Court No. - 17

Case :- WRIT - C No. - 3000121 of 2002

Petitioner :- Awadh Naresh
Respondent :- Commissioner Devi Patan Gonda And Anr.
Counsel for Petitioner :- G.S. Chauhan,Gyan Singh Chauhan,K.M. Dubey
Counsel for Respondent :- C.S.C.,Abdul Haleem,Mohd. Shameem Khan,Prahlad

Hon'ble Alok Mathur,J.

1. Heard Sri G.S. Chauhan, learned counsel for the petitioner as well as learned Standing Counsel for the respondents.

2. By means of present writ petition the petitioner has challenged order dated 18.11.2001, passed by the Prescribed Authority under Section 10 of the Imposition of Ceiling on Land Holdings Act, 1960, thereby rejecting the objections raised by the petitioner as well as answered the question as formulated in the remand proceedings by the Appellate Authority in its order dated 28.03.1999.

3. The petitioner being aggrieved by the order of Prescribed Authority dated 18.12.2001, preferred an appeal before the Divisional Commissioner which has also been rejected by means of order dated 29.10.2002. Both the aforesaid orders have been impugned in the present writ petition.

4. The petitioner is original tenure holder, was served with notice under Section 10(2) of the Act, 1960 on 11.05.1992. In the said notice it was stated that total irrigated land 30.017 acre of which 22.978acre irrigated land has been given to the tenure holder while 7.039 acre land has been declared as surplus under the Act, 1960. The petitioner on receipt of said notice filed his objections stating that the land has wrongly been shown as irrigated land while same is un-irrigated. It was also stated that the petitioner has major son and therefore two hectares of land has to be released in his favour as per provisions of Section 5(3)(b) of the Act, 1960. The petitioner has also submitted that certain lands are sub-merged and consequently same cannot be taken towards the total holdings of the petitioner and therefore have to be excluded from the land shown to be surplus in the notice dated 11.05.1992.

5. Another ground taken for the first time before the Prescribed

Authority was with regard to plot no. 462, 335 and 678 for which sale deeds have been registered by the petitioner transferring the said plots in favour of Rampyari and Shanti Devi and said transfer was made for valuable consideration and that too prior to cut-off date and consequently said plots had to be excluded from the total holdings of the petitioner.

6. The Prescribed Authority duly considered the objections raised by the petitioner with regard to the fact as to whether land were irrigated or unirrigated. He has stated that as per Khasra for the fasli year 1399, it has been shown that Gata Nos. 316, 335 and 482 have indicated to have "boring" and two crops being grown on the said land. With regard to Gata Nos. 335 and 1584, again it has been shown that they contain "boring". Apart from the aforesaid facts statement of original tenure holder was also recorded where he has admitted that there was "boring" on the said land and considering the aforesaid material, the Prescribed Authority concluded that said land fell into the category of irrigated land rather than un-irrigated land.

7. With regard to the issue that petitioner has major son and two hectares of land should be released in his favour the Prescribed Authority has stated that same has also been taken into account and released.

8. The contention of petitioner with regard to sale of plot no. 462 in favour of Ram Pyari and Shanti Devi it is stated that said plea is not bonafide and has been taken only to escape from the clutches of provisions of Act, 1960.

9. The Prescribed Authority further recorded that neither Shanti Devi nor Ram Pyari had ever filed objections or appeared before the Prescribed Authority assailing the notice issued against the petitioner.

10. The petitioner being aggrieved by the order of Prescribed Authority had preferred an appeal. In appeal the Appellate Authority has also considered the entire facts and affirmed the findings recorded by the Prescribed Authority.

