

Court No. - 17

Case :- WRIT - C No. - 3000042 of 2007

Petitioner :- Mohneshwar Prasad Singh

Respondent :- State Of U.P.Through Secy. Revenue Lko. And
2 Others

Counsel for Petitioner :- Virendra Misra,Km. Vasundhara
Mathur,Pranav Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Praveen Agarwal, learned counsel for the petitioner as well as learned Standing Counsel for the respondents.

2. By means of present writ petition the petitioner has assailed the order dated 23.05.2005, passed by the Prescribed Authority, therein objections preferred by Gupteshwar Prasad Singh have been rejected and also order dated 09.05.2007 passed by the Appellate Authority whereby he has rejected the appeal preferred by the petitioner against the order of Prescribed Authority.

3. It has been submitted by learned counsel for the petitioner that petitioner is the original tenure holder and a notice under Section 10(2) of the Imposition of Ceiling on Land Holdings Act, 1960 (*hereinafter referred to as "the Act, 1960"*) was issued and proceedings under Section 10(2) of the Act, 1960 were initiated. As no one has appeared on behalf of original tenure holder, the proceedings culminated ex-parte by means of order dated 30.11.1974. Subsequently, an application was moved before the Prescribed Authority at the behest of petitioner for recall of ex-parte order dated 30.11.1974. The said application was filed by one Kamla Prasad Singh who is the father of the petitioner, indicating that he is appointed as 'Mukhtar' by the petitioner and consequently, the application for recall was filed stating that no notice has been received by the original tenure holder and accordingly sought to recall of previous order passed by the Prescribed Authority. The Prescribed Authority after due consideration rejected the said application by means of order dated 31.10.1975.

4. It seems that apart from the petitioner his brother Gupteshwar Prasad Singh moved an application for recall of order dated 31.10.1975, stating that he has not been served with the notice under Section 10(2) of the Act, 1960 and he had never been given opportunity to participate in the proceedings. The

Prescribed Authority duly considered the objections and was of the view that Gupteshwar Prasad Singh was duly represented and their father had put in appearance on their behalf and has also filed 'Mukhtarnama' and considered the objections filed by father of petitioner, same were rejected and application for recall was accordingly rejected, which was filed on behalf of Gupteshwar Prasad Singh on 26.02.2004. On coming to know about the order dated 26.02.2004, the petitioner approached this Court by filing Writ Petition (C) No. 44 of 2004. This Court by means of judgment and order dated 27.04.2004, accepting the contentions of petitioner, this Court set aside the order dated 26.02.2004 and remitted the matter back to Prescribed Authority for deciding the same afresh after affording opportunity of hearing to all the parties concerned.

5. In the remand proceedings the petitioner appeared before the Prescribed Authority and submitted that he had never been heard by the Prescribed Authority previously. The Prescribed Authority was of the view that previously all the objections preferred by the petitioner which were filed through his father had been heard and that order passed on 31.10.1975 and consequently, once order has become final same could not have been re-opened by the Prescribed Authority. The Prescribed Authority did not accept the contention of the petitioner that previous proceedings initiated by the father of petitioner without having any authority.

6. At this stage there is no dispute that the petitioner did not file any objection under Section 11(2) of the Act, 1960 before the Prescribed Authority and the Prescribed Authority was considering the objections filed by his father Kamla Prasad Singh. The petitioner being aggrieved by the order passed by the Prescribed Authority, rejecting objections of Kamla Prasad Singh dated 23.03.2005, preferred an appeal before the Appellate Authority.

7. Before the Appellate authority no documents or material was filed by the petitioner in support of his contention. The Appellate Authority also went through the entire record and affirmed the findings recorded by the Prescribed Authority. It was specifically stated that Mohneshwar Prasad Singh – Petitioner was duly represented by his father Kamla Prasad Singh and only after recording satisfaction that notices were duly served upon the original tenure holder, the objections filed were duly decided. He further stated that objections under Section 11(2) of the Act, 1960 were preferred on behalf of original tenure holder by father of the petitioner which have been decided on merits by order dated 31.10.1975. He has further stated that in the application under Section 11(2) of the Act, 1960 there was deliberate concealment with regard to

previous proceedings and Kamla Prasad Singh duly represented his son before the Prescribed Authority. Both the authorities below were satisfied that father of the petitioner had duly represented the petitioner and who filed objections which were decided by means of order dated 31.10.1975.

8. The Appellate Authority was of the view that once petitioner was duly represented before the Prescribed Authority and an order on merits had been passed there was no occasion for the Prescribed Authority to re-hear the matter again on an application under Section 11(2) of the Act, 1960 and consequently rejected the appeal preferred by the petitioner.

9. Assailing both the orders learned counsel for the petitioner has submitted that notice under Section 10(2) of Act, 1960 was never served upon the petitioner. He has submitted that petitioner lives in Patna while notices were sought to be served at Lucknow at Village – Habwapur Gosaiganj, Tehsil - Mohanlalganj, Lucknow. It is submitted that it is mandatory for the authority to serve the notice under Section 10(2) of the Act, 1960 upon the original tenure holder and any defect in service would be fatal to the proceedings, hence the entire proceedings deserve to be set aside and the matter remitted to the Prescribed Authority for re-hearing.

