

Court No. - 17

Case :- WRIT - C No. - 3000092 of 1994

Petitioner :- Gaya Prasad And Another

Respondent :- Commissioner Faizabad Division And Others

Counsel for Petitioner :- Suresh Chandra Srivastava,Deo
Prakash Misra,Nand Kishore,Shakti Vikram Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Suresh Chandra Srivastava, learned counsel for the petitioners as well as learned Standing counsel for the respondents.

2. By means of the present writ petition the petitioner has challenged the order dated 11.4.1989 passed by the prescribed authority thereby rejecting the application filed by the petitioner under Section 11(2) of U.P. Imposition of Ceiling on Land Holdings Act, 1960 only on the ground of delay. The petitioner has also challenged the order dated 6.7.1994 passed by Commissioner, Faizabad in exercise of appellate powers under Section 13 of the aforesaid Act and upheld the order of the prescribed authority and additionally he has rejected the appeal on merits.

3. It has been submitted by learned counsel for the petitioner that proceedings under the Act of 1960 were commenced against the recorded tenure holder, namely Sri Yawar Husain Khan and notice was issued to him sometime in 1974 to which objections were filed by him on 18.8.1974 and after considering the objections the prescribed authority concluded the proceedings on 31.12.1974 and declared 246-16-15 half holdings as surplus. Even the appeal preferred by the original tenure holder was rejected on 23.4.1976 and the order of the prescribed authority was confirmed.

4. The case of the petitioner is that by means of a registered sale deed executed on 7.4.1972 he had purchased gata No.621 area 0-12-10 hectare of land for sale consideration of Rs.600/- from the recorded tenure holder. It is stated that his name was duly entered into the revenue records. The petitioners case is that he was never aware or had the knowledge of the fact that proceedings initiated against the recorded tenure holder under the Act of 1960 and consequently was never given either any notice or opportunity to participate before the prescribed

authority when the ceiling proceedings were pending against the recorded tenure holder. It is stated that only when the State authorities executed the order of the prescribed authority dated 13.12.1974 and the name of the State was mutated in the revenue records which was done on 9.12.1988 that the petitioner came to know that the land has been declared surplus in the ceiling proceedings. It is stated that immediately thereafter in April, 1989 he moved application under Section 11(2) of the Act of 1960 before the prescribed authority with a prayer to exclude the land from the original holdings of the recorded tenure holder and further to give him the benefit of Section 5 sub clause 6 of the Act stating that he was a bonafide purchaser for adequate sale consideration. The prescribed authority by means of the the impugned order dated 11.4.1989 rejected the said objection and submitted that the ceiling proceedings had become final and the application has been filed 15 years thereafter and merely on this ground rejected the application of the petitioner.

5. The petitioner subsequently had assailed the order of the prescribed authority in appeal reiterating that he was not aware of the proceedings under the Act of 1960. Despite the fact that his name had been mutated in the revenue records in 1972 itself and the ceiling proceedings were conducted in 1974. He further claimed that the land purchased by him was liable to be excluded in light of the provisions contained under Section 5 sub clause 6 of the Act of 1960. The appellate authority confirmed the findings of the prescribed authority with regard to the delay and laches in moving the application under Section 11 (2) of the Act of 1960. He further considered the fact that the petitioner was not able to file original sale deed before the appellate authority and consequently held that the petitioner has not been able to prove the sale and consequently rejected the appeal.

6. Learned counsel for the petitioner submits that once the prescribed authority has rejected his application merely on the ground of delay and the appeal against the said order deserved to be confined to the order of the prescribed authority but the appellate authority in exercise of his jurisdiction has delved into the merits of the case and rejected the application of the petitioner being contrary to the provisions of sub clause 6 of section 5 of the Act of 1960.

7. Learned Standing counsel, on the other hand, has opposed the writ petition. He has submitted that there was substantial delay in moving the application under Section 11(2) by the petitioner and the prescribed authority and the appellate authority have duly considered the case of the petitioner. He has

further submitted that the proceedings against the original tenure holder were concluded in 1976 whereby the order of the prescribed authority was passed in 1974 so it is not possible that the petitioner who had purchased the land from the recorded tenure holder was not aware of the ceiling proceedings and consequently submits that there is no infirmity either in the order of the prescribed authority or the appellate authority and consequently submits that the writ petition deserved to be dismissed.

