

Court No. - 17

Case :- WRIT - C No. - 3000069 of 1995

Petitioner :- Rajendra Dev Tripathi

Respondent :- State of U.P. and Others

Counsel for Petitioner :- H.S. Sahai, Ashok Kumar

Verma, Nripendra Mishra, Sanjay Saxena Advocate, U S Sahai

Counsel for Respondent :- C.S.C., Ambuj Kumar, Raj Priya
Srivastava

Hon'ble Alok Mathur, J.

1. Heard Sri Nripendra Mishra, learned counsel for the petitioner and Sri S.K. Khare, learned Standing Counsel for respondent nos. 1 to 3.

2. By means of the present petition, the petitioner has challenged the order passed by the appellate authority i.e., Additional Commissioner Judicial, Faizabad Mandal, Faizabad dated 31.03.1995, wherein he has rejected the appeal preferred by the petitioner against the order of the prescribed authority dated 22.09.1986. Petitioner has also assailed the order of the prescribed authority dated 25.05.1986 before this Court in the present writ petition. It has been submitted by learned counsel for the petitioner that ceiling proceedings were commenced against the original tenure holder namely Smt. Kamala Singh. Proceedings under Section 10(2) of the Act of 1960 were concluded on 16.12.1974 and certain land of original tenure holder were declared as surplus. The original tenure holder, against the said order, had preferred an appeal and the said appeal was also rejected on 21.07.1976. It seems that the original tenure holder had subsequently approached the High Court assailing both the said orders by filing a writ petition being writ petition No. 2808 of 1976. The only aspect which was urged by the original tenure holder was with regard to the choice to be exercised as per the provisions contained in Section 12 A of the Act of 1960. This Court considering that the original tenure holder has a right to give his choice and once the said choice is given then the prescribed authority is to consider the said choice accordingly and it is for this limited purpose the writ petition was allowed by means of judgement dated

15.11.1978 and matter was remitted to the prescribed authority. Prescribed authority in the remand proceedings duly considered the choice of the petitioner and excluded gata no.25 from the land which was declared surplus and disposed of the said application in terms of the order of this Court. The said order was passed on 22.09.1986 which has been challenged by the petitioner in the present Writ petition.

3. It is noticed that in the remand proceedings the original tenure holder had approached the prescribed authority but it is the petitioner who filed an appeal against the order of the prescribed authority dated 22.09.1986. For the first time, it seems that, the petitioner stated that he was a bonafide purchaser for consideration and submitted that his land deserves to be excluded from ceiling proceeding. He further stated that the choice exercised by the original tenure holder as well as the order passed by the prescribed authority is arbitrary and submitted that his land which has been purchased from the original tenure holder also deserves to be excluded. The prescribed authority duly considered the arguments of the petitioner and rejected the same. It returned a finding that the sale consideration was inadequate and also that one of the purchasers namely Yogendra Singh was closely related to the original tenure holder and consequently it cannot be said that the sale was bonafide or for adequate consideration. The petitioner has approached this Court assailing the appellate order dated 31.3.1995 as well as the order of the prescribed authority dated 22.9.1986. Learned counsel for the petitioner submitted that he had purchased a total of around nine bighas of land from the original tenure holder out of which one bigha of the land has been declared surplus by the prescribed authority. He submits that adequate consideration was paid by the petitioner and also that he is not related to the original tenure holder and submits that his case squarely falls under the provisions of Section 5 sub clause 6 of the Act of 1960, and consequently his land ought to have been excluded.

4. Learned Standing Counsel opposed the writ petition and submits that from the perusal of the entire record it is borne out that the petitioner has never approached the prescribed authority asserting his claim for exclusion of his land from the holdings of the original tenure holder. It is the original tenure holder, Smt. Kamala Devi, who had all along litigated and tried to

establish her rights before the appellate authority as well as before this Court. It is further stated that it is on her behest that the writ petition no. 2808 of 1976 was allowed by this Court and the matter was remitted to the prescribed authority for considering the choice made by her. The prescribed authority subsequently passed the order dated 28.09.1986, in compliance of the directions issued by this Court and excluded the land as per provisions contained in Section 12 A of the Act of 1960, in terms of the choice indicated by the original tenure holder. He submits that the petitioner being a subsequent purchaser from the original tenure holder cannot exercise the rights under Section 12 A of the 1960 Act, as the said right is vested only in the original tenure holder and the original tenure holder herself exercised the rights under Section 12 A, which is clearly indicated by the order passed by this Court as well as the order passed by the prescribed authority and accordingly even with regard to the choice of the petitioner has no case and said choice is not even liable to be considered by the prescribed authority. He further submits that despite the fact that the petitioner has never approached the prescribed authority by moving an application establishing his case under Section 5 sub clause 6 for exclusion of his holdings, but the appellate authority has returned a finding that the said acquisition by the petitioner was not bonafide or for adequate sale consideration.

5. I have heard the learned counsel for the parties and perused the record, from the facts as emanating here-in-above it is clear that petitioner has purchased the disputed property from the original tenure holder though the date of purchase is disputed in as much as in all the documents filed by the original tenure holder there has been a deliberate obliteration of the date of sale. This aspect has been duly considered by the prescribed authority as well as the appellate authority. It may be that date of sale was relevant in as much as that in case the said sale was after issuance of notice under Section 10(2) or was after the cut off date, then it has legal implication and it would be relevant to consider as to whether the said sale is hit by the provisions of Section 5 sub clause 8 of the 1960 Act. In the present appeal, this Court has looked into the appellate order as well as order of the prescribed authority, the order of the prescribed authority seems to be in compliance of the orders of this Court, passed in the Writ petition No.2808 of 1976, where he has accepted the

choice of the original tenure holder and accordingly this Court does not find any infirmity in the order of the prescribed authority and nor does the same require interference.

6. With regard to the order of the appellate authority dated 31.03.1995. It is noticed that a finding has been returned with regard to the fact that the purchase by the petitioner was not bonafide or for adequate consideration. It was not necessary for the appellate authority to have returned the said finding in as much as the said issue was never considered or dealt by the prescribed authority and further we do not find any material brought on record by the petitioner so as to interfere with the finding of the appellate authority as discussed by the appellate authority for coming to the conclusion with regard to the adequacy of the sale consideration or with regard to the fact that sale deed was not bonafide. No interference is also required with the order of the appellate authority. Once we observe that the petitioner has, till date, never exercised his rights under Section 11 (2), though it has been erroneously stated in paragraph no.1 of the writ petition that the objection of the petitioner was rejected by the prescribed authority, but it seems no such order was passed by the prescribed authority, the said averments seems to be incorrect and accordingly it is for the aforesaid reasons we do not find any infirmity in either of the two impugned orders. The petitioner would have been suitably advised to have moved an appropriate application before the prescribed authority for redressal of his grievance and to demonstrate that he is entitled for exemption as provided under Section 5 sub clause 6 of the Act of 1960.

7. Subject to the aforesaid observations this Court does not find any requirement for interference under exercise of Article 226 of the Constitution of India. Accordingly, writ petition is dismissed.

(Alok Mathur,J.)

Order Date :- 20.11.2023

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