

Court No. - 17

Case :- WRIT - C No. - 3000069 of 1996

Petitioner :- Raj Bahadur Singh

Respondent :- Ist Addl. Commissioner Lucknow Division
Lucknow And

Counsel for Petitioner :- Nirmal Tewari, Ajay Kumar
Singh, D.P.S. Chauhan, Pradeep Kumar Tiwari, Ram K.
Singh, Ram Kumar Singh, Ripu Daman Shahi

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri R. P. Shahi, learned counsel for the petitioner as well as learned Standing counsel appearing for the respondents.
2. The moot question which has arisen for consideration before this Court in the present writ petition is as to whether the proceedings under Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Act of 1960) can be commenced once on previous occasion the land has already been declared surplus.
3. In the present case, it has been submitted by learned counsel for the petitioner that notice under Section 10 (2) of the Act of 1960 was issued to the petitioner i.e. Raj Bahadur Singh on 24.1.1985. The petitioner had submitted his objections. He submitted that on previous occasion also notice under Section 10 (2) of the Act of 1960 was issued to him and the order was passed by the prescribed authority on 5.2.1977 and certain portion of his land was declared surplus which had become final. Consequently second notice in this regard cannot be issued to him.
4. The prescribed authority rejected his objections and categorically stated that second notice can be issued to him. He also recorded the fact that various sale deeds have been executed by the original tenure holder.
5. Aggrieved by the order of the prescribed authority the petitioner preferred an appeal before the appellate authority where also the petitioner contended that the proceedings initiated by the prescribed authority were without jurisdiction as on previous occasion ceiling proceedings had already been concluded and had become final and certain portion of his land has already been declared to be surplus. The appellate authority

also by means of his order dated 31.7.1996 rejected the contentions of the petitioner merely reaffirming the order of the prescribed authority stating that ceiling proceedings can be commenced even if they have been concluded.

6. Learned counsel for the petitioner submits that the ceiling proceedings in the present case could not have been commenced after their conclusion on previous occasion by means of order dated 5.2.1977. He submits that neither was there any rectification or error in the previous proceedings which required any correction in exercise of the powers under Section 13 (a) of the Act of 1960. Even if that is required, the same can be done within two years from the date of notification. Present proceedings have been initiated after expiry of more than nine years and consequently in any view of the matter the said proceedings were illegal and arbitrary. He further submits that under Section 29 of the Act of 1960 the proceedings can be re-initiated only when some other land has come into the hands of the original holder or nature of the land has changed from un-irrigated to irrigated. Neither the aforesaid fact exists in the present case nor has any such situation which has been mentioned or considered either by the prescribed authority or appellate authority and, hence such exercise of power is arbitrary and not envisaged under the Act of 1960.

7. Learned Standing counsel, on the other hand, has opposed the writ petition and supported both the impugned orders. He submits that there is provision under Section 31 for re-determination of land which has been previously declared surplus but could not demonstrate that the conditions prescribed in Section 31 of the Act of 1960 exists in the present case.

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

9. We have also perused the order dated 5.2.1977 passed by the Prescribed Authority in remand proceedings where on the previous occasion the same land was subjected to ceiling operations and the Prescribed Authority was directed to consider as to whether the land was a grove and also in case the said land is excluded, the remaining land would be within the ceiling limits or otherwise. The Prescribed Authority has finalized the proceedings by passing order on 5.2.1977. Once the proceedings had culminated a fresh notice was issued to the petitioner who is the original tenure holder under Section 10(2) of the Act of 1960.

10. The petitioner had raised preliminary objection assailing the validity of the proceedings at the outset before the Prescribed

Authority, who rejected his objections but did not record any reasons for such rejection merely stating that he is duly empowered to re initiate the proceedings under the act of 1960 with regard to the land in dispute even where on previous occasion had been subjected to ceiling operations. When the same aspect was raised before the appellate authority he also rejected the same holding that there is sufficient power to re-initiate the proceedings. The appellate authority also did not consider it necessary to consider the statutory provisions of the Act of 1960 and to discuss with regard to the facts of the present case as to whether there was any sufficient acquisition or accretion of land which may necessitate re initiation of the proceedings under Section 29 or Section 31 of the Act of 1960. The only other provision by which proceedings could be re-initiated is under Section 13 (a) where limitation of two years from the date of notification under Section 14 is provided.

