

Court No. - 17

Case :- WRIT - C No. - 3000007 of 2008

Petitioner :- Ram Kumar

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

Counsel for Petitioner :- Ravindra Kumar Sinha

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Ravindra Kumar Sinha, learned counsel for the petitioner as well as learned Standing Counsel for the respondents.

2. The petitioner is aggrieved by the order dated 14.11.2007, passed by the Appellate Authority under Section 13 of the Imposition of Ceiling on Land Holdings Act, 1960 (*hereinafter referred to as "the Act, 1960"*) as well as order dated 02.03.2007, passed by the Prescribed Authority.

3. It has been submitted by learned counsel for the petitioner that notice dated 16.09.2004 under Section 10(2) of the Act, 1960 was issued to one Murli Dhar, who is father of the petitioner. After issuance of the notice certain defects were noticed and consequently an amended notice was issued to the original tenure holder on 23.03.2005. In the said notice it was proposed that 7-3 hectares of irrigated land was to be left for the personal use of the original tenure holder and remaining 2 - .88 hectares of land was sought to be declared surplus under the provisions of Act, 1960. The petitioner had filed objections and stated that his father Murli Dhar had died on 05.01.1977 leaving behind two sons including the petitioner and his other brother Krishna Kumar. Both the brother have inherited half of the land holdings of Murli Dhar. It was further stated that the petitioner has three sons who were major alongwith married daughter and consequently two hectares of land deserves to be excluded from his holdings. He has further stated that proceedings were concluded in pursuance to the previous notice under Section 10(2) of the Act, 1960, and to that effect he had submitted that with regard to same land fresh proceedings under Section 10(2) of the Act, 1960 could not be initiated and same would be barred by the principles of *res-judicata*.

4. With regard to the fact that proceedings were hit by the principles of *res-judicata*, the Prescribed Authority framed issue

no. 3 and it was stated that no documents have been filed by the petitioner to indicate that said proceedings had culminated and finalised by any order and consequently the Prescribed Authority is of the view that principles of *res-judicata* cannot be applied in the said case.

5. The Appellate Authority in the impugned order has stated that said issued has been raised by the appellants, but it seems that he had not dealt with or returned any finding with regard to the said issue.

6. Learned counsel for the petitioner submits that once issue has been raised and duly recorded by the Appellate Authority, it was mandated for him to return a finding with regard to the issue raised. By not considering the said issue the Appellate Authority has acted arbitrarily and consequently such an order would be rendered illegal and arbitrary having been passed without any application of judicial mind.

7. Learned Standing Counsel on the other hand has opposed the writ petition but could not dispute the fact that issue pertaining to the previous culmination of proceedings in pursuance to the notice under Section 10(2) of Act, 1960 was duly raised by the petitioner before the Appellate Authority on which no finding has been returned by him, nor has be dealt with the said issue in the impugned order.

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

9. It is noticed that the Appellate Authority is mandated to consider the grounds raised by the appellant and in case any issued raised by the appellant is not considered, the very purpose of filing an appeal gets frustrated and consequently not in conformity with the principles of judicial propriety. The authority while deciding an appeal is under mandate to consider the issues raised in the appeal and return finding in this regard and by not doing so, the Appellate Authority has clearly abdicated his jurisdiction and such an order cannot be sustained.

10. In the light of aforesaid this Court is of the considered view that despite noticing the arguments of the appellant that order of Prescribed Authority was hit by the principles of *res-judicata* and the said issue has not been considered by the Appellate Authority and consequently the appellate order deserves to be set aside.

11. In the light of above, present writ petition is **partly allowed**. The order dated 14.11.2007, passed by the Appellate Authority is set aside. The matter is remanded to the Commissioner,

Lucknow Division, Lucknow to consider and decide the appeal preferred by the petitioner afresh expeditiously, say within a period of three months from the date of production of certified copy of this order.

Order Date :- 16.11.2023

A. Verma

(Alok Mathur, J.)