11. The petitioner has assailed both the orders in the present writ petition. It is submitted that firstly the Prescribed Authority failed to consider the grounds raised by the petitioner with regard to sale of plot no. 335 in favour of Shanti Devi and Ram Pyari. He submitted that the said sale deed was executed prior to the cut-off date and according to the provisions of Section 5 of Act, 1960 the said plot should have been excluded from the holdings of the tenure holder. In this regard it is noticed that neither was the sale deed produced before any of the authorities

below nor oral statements were made with regard to such sale deed. It is further noticed that appeal preferred by the petitioner against order of Prescribed Authority was allowed on 28.03.1994 and the matter was remanded to the Prescribed Authority on three grounds namely :-

(i) The first issue which was remanded related as to whether the lands were irrigated or unirrigated and accordingly calculation has not been made correctly.

(ii) As to whether two hectares of land has been excluded in favour of major sons of the petitioner.

(iii) Any mistake in computing the said land had to be corrected.

12. It is noticed that the matter was remitted only on the aforesaid three grounds/issues as stated in the appellate order. It is only in the remand proceedings before the Prescribed Authority it is for the first time the petitioner raised the issue with regard to sale of plot no. 335 to Shanti Devi and Ram Pyari. It seems that he did not filed any material in this regard to support his contention. The jurisdiction of the Prescribed Authority in the remand proceedings was limited by the Appellate Authority by his order dated 28.03.1994. The petitioner never raised this issue at the time when he was responding to the notice under Section 10(2) of Act, 1960 dated 11.05.1992, he never raised this issue even when he filed appeal against the order of Prescribed Authority.

13. It is in the aforesaid facts that the petitioner who was original tenure holder, failed to raise these issues at the relevant point of time, the said issues were raised by him before the Prescribed Authority in the remand proceedings. Though the Prescribed Authority has considered the issues raised by the petitioner, but, has not given any benefit of the same, but it is seen that the said issues were not in competence of the Prescribed Authority while deciding the objections preferred in the remand proceedings.This Court also does not find merit in the arguments raised by the petitioner in this regard and hence no interference in the order of Prescribed Authority or Appellate Authority is called for.

14. The next issue raised by the petitioner is with regard to the exclusion of two hectares of land in favour of his major sons. Both the authorities below have returned finding that two hectares of land has been attached in the land which has been retained by the petitioner after calculation of surplus land under the Act, 1960. Neither has any chart been filed by either of the

party to show that two hectares of land has been released in favour of the sons of petitioner. The statutory right vests in the petitioner under Section 5(3)b of the Act, 1960. Only on this question the matter deserves to be sent back to the Prescribed Authority for confirming as to whether two hectares of land has been released in favour of major sons of the petitioner. In case two hectares of land has already been released in favour of major sons of the petitioner, necessary adjustment be made under Section 5(3)b of the Act, 1960.

15. It has further been contended that the petitioner has filed his objections which have not been considered by the Prescribed Authority or the Appellate Authority. In this regard it has been noticed that objections were not considered because the petitioner at that point of time has not filed affidavit as required by the Prescribed Authority. This issue is also decided in favour of petitioner and in case any objection has been given by him it shall be considered by the Prescribed Authority.

16. The petitioner undertakes to file all the necessary documents before the Prescribed Authority for consideration of his objections and in case said land as disclosed by him is available, then surplus be taken from other available lands of petitioner.

17. In the light of above, present writ petition is **partly allowed**. The matter is remanded to the Prescribed Authority for to consider the following :-

(a) Consider as to whether two hectares of land has been released in favour of major sons of the petitioner, in case it is released no benefit would be given and in case no land is released, the same shall be released.

(b) Option exercised by the petitioner shall be again considered. The petitioner fulfil all the formalities in this regard. And on doing so the Prescribed Authority shall release the land as per option given by the petitioner subject to the conditions stated by this Court herein above.

18. Let aforesaid exercise be conducted expeditiously by the Prescribed Authority and conclude the proceedings within two months from the date of production of certified copy of this order. The petitioner undertakes to cooperate in the said proceedings.

Order Date :- 31.10.2023/A. Verma

(Alok Mathur, J.)

Digitally signed by :-
ANURAG VERMA
High Court of Judicature at Allahabad,
Lucknow Bench