may be directed to pass appropriate orders taking into consideration the options given by the petitioner and amend his previous order and declare other lands as surplus.

8. Learned counsel for the petitioner has confined his arguments to the aforesaid for direction to the Prescribed Authority to pass fresh order in the light of choice given by him.

9. Learned counsel for the private respondents as well as learned Standing Counsel do not object to the above prayer made by the petitioner.

10. Considering the fact that it is also provided in the statute that original tenure holder can always give his choice and in case such choice is given the Prescribed Authority shall consider such choice in accordance with law.

11. In the light of above, with the consent of learned counsel for the parties present writ petition is **disposed of** with direction to the Prescribed Authority to decide the matter afresh in the light

of previous order of this Court dated 06.05.1987. In the remand proceedings the petitioner will have liberty to give fresh choice within four weeks from the date of production of certified copy of this order. The Prescribed Authority shall pass appropriate orders within next three months after giving due opportunity of hearing to all the parties concerned in accordance with law.

Order Date :- 16.11.2023

A. Verma

(Alok Mathur, J.)