11. From a bare perusal of the order of the Prescribed Authority as well as appellate authority it is clear that there was no such fact for proceeding under Section 13 or 29 or 31 existing in the present case which may necessitate reopening of the proceedings. In case there was any accretion of the land then it was necessary for the same to be indicated in the notice under Section 10 (2). Even when the Prescribed Authority passing the impugned order was mandated to discuss as to whether there was any fresh accretion of land at the hands of the tenure holder for which fresh proceedings could have been initiated under the Act of 1960. A perusal of the entire record clearly shows that there was no materiel before any of the authorities concerned to re-initiate the proceedings under the Act of 1960 when the proceedings had culminated on previous occasion by passing order by the Prescribed Authority on 5.2.1977 had become final. This aspect has also been considered by a coordinate Bench of this Court in the case of ***State of U.P. through Collector, Mirzapur Vs. Additional Commissioner(J), Varanasi Division, Varanasi and others, 2009 (27) LCD 71*** the relevant portion of which is quoted as under:-

"8. From the perusal of the Act it also appears that there is no provision for second notice under Section 10 (2) of the Act and for the re-determination of surplus land except Section 13-A, 29, 30 and 31 of the Act. The scope of Section 13-A came to be considered before the Apex Court in Devenddra Nath Singh and others v. civil Judge and others (2000 (91) RD 28 (SC). In the aforesaid case the Apex Court has held as under:-

Having examined the provisions of Section 13-A and Section 38-B of the Act, we are of the considered opinion that under Section 13-A the Prescribed Authority has the power to reopen

the mater within two years from the date of the notification under sub-section (4) of Section 14 to ratify any apparent mistake which was there on the face of the record. That power will certainly not include the power to entertain fresh evidence and re-examine the question as to whether the two sons, namely, Hamendra and Shailendra were major or not. The power under Section 38-B merely indicate that if any finding or decision was there by any ancillary forum prior to the commencement of the said sections in respect of a matter which is governed by the Ceiling Act, then such findings will not operate as res-judicata in a proceeding under the Act. That would not cover the case where findings have already reached its finality in the very case under the Act. In this view of the mater we have no hesitation to come to the conclusion that the Prescribed Authority has no jurisdiction to reopen the question of majority of the two sons in purported exercise of the power under Section 13-A. If the authority had no jurisdiction, question of waiver of jurisdiction does not arise, as contended by the learned Counsel for respondent.

In the aforesaid premises, the impugned order of the Prescribed Authority as well as that of the High Court are st aside and it is held that in the computation of the ceiling Hamendra and Shailendra will be treated as two major sons."

9. In *Prakash Singh v. Prescribed Authority , Bilaspur and another, 1985 (11) ALR 772 (FB)*, this Court has observed as under:-

"It is only in those cases where the amendments require the Prescribed Authority to redetermine surplus land that the notice under Section 10 (2) be issued. It is, therefore, obvious that there may be cases where the earlier decision as a whole may not require modification at all, or there may be cases where only partial modification may become necessary. For example, if the question is as to whether a particular plot of land is irrigated or not has been determined and does not call for any fresh decision. Since there is no amendment to the relevant provisions in this regard by the 1976 Amendment there would be no necessity of the Prescribed Authority embarking on a fresh enquiry as to whether the said plots are irrigated or not. In such an event the previous order of the Prescribed Authority made before 10th October, 1975 will neither stand annulled nor be non-est."

12. Even form the aforesaid judgment it is clear that it is only under certain specific circumstances as stated under the Act itself that the proceeding can be re-initiated and in the present case none of these facts exist for re initiation of the

proceedings. Both the orders are accordingly illegal and deserve to be set aside.

13. Accordingly the order dated 22.7.1991 passed by the Prescribed Authority and the order dated 31.7.1996 passed by the Ist Additional Commissioner, Lucknow Division, Lucknow are set aside.

14. The writ petition is **allowed**.

(Alok Mathur, J.)

Order Date :- 28.11.2023

RKM.