

Court No. - 17

Case :- WRIT - C No. - 3000125 of 1996

Petitioner :- Smt.Rameshwari Devi Objection Filed

Respondent :- State of U.P.

Counsel for Petitioner :- Hari Om Singh, Shobhit Mohan Shukla

Counsel for Respondent :- C.S.C.

And

Case :- WRIT - C No. - 3000126 of 1996

Petitioner :- Smt.Saroj Gupta Objection Filed

Respondent :- State of U.P.

Counsel for Petitioner :- Hari Om Singh, Megha Pandey, Shobhit Mohan Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Shobhit Mohan Shukla, alongwith Ms. Megha Pandey, learned counsel for the petitioner, Sri L.M. Khare, learned Standing Counsel on behalf of the respondent nos. 2 and 3.

2. The petitioner by means of the writ petition has assailed the order dated 31.07.1996 passed by the Additional Commissioner Lucknow, Division Lucknow in appeal no.273 of 1990-91, Sri Rameshwari Devi Vs. State of U.P. and also the order dated 11.07.1991 passed by the Prescribed Authority Ceiling. The facts in brief are that proceedings under Section 10(2) of the Uttar Pradesh Imposition of Ceiling on the Land Holdings Act 1960 were initiated against the recorded tenure holder namely Kashi Nath Mehrotra. He has put in appearance before the prescribed authority and filed his objection. In the objections filed by him he stated that he had sold 5 acres land of plot no.1362 situated in village pargana District Kheri to Writ petitioner of Writ petition no.3000125 of 1996 and plot no.1632 measuring 12.5 acres in favour of Suraj Gupta, writ petitioner of 3000126 of 1996 by means of registered sale deed on 07.02.1972. It was stated that for the said sale, there was adequate consideration and said sale was also bonafide and consequently, in his objections, under Section 10(2) before the prescribed authority, he had stated that said lands be excluded from the holdings of the recorded tenure holder. To canvass his

submissions with regard to the fulfillment of conditions prescribed under sub clause 6 of section 5 of the Act of 1960, the petitioners had also adduced oral evidence before the prescribed authority. The prescribed authority after due consideration of the objections, rejected the same by means of the order dated 19.12.1987. Against the order dated 19.12.1987 the recorded tenure holder, namely Kashi Nath Mehrotra had preferred an appeal before the appellate authority which remained pending.

3. The petitioner, thereafter, moved an application under Section 11(2) of the Act of 1960 before the prescribed authority. Before the prescribed authority, it was stated that even though the said sale deed is after the cut off date but the same is bonafide and for adequate consideration and considering the provisions contained sub clause 6 of section 5 of the Act of 1960, the lands which have been transferred by the recorded tenure holder via a registered sale deed in favour of the petitioner deserves to be excluded. The prescribed authority rejected the contentions of the petitioner by means of the order dated 11.07.1991. While rejecting the said application he was of the view that the sale deed was after the cut off date as prescribed under the Act of 1960 and also that no evidence was adduced to show that the sale deed was bonafide. The petitioners, thereafter moved an appeal before the appellate authority. The appeal which was filed by the recorded tenure holder was already pending before the appellate authority and both the appeals were clubbed and heard together. It was also noticed that similarly, other purchasers, who had purchased land from the recorded tenure holder had also filed an application under Section 11(2) before the prescribed authority and after considering the case the prescribed authority had allowed their claims and excluded the lands from the holding of the recorded tenure holder by means of the orders dated 28.06.1991, 13.05.1991, 28.01.1993 and 08.07.1991. Against all the aforesaid orders the state had filed an appeal before the appellate authority. The appeal filed by the State were also clubbed and all appeals have been decided by means of the impugned order. It has been submitted by the counsel for the petitioner that the order of the prescribed authority as well as the appellate authority require interference by this Court. He submitted that even though the transfer in the present case was after the cut off date there was substantial material before the prescribed authority to conclude that the sale deed ought to have been excluded in light of the provision contained in sub clause 6 of section 5 of the Act of 1960. It was clearly stated that there was requirement by the recorded tenure holder for opening of a shop for his son for which he required money and

therefore he had made the said transfers of the land. It has further been submitted that after the said sale deed were executed the land has been mutated in favour of the petitioners.

