

Court No. - 17

Case :- WRIT - C No. - 3000087 of 2008

Petitioner :- Prithabi Raj Singh

Respondent :- Additional Commissioner Faizabad
Division Faizabad

Counsel for Petitioner :- H.S.Tiwari

Counsel for Respondent :- C.S.C.,Rajendra
Pratap Singh,Sanjay Tripathi

Hon'ble Alok Mathur,J.

Heard Shri H.S. Tiwari, learned counsel for the petitioners as well as learned Standing Counsel on behalf of respondents.

Present writ petition is being filed by the petitioners being aggrieved by the order dated 18.8.2008 passed by the learned Additional Commissioner (Administration), Faizabad Region, Faizabad thereby allowing the appeal preferred by the respondents under Section 13 of U.P. Imposition of Ceiling on Land Holdings Act, 1960.

The petitioners are aggrieved by the only portion of the said order whereby the Additional Commissioner (Administration), Faizabad Region has remanded the matter to the Prescribed Authority to determine as to whether after addition of the disputed 16 plots in favour of the petitioners as irrigated, the land of the petitioners would be available to be declared surplus under the provisions of the Act of 1960 or not ?

It has been submitted by the learned counsel for the petitioners that a notice under Section 10 (2) of the Act of 1960 was issued to Ayodhya Singh.

Initially Ayodhya Singