

Court No. - 17

Case :- WRIT - C No. - 3000062 of 2004

Petitioner :- Jawahar Lal And 4 Ors

Respondent :- Additional Commissioner Judicial
Lucknow Division And 3 Ors

Counsel for Petitioner :- V.K. Pandey

Counsel for Respondent :- C.S.C

Hon'ble Alok Mathur,J.

Heard Shri V.K. Pandey, learned counsel for the petitioner as well as learned Standing Counsel on behalf of respondents.

By means of the present writ petition the petitioner has challenged the order dated 23.6.2003 passed by the Prescribed Authority under Section 10 (2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 as well as order dated 06.7.2004 passed by the learned Additional Commissioner (Judicial), Lucknow Division, Lucknow thereby rejecting the appeal preferred against the order of the Prescribed Authority passed under Section 13 of the Act of 1960.

The facts as stated by the petitioner are that the petitioner is the purchaser of a plot of land no.445 Sa situated in village Kumaara, Pargana - Mahona, Tehsil Bakshi Ka Talab, District Lucknow who had purchased the said plot from one Mr. Lalji who in turn had purchased the same from the recorded tenure holder on 03.12.1981.

It has been submitted that proceedings under Section 10 (2) of the Act of 1960 were initiated against the recorded tenure holder namely Kaushalya Devi and notices were discharged by order dated 28.8.1975 holding that the recorded tenure holder does not have any land which could be declared surplus.

It is stated that after the proceedings have culminated and the order of the Prescribed Authority became final as no appeal was filed within prescribed period, the recorded tenure

holder had sold a portion of the said land to one Lal Ji who in turn had sold the land to the petitioner.

The controversy in the present case has arisen as the State chose to file an appeal against the order of the Prescribed Authority some time in 1988. They preferred an appeal before the appellate authority and the said appeal was registered as appeal no.37/88-89. The said appeal was allowed on 04.12.2001 and matter was remanded to the Prescribed Authority for adjudication afresh. Even in the remand proceedings no notice was served to the petitioner despite the fact that in the meanwhile the land has been mutated in the name of the petitioner.

It is in the aforesaid circumstances the Prescribed Authority in the remand proceedings again passed the order dated 23.6.2003 and the land of the petitioner was declared surplus. When the petitioner came to know about the order of the Prescribed Authority he preferred an appeal against the order dated 23.6.2003. The Appellate Authority has rejected the appeal preferred by the petitioner on 06.7.2004 and, hence, the present petition has been filed challenging the order of the Prescribed Authority dated 23.6.2003 as well as order of the appellate authority dated 06.7.2004.

It has been vehemently submitted by the learned counsel for the petitioner that the ceiling proceedings under the Act of 1960 had concluded in the present case against the recorded tenure holder on passing of the order dated 28.08.1975. The recorded tenure holder has sold a plot of land to one Lal Ji on 03.12.1981 and Lal Ji in turn had sold the said land to the petitioner on 02.01.1984. From the aforesaid date it is clear that no proceedings were pending on the date when the land was sold by the recorded tenure holder or when the land was sold by the said Lal Ji to the petitioner. It is only much later that the State filed an appeal against the order of the Prescribed Authority dated 28.08.1975. The petitioner was not represented before the Prescribed Authority

and, consequently, the said proceedings were decided without participation of the petitioner. For the first time the petitioner has raised his grievance before the appellate authority who has rejected the same by means of the order dated 06.7.2004.

While rejecting the appeal preferred by the petitioner a finding has been returned by the appellate authority that the sale deed has been executed in the present case in favour of the petitioner after the land has been declared surplus. The appellate authority has also questioned the exchange of the said land made by the recorded tenure holder stating that the forest land cannot be exchanged, consequently, exchange itself was illegal and the recorded tenure holder did not have any rights to have the said land exchanged.

Learned counsel for the petitioner has submitted that on both the grounds the order is illegal, arbitrary and perverse and, accordingly, deserves to be set aside. He submitted that the finding that the sale had taken place subsequent to the land having been declared surplus is a finding which is evidently perverse and contrary to the record. He submits that the land of the recorded tenure holder were subjected to the proceedings under the Act of 1960 and were released from the ceiling proceedings by the order of the Prescribed Authority dated 28.08.1975.

He submits that on the date of transfer of the said land in favour of the predecessor in interest of the petitioner no ceiling proceedings were pending against the recorded tenure holder. Even when the said land was purchased by the petitioner on 02.01.1984 the situation remained the same. It is only when the appeal was filed in year 1988 order of the Prescribed Authority was reversed on 04.12.2001. Even till 04.12.2001 the disputed land has not been declared surplus inasmuch as the matter was remitted to the Prescribed Authority for deciding the controversy afresh. It is only in the remand proceedings that the Prescribed Authority

by means of the order dated 23.6.2003 for the first time declared the land surplus at the hand of the recorded tenure holder.

In the aforesaid facts the finding of the appellate authority that the petitioner had purchased the land after being declared surplus is clearly contrary to the facts, perverse and consequently requires interference.

The second ground which has been considered by the appellate authority stating that the said land was part of the land exchanged by the recorded tenure holder with the Forest land. He has stated that firstly recorded tenure holder did not himself had sufficient rights for exchange of the said land. He could not have exchanged the said land and secondly no exchange of the Forest land is permissible.

These facts or records were neither examined by the Prescribed Authority nor by the appellate authority and merely on the basis of the conjecture and surmises the finding in this regard has been recorded. Even otherwise in case the State was aggrieved by the order passed, under Section 161 of UPZALR Act there was sufficient powers to have the said findings reversed by filing a revision but Prescribed Authority could not have disbelieved or rejected the exchange made by the competent authority.

There is no doubt that the recorded tenure holder to whom notices were issued had transferred a part of his holding by registered instrument in favour of the petitioner on 02.01.1984. During this period neither the land was declared surplus nor were any ceiling proceedings were pending, consequently, this Court is of the considered view that the findings recorded by the appellate authority in this regard are clearly perverse and arbitrary.

This Court is of the considered view also that once the land was alienated at the time when the ceiling proceedings had already been concluded then there was no occasion for the petitioner to

have moved any application under Section 11 (2) of the Act of 1960. Considering that previously the proceedings under Section 10 of the Act of 1960 had been concluded holding that there was no surplus land at the hands of the recorded tenure holder.

In the present case the Prescribed Authority has passed the order dated 28.8.1975 releasing the lands of the recorded tenure holder after recording a finding that he did not have sufficient land to attract the provision of the Act of 1960. It is for the aforesaid reasons this Court is not inclined to remit the matter to the Prescribed Authority for decision afresh. From the facts it is clear that there was no defect in the transfer of the land by the recorded tenure holder in favour of the Lal Ji or by Lal Ji in favour of petitioner.

Accordingly, the order of the appellate authority as well as Prescribed Authority are set aside. Writ petition is accordingly allowed.

Order Date :- 12.12.2023
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(Alok Mathur, J.)