4. The first issue which requires consideration is as to whether the prescribed authority was bound by his previous order dated 19.12.1987 while considering the objections preferred by the petitioner under section 11(2). As per the scheme of Act of 1960, after publication of the notice under Section 9, objections have to be filed by the recorded tenure holder within thirty days of the said publication. In case the recorded tenure holder fails to file any objection then a notice under Section 10(2) is served upon such tenure holder alongwith a statement calling upon him to show cause as to why the statement may not be treated as correct and the land be declared surplus. Kashi Nath Mehrotra, the recorded tenure holder, in pursuance of the notice issued to him under Section 10(2) had appeared before the prescribed authority. It seems that he has made objections with regard to the land transferred by him in favour of the petitioners and sought exclusion of the said lands from his holdings. To demonstrate that the said sale deed was genuine and bonafide and for adequate consideration, he had produced the petitioners before the prescribed authority who gave oral statements in favour of the recorded tenure holder. It is in the aforesaid circumstances, the prescribed authority was called to determine as to whether the conditions under sub clause 6 of section 5 of the Act of 1960 were fulfilled or not. The prescribed authority had summarily rejected the contention of the recorded tenure holders by merely stating that the said transfer was after the cut off date and that no evidence has been shown to the effect that the said sale was bonafide. On the other hand, after rejection of the application under Section 10(2) at the behest of the recorded tenure holder, the petitioners moved an application under Section 11(2) of the Act of 1960. Though the issue to be determined by prescribed authority was similar, but the parties were different and the present application was at the behest of the purchasers of the land from the recorded tenure holder. The objections of the petitioners were rejected vide order dated 11.7.1991 by merely stating that principles of *res-judicata* had barred him from entering into the controversy again, once the said issue has been decided previously by him on 19.11.1987. He merely recorded that the said transfer was after the cut off date and there is no evidence to show that the sale deed was bonafide or for adequate consideration and also that the application of the petitioner was barred on the principles of *res judicata*, rejected the same. It is noticed that in case the prescribed authority was of the view that the application under Section 11(2) was barred by the principles of *res judicata* then

he need not have appreciated the facts and decided the entire controversy on merits. It seems that despite holding that the application was barred by the principles of *res judicata* he entered into the controversy on merits and appreciated the evidence adduced by the petitioners and made a categorical finding that the petitioners have not been able to establish that the sale was bonafide and for adequate consideration. It has been submitted that the findings are clearly perverse and legally impermissible in as much as for Section 11 of the CPC to be made applicable it has to be demonstrated apart from the fact that the issue is directly and substantially the same in both the suits, it is also to be shown that it is between the same parties whom they or any of them claim litigation on the same issue. In the present case the issue was firstly decided by the prescribed authority on application made under Section 10(2) at the behest of the recorded tenure holder. He had sought exclusion of his land which has been sold by him to the petitioners from his holdings. In the subsequent proceedings, which were initiated at the behest of the petitioners by moving application under Section 11(2) it was also canvassed that the land purchased by the petitioners was ought to be excluded from the holding of the recorded tenure holder as the said sale was fully covered by the provisions of Sub clause 6 of Section 5 of the Act of 1960. By moving an application under Section 11(2) the petitioners were not litigating under rights obtained from the recorded tenure holder but their independent rights were being canvassed as which were acquired by them after entering into the registered sale deed.

5. In the said facts this Court is of the considered view that the principles of *res judicata* does not apply and could not have bound the prescribed authority from coming to a conclusion different from the one recorded by him while deciding the application at the behest of the recorded tenure holder. From the material on record it is clear that the reasons for alienation of the said land has also been disclosed by the recorded tenure holder who had stated that he needed money for opening a shop for his son. There was no material before the prescribed authority or the appellate authority to doubt the statement made by the recorded tenure holder and merely be recording some conjectures in the most cryptic manner they have sought to reject the statement made by the recorded tenure holder.

6. Apart from the above, it is noticed that all the other persons who had purchased land from the recorded tenure holder had subsequently moved application under Section 11 (2) of the Act of 1960 before the prescribed authority. With regard to the said transfer of land which were also subsequent to the cut off date, the prescribed authority returned a finding in favour of the

applicants that conditions under sub clause 6 of section 5 of the Act of 1960 were fulfilled and he allowed the said applications and excluded the lands from the holding of the recorded tenure holder. Against the said order an appeal was preferred by the State which is also decided alongwith impugned order wherein the stand of the State was upheld. Impugned order was assailed by the other tenure holders before this Court. This Court has set aside the order of the appellate authority and upheld the order of the prescribed authority excluding the lands from the ceilings operation under the Act of 1960. The petitioner has been singled out merely because he sought to participate in the proceedings under Section 10(2) of the Act of 1960. Apart from the said fact there is no other material available on record so as to single out and differentiate the case of the petitioner and record a finding against him and include his lands under the Act of 1960 and hold the same to be surplus.

7. This Court has gone through the judgement of the co-ordinate benches of this Court in the case of Munshi Ram Vs. Addl. Commissioner Lucknow in Writ C No. 3000108 of 1996, Suraj Prasad Vs The Adl. Commissioner Lucknow Division and others in Writ C No. 3000119 of 1996 and Gajjan Singh and Others Vs The Adl. Commissioner Lucknow Division and others in Writ C No. 3000123 of 1996. In all of the above cases, the order of the appellate authority has been set aside and the lands have been excluded from the ceiling operations and also from the holding of the recorded tenure holder. There is no reason to treat the case of the petitioner differently when all the lands sold by the recorded tenure holder have been excluded from ceiling operation and excluded from being declared surplus.

8. For all the aforesaid reasons, the writ petition is **allowed**. The order of the prescribed authority dated 11.07.1991 as well as the order of the appellate authority dated 31.07.1996 are set aside. The matter is remitted to the prescribed authority to pass a fresh order giving the petitioner the benefit as has been granted to other persons and pass appropriate orders excluding the land of the petitioners from ceiling operations. Let the needful be done, expeditiously, preferably within one month from the date a certified copy of the order is produced before him.

[Alok Mathur,J.]

Order Date :- 12.12.2023
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