

Court No. - 17

Case :- WRIT - C No. - 3000075 of 1996

Petitioner :- Shiv Raj Singh And Others

Respondent :- Prescribed Authority Ceiling Unnao And Others

Counsel for Petitioner :- G.S.Nigam,Durgesh Kumar
Verma,Sukhveer Singh,Vijai Bahadur Verma

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Sukhveer Singh, learned counsel for the petitioner as well as learned Standing counsel for the respondents.

2. By means of the present writ petition the petitioner has challenged the order dated 30.11.1993 passed by Prescribed Authority under Section 10 (2) of U.P. Imposition of Ceiling on Land Holdings Act, 1960 as well as appellate order dated 31.7.1996 passed by appellate authority rejecting the appeal preferred against the order of the Prescribed Authority under Section 13 of the Act of 1960.

3. It has been submitted on behalf of the petitioner that a notice under Section 10 (2) was issued to one Shiv Ram Singh, who is father of the petitioner on 28.7.1990 which was duly served upon the tenure holders on 3.8.1990. In response to the said notice the petitioner along with his two brothers, namely Ram Raj Singh and Shyam Raj Singh appeared before the Prescribed Authority and informed that their father has passed away about one year prior. They also filed their objections on 17.8.1990. He filed his objections to the notice issued by the Prescribed Authority. The Prescribed Authority after considering the objections as well as evidence filed by Naib Tehsildar (Ceiling) with regard to the status of the land as to whether it was irrigated or un-irrigated rejected the objections filed by the tenure holder and declared his holdings with regard to plot No.s 281 /4 and 281/9 as surplus totaling to 12.992 hectares.

4. Aggrieved by the said order an appeal was filed before the appellate authority where it was stated that the petitioner has three sons namely Shiv Raj Singh, Ram Raj Singh and Shyam Raj Singh, who are majors and consequently as per the provisions of Section 5 of the Act of 1960 the land should have been excluded in their favour and the Prescribed Authority having not considered the said aspect his order requires interference. He also raised objections with regards to the status

of the land and stated that the same was un-irrigated and the conclusion drawn by the Prescribed Authority was also infirm in this regard.

5. The appellate authority considering the aforesaid statements raised on behalf of the petitioner was of the view that as per the report of the Lekhpal it was evident that two crops were grown on the said land and also that there was provision for irrigation and tube-well was existing on the said land and accordingly he rejected the contentions of the petitioner. With regard to the aspect as to whether he had three sons his statement was relied upon where he has stated that in June, 1993 which is the cut off date, he did have any sons who were major and consequently in this regard also the appellate authority did not agree with the contentions of the petitioner and the same was also rejected.

6. Before the appellate authority it was also submitted by the petitioner at the appellate stage that the said land was subjected to ceiling proceedings on earlier occasion and consequently the same land could not be subjected to ceiling proceedings again. In this regard the appellate authority was of the view that the petitioner had not filed any document before the Prescribed Authority nor this ground was taken by him before the Prescribed Authority with regard to the same land being subjected to ceiling proceedings and concluded by the order of the Prescribed Authority dated 26.12.1974 was just and proper. He has filed a certified copy of the said order. He submits that this issue was also raised before the appellate authority and the same finds mention in the said order. Though the petitioner had filed certified copy and also the argument of the petitioner was considered and rejected on the ground that he has not raised it before the Prescribed Authority.

7. Learned Standing counsel, on the other hand, has opposed the writ petition. He submits that the petitioner has raised all the grounds before the Prescribed Authority as well as appellate authority. He submits that the land was subjected to ceiling proceedings on previous occasion and also but never raised before the Prescribed Authority and consequently the petitioner was precluded from taking the same before the appellate authority accordingly he has supported the impugned order and prayed for dismissal of the writ petition.

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

9. From the aforesaid it is noticed that the present dispute pertains to the land belonging to the petitioner, namely gata No.281/4 and 281/9 in Village Katri Pariyar, Pargana Pariyar,

Tehsil and District Unnao. The main ground as has been raised by the petitioner is that the said land was subjected to ceiling proceedings on the previous occasion. In support of his submissions he has relied upon copy of the order dated 26.12.1974 filed along with supplementary affidavit.

10. A perusal of the said order indicates that notice was issued to the original tenure holder i.e. father of the petitioner on 14.8.1974 and the same was served on the original tenure holder and in his objections the petitioner had only made request that his land situated at gata No. 281/2/9 may not be declared as surplus and in its place land of gata No. 281/2/4 may be declared surplus. The said option exercised by the petitioner was duly accepted and was allowed and the land situated at 281/2/4 was declared surplus. The said plea was taken in the memo of appeal which has been filed along with the writ petition and the same was also considered by the appellate authority.

11. The appellate authority has without considering the consequences as to whether second proceedings are maintainable and without ascertaining the correct facts has proceeded to reject the contentions of the petitioner stating that the said plea was not raised before the Prescribed Authority. This Court is of the view that the issue raised by the petitioner goes to the very root of the matter and should have been duly considered by the appellate authority and by not doing so he has acted arbitrarily and failed to exercise the jurisdiction vested in him.

12. The other reason which requires interference is that if the said issue was raised by the petitioner in his appeal then it was incumbent upon the appellate authority to ascertain from the respondent as to whether the said land was subject matter of ceiling proceedings on previous occasion. By not doing so the appellate authority has acted arbitrarily and not discharged the burden vested in him as such. It was incumbent upon the appellate authority to have taken into consideration that in case the said land was subject to ceiling proceedings on previous occasion then unless the conditions as prescribed under Section 13 or Section 29 of the Act of 1960 were existing, the second proceedings could not have been initiated.

13. On the other hand, if there was no further acquisition of the land or there was an infirmity / defect requiring rectification in the first proceeding then the second proceedings would be maintainable. Factual situation in this regard should have been ascertained from the respondents before summarily rejecting the contentions of the petitioner. Only for the aforesaid aspect

the matter requires interference and this Court is satisfied that the appellate authority has not dealt with the said aspect of the matter and accordingly, the writ petition is **allowed**. The appellate order dated 31.7.1996 passed by Additional Commissioner, Lucknow Division, Lucknow, is set aside.

14. The matter is remitted back to the appellate authority. The petitioner is required to place all the relevant materials which may indicate that the said land was subjected to ceiling proceedings on previous occasion. In case, the appellate authority is satisfied that ceiling proceedings had been undertaken on the said land previously, then it will be open for him to pass appropriate orders or remand the matter to the Prescribed Authority for further adjudication.

15. Considering that substantial period of time has elapsed, let fresh decision be taken by the appellate authority expeditiously, say within a period of four months from the date a certified copy of this order is placed before him. The petitioner shall file all the documents in support of his contentions within a maximum period of one month from today.

16. Till final order is passed as directed by this Court, no coercive action shall be taken against the petitioner with regard to the disputed land.

(Alok Mathur, J.)

Order Date :- 18.11.2023
RKM.