8. I have heard learned counsel for the parties and perused the records.

9. From the facts as borne out from the record as well as from the arguments of the respective counsel it is clear that the proceedings were initiated against the original tenure holder Sri Yawar Hussain Khan and after hearing the objections filed by the recorded tenure holder the prescribed authority passed order impugned dated 31.12.1974 declaring 246-16-15 and half holdings of the original tenure holder as surplus. The appeal filed in this regard was also rejected on 23.4.1976 and the order of the prescribed authority was accordingly confirmed.

10. The petitioner had purchased plot No.621 from the original tenure holder on 7.4.1972 which is the date prior to commencement of the ceiling proceedings against the recorded tenure holder. After purchasing the said land from the original tenure holder the land was mutated in the name of the petitioner on 7.4.1972. It is vehemently submitted that the petitioner was not aware of the ceiling proceedings till the land was recorded in favour of the State by the revenue authorities, which is evident from the revenue khatauni filed by the petitioner indicating that the said correction was made in the revenue records on 9.12.1988. Within a period of three months the petitioner preferred his objections under Section 11(2) before the prescribed authority who rejected the same on the ground of delay.

11. The delay if any is a matter of fact and has to be verified from the records, documents and the evidence placed before appropriate authority. The case of the petitioner is that he was not aware of the ceiling proceedings prior to carrying out the mutation in the revenue records in December, 1988. There is no other documents, evidence or any other material filed by the State to contradict the claim of the petitioner. The prescribed authority has rejected the application of the petitioner merely holding that it was delayed by over 15 years from the date of the order passed in appeal by the appellate authority. The petitioner had clearly produced sufficient material to show that

it is only after the land was mutated in favour of the State in pursuance of the order passed by the ceiling authorities that he was made aware that the land has been declared surplus as per the orders of the prescribed authority.

12. This Court does not find any reason to disbelieve the statement of the petitioner. There is no denial of the fact by the State that the ceiling proceedings with regard to the original tenure holders had attained finality on 23.4.1976 when the appeal filed by the revenue authorities was dismissed by the appellate authority. It took 12 years for the State itself to execute their own orders and mutating the entry in the revenue records. Once this fact is not disputed it can be said that the moment the revenue records were mutated in favour of the State the petitioner came to know about the said fact and immediately thereafter he has moved application under Section 11 (2) of the Act of 1960. This Court is accordingly of the considered view that the delay has been adequately explained by the petitioner in his application under Section 11 (2) and the same could not have been dismissed by the prescribed authority solely on the ground of delay and laches.

13. Apart from the above, it is to be seen that liberal interpretation with regard to the delay has to be taken in cases where the land of individual is being taken away by the State and the proceedings has been concluded with delay which is substantial in nature and liberal interpretation with regard to the delay has to be given. Once present dispute is before the appropriate authority then unless he is unable to explain the delay or the delay is substantial and no explanation is forthcoming then certainly the application can be dismissed on the ground of delay and laches. Contrary is the finding in the present case where the petitioner was able to demonstrate that he was not aware of the said proceedings and he moved appropriate application after coming to know of the mutation entries.

14. In light of the above, the issue pertaining to delay and laches is decided in favour of the petitioner as against the respondents. It is further noticed that once aspect of the merits of the case and as to whether the land was liable to be excluded in terms of the provisions of Section 5 sub clause 6 of the Act of 1960 was not decided by the prescribed authority it would have been appropriate for the Apex Court to have remanded the matter to the prescribed authority rather than to take upon himself to determine the evidence placed by the petitioner and in this regard also the order of the Prescribed Authority is infirm and deserves to be interfered with.

15. In light of the above, the writ petition is **allowed**. The orders dated 11.4.1989 passed by the prescribed authority as contained in Annexure No.5 to the writ petition and the order dated 6.7.1994 passed by Commissioner, Faizabad, contained in Annexure No.7, are set aside.

16. The matter is remitted back to the prescribed authority to decide afresh. Considering that much time has lapsed and the matter has remained pending for last nearly three decades, the prescribed authority is directed to pass necessary orders expeditiously, say within a period of three months from the date a certified copy of this order is placed before him.

17. The petitioner undertakes to file all relevant materials in support of his application under Section 11 (2) before the prescribed authority within a period of one month from today.

18. In case, the same is done, the prescribed authority is directed to proceed and decide the same expeditiously in accordance with law.

(Alok Mathur, J.)

Order Date :- 29.11.2023
RKM.