

Court No. - 17

Case :- WRIT - C No. - 3000148 of 1998

Petitioner :- State Of U.P.Through Collector Kheri

Respondent :- Addl. Commissioner Lucknow And Others

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard learned Standing counsel appearing for the petitioner.
2. This writ petition has been filed by the State Government assailing the order passed by Additional Commissioner, Lucknow Division, Lucknow in exercise of powers of under Section 13 of Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Act of 1960) thereby allowing the appeal preferred by the original tenure holders and remanding the matter back to the Prescribed Authority to be decided in terms of the judgment of this Court in Writ Petition No.3797 of 1982 dated 12.12.1988. 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 original tenure holder Sri Sikandar Singh and the proceedings were finalized by the order of the Prescribed Authority dated 12.11.1981 holding that 59.82 acre of land irrigated land was declared surplus.
3. Against the said order five appeals were preferred before the appellate authority, who rejected the four appeals but allowed appeal No.140/81-82 by means of order dated 29.4.1982 and remanded the matter back to the Prescribed Authority. Against the order of remand dated 29.4.1982 the State Government approached this Court by filing writ petition No.3739 of 1982. In the said order the only issue was as to whether the land of original tenure holder so declared surplus by the Prescribed Authority is irrigated or un-irrigated which was the moot question to be decided by this Court. This Court was of the view that the Prescribed Authority be directed to look into the revenue records including latest village map and also to make spot inspection if necessary before giving any finding as to whether the land in question is irrigated or unirrigated. Directions were issued to the Prescribed Authority to look into the matter again in accordance with the directions made therein.
4. The Prescribed Authority in remand proceedings by means of order dated 30.5.1990 again declared 59.82 acres of irrigated

land to be surplus. In appeal No.56/353/90-91 the Additional Commissioner, Lucknow Division, Lucknow while rejecting the appeal considered the fact that the Prescribed Authority had looked into the submissions made by revenue officials with regard to the question of said land being irrigated / un-irrigated and also observed that High Court vide its order dated 12.12.1988 had only stated that if required spot inspection may be made. He states that the High Court had not made it mandatory for the Prescribed Authority to make a spot inspection before passing the order and therefore, held that no interference is required to be made in the order of the Prescribed Authority rejecting the said appeal.

5. Against the order dated 12.3.1997 an application for review was filed by the original tenure holder which has been allowed by means of order dated 13.6.1997 remanding the matter only on the ground that the Prescribed Authority did not conduct spot inspection while complying with the order of this Court dated 12.12.1988.

6. Learned counsel for the petitioner has submitted that the order is illegal and arbitrary in as much as no power of review is vested in the appellate authority in exercise of powers under Section 13 of the Act of 1960 and consequently the said order is without jurisdiction.

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

8. The only question which has been agitated before the Prescribed Authority and the appellate authority repeatedly is with regard to the nature of the land as to whether it is irrigated or unirrigated. When the matter reached this Court in writ petition No.3797 of 1982, this Court found that the Prescribed Authority had not dealt with the said matter correctly and he did not look into the revenue records nor did he conduct any spot inspection. In the aforesaid circumstances, this Court was of the view that the Prescribed Authority has to look into the village map and other records and also to make spot inspection if necessary.

9. Admittedly, in the present case the records of *fasli* year 1379 are not available and the matter has been decided only on the basis of the statements of the revenue officials recorded before the Prescribed Authority. Admittedly, no spot inspection was made by the Prescribed Authority before returning a finding as to the surplus land being irrigated land. It is on this ground alone that the dispute persists and the proceedings have been kept pending for last more than four decades.

10. Without entering into the merits of the case nor considering the grounds raised by the petitioner with regard to the maintainability of the review petition before the Prescribed Authority, this Court is of the considered opinion that the order of this Court dated 12.12.1988 has not been complied by the Prescribed Authority in its letter and spirit. When the revenue records were not complete and the records pertaining to *fasli* year 1379 was not available then it was incumbent upon the Prescribed Authority to have made spot inspection which would have determined the facts as to whether the said land is irrigated or un-irrigated which would have given quietus to the dispute between the parties.

11. A perusal of the records indicates that there is no interim order and by means of the impugned order the Prescribed Authority was directed to pass a fresh order after conducting spot inspection. Though no status report is available on record but after more than two decades the Prescribed Authority would have complied with the appellate order and finalized the matter. In case, any order has been passed by the Prescribed Authority the same would be liable to be challenged in appeal in which situation this Court would not interfere.

12. In case, the Prescribed Authority has not passed any fresh order in pursuance of the impugned appellate order, then to give quietus to the dispute the Prescribed Authority is directed to determine the aspect as to whether the land in dispute is irrigated or un-irrigated by considering all the records as previously directed by this Court vide order dated 12.12.1988 and also to conduct spot inspection in accordance with law.

13. In case no orders have been passed by the Prescribed Authority in compliance of the impugned appellate order dated 29.4.1982 and the matter is pending before him, let needful be done expeditiously and to that effect the Prescribed Authority is directed to conclude the proceedings within a period of six months from today as per the directions of this Court. He shall duly indicate the respondents about this order and the proceedings to be held by him in pursuance of the directions issued by this Court.

14. With aforesaid observations and directions the petition stands **disposed off**.

(Alok Mathur, J.)

Order Date :- 16.11.2023
RKM.