10. In support of his submissions learned counsel for the petitioner has relied upon the judgment in the case of Satish Chandra Tiwari Vs. State of U.P. 2022 (2) ALJ 560. It is submitted that in the said case notices were received by the person other than original tenure holder and no appearance was put in by the original tenure holder and the Prescribed Authority proceeded ex-parte. He submits that the Court had held it mandatory that notices are served upon the original tenure holder.

11. Learned Standing Counsel on the other hand has opposed the writ petition by submitting that petitioner being original tenure holder was duly represented before the Prescribed Authority by his father Kamla Prasad Singh as well as his brother Gupteshwar Prasad Singh. The objections under Section 11(2) of the Act, 1960 were duly considered by the Prescribed Authority and only in remand proceedings application of Gupteshwar Prasad Singh was heard. It is submitted that petitioner did not submit any application to canvass his submissions that notices were never served upon him. He submits that in case petitioner sought adjudication on the fact that notice under Section 10(2) of the Act, 1960 were never served, he should have moved an application and also demonstrate his case before the Prescribed Authority by filing relevant documents in support of his contention. Before the

Prescribed Authority the petitioner did not at any stage move any application so that his submission could have been accepted nor had he filed any document before the Prescribed Authority in support of his submissions to indicate that notice was never served upon him.

12. Heard learned counsel for the parties and perused the record.

13. It is noticed that proceedings were initiated by issuance of notice under Section 10(2) of the Act, 1960. In pursuance to the said notice due representation was made by one Kamla Prasad Singh who is the father of the petitioner, who also filed objections to the said notice. The father of the petitioner had represented his son i.e. the petitioner before the Prescribed Authority and also filed his authorisation in the form of 'Mukhtarnama'. After considering objections filed by the Kamla Prasad Singh the Prescribed Authority did not concur with the same and rejected the objections. Brother of the petitioner i.e. Gupteshwar Prasad Singh moved an application for recall of order dated 31.10.1975. The said application was also rejected on 26.02.2004.

14. The petitioner did not appear before the Prescribed Authority assailing the order dated 26.02.2004, but filed writ petition before this Court being Writ Petition No. 44 (Ceiling) of 2004, which was allowed by means of order dated 27.07.2004, remanding the matter back to Prescribed Authority for deciding the matter fresh after giving opportunity of hearing to the parties concerned.

15. It was open for the petitioner to move appropriate application before the Prescribed Authority stating his Case that he had never been served with the notice under Section 10(2) of the Act, 1960 and had such an application been moved before the Prescribed Authority, he could have opportunity to examine the contentions of petitioner as well as examine his own records and would have come to a finding as to whether the petitioner was duly served with the notice under Section 10(2) of the Act, 1960 or not.

16. It is further made clear that even in remand proceedings the Prescribed Authority was merely considering an application filed by his brother Gupteshwar Prasad Singh for recall of order dated 31.10.1975. There was no application preferred by the petitioner for consideration before the Prescribed Authority and consequently it was not possible for the Authority to allow the contention of the petitioner in absence of any application filed before the Prescribed Authority.

17. It is in the aforesaid circumstances the Prescribed Authority

rejected the objections preferred by Gupteshwar Prasad Singh. Aggrieved by the rejection the petitioner had moved appeal before the Appellate Authority. At all stages and even before this Court the solitary ground urged is that the petitioner being original tenure holder was not sufficiently served. In case that was correct, then same issue had to be adjudicated by the Prescribed Authority after objections filed by the petitioner under Section 11(2) of the Act, 1960, it were never filed. Even before the Appellate Authority no material was filed to demonstrate that the petitioner was never served with the notice nor were any documents to this effect were filed before the Prescribed Authority to canvass his submission in this regard. The Prescribed Authority also considered the objections of the petitioner and returned a finding that petitioner at all stages was duly represented by his father who had represented him in the capacity of 'Mukhtar'. Mukhtarnama was also filed. Before this Court submission was made that there was defect in the 'Mukhtarnama' as well as Vakalatnama filed by his brother. These are questions of fact which were never urged before the authorities below and accordingly the petitioner would not be permitted to raise such objections before the writ Court for the first time.

18. The Appellate Court after considering entire facts did not find any infirmity in the order of Prescribed Authority with regard to the fact as to whether the petitioner was duly represented before the Prescribed Authority while considering objections under Section 11(2) of the Act, 1960.

19. Undoubtedly, law with regard to service is clear where such notice has to be served upon the original tenure holder but any objections with regard to service has to be taken before the appropriate authority when appearance is put before him. Once father of petitioner had put in appearance in the proceedings under Section 10(2) of the Act, 1960 then it was deemed that notices have been served on the petitioner and father had also filed his 'Mukhtarnana' indicating that he had authority to appear on behalf of the petitioner. There cannot be any defect in the procedure which was followed. Before the Prescribed Authority the procedure was never questioned at any stage, and even the petitioner did not file any application which precluded the Prescribed Authority from going into such question while deciding the matter in remand proceedings.

20. Considering the arguments raised on behalf of the petitioner and after perusing the record, this Court does not find any infirmity with the order of the Prescribed Authority or the Appellate Authority.

21. In view of above discussion, this Court is of the considered

view that there is no infirmity in either of the two orders. The writ petition being devoid of merits is dismissed.

Order Date :- 17.11.2023

A. Verma

(Alok Mathur, J.)