

Court No. - 17

Case :- WRIT - C No. - 3000062 of 2006

Petitioner :- Raj Kumar And Others

Respondent :- Prescribed Authority Ceiling /Additional Collector And Ors.

Counsel for Petitioner :- S.K.Mehrotra,Ishwar Dutt Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri I. D. Shukla, learned counsel for the petitioners as well as learned Standing counsel on behalf of the respondents.

2. Present petition has been filed by five petitioners. Petitioner No.1 is the original tenure holder while petitioner Nos. 2 to 5 are subsequent purchasers of the plots from the original tenure holder, namely Raj Kumar.

3. It has been submitted by learned counsel for the petitioners that notice under Section 10 (2) was given by the Prescribed Authority on 16.10.2023 in which it was stated that in four villages, namely Ganeshpur Dutahi, Basantpur Raja, Devtaha and Matera, Pargana, Tehsil and District Gonda. He has the total holding of 56.58 acres out of which 46.44 acres is irrigated land out of which 28.42 acres of irrigated land was proposed to be declared surplus under U.P. Imposition of Ceiling on Land Holdings Act, 1960. Petitioner No.1 appeared before the Prescribed Authority and filed his objections on 31.1.2005. The Prescribed Authority by means of order dated 15.3.2005 rejected the objections filed by the petitioner and declared 28.42 acres of irrigated land as surplus land. Petitioner No.1 was further asked to give his options within the period prescribed.

4. The petitioner being aggrieved by the said order had filed his appeal before Additional Commissioner (Judicial), Devi Patan Mandal, Gonda who rejected the same on 2.11.2006 upholding the findings recorded by the Prescribed Authority.

5. Present petition has been filed by the original tenure holder i.e. petitioner No.1 as well as by petitioner No.s 2 to 5 who are the purchasers of the property from the petitioner. Petitioner No.s 2 to 5 never moved any application under Section 11(2) of the Act of 1960 before the Prescribed Authority nor did they appear before the appellate authority and have approached this Court for the first time in the present writ proceedings.

6. The petitioners have assailed both the orders of Prescribed Authority as well as of the appellate authority on various grounds but has lastly submitted that the grievance of the petitioners shall be substantially redressed in case the choice of the land to be declared surplus is duly considered by the Prescribed Authority and have more specifically submitted that the land of petitioner Nos. 2 to 5 which is part of the original tenure holdings of the petitioner is left out from the surplus land and the Prescribed Authority may be directed to include other land of the petitioner as surplus. It has further been submitted that in any view of the matter the said right of choice has been provided by the Act of 1960 as per Section 12 (A) (b) and accordingly even Prescribed Authority is bound to consider the choice of the petitioner No.1 in case the same is given.

7. Learned Standing counsel does not object to the prayer made by the petitioners.

8. Accordingly, with the consent of the parties the petition is disposed off with a liberty to the petitioner No.1 to move appropriate application under Section 12 (A) (d) of the Act of 1960 before the Prescribed Authority within next four weeks.

9. On the application being filed before the Prescribed Authority within the time prescribed, he shall consider and decide the said application and consider as to whether the other holdings of petitioner No.1 can be declared as surplus in lieu of the land held by petitioners No. 2 to 5. He shall decide the said application expeditiously, say within a period of three months from the date a certified copy of this order along with the application is preferred by the petitioner, in accordance with law.

10. With aforesaid direction the petition stands **disposed off**.

11. It is made clear that this Court has not dealt with the merits of the impugned order assailed by the petitioners in the present writ petition.

(Alok Mathur, J.)

Order Date :- 2.11.2023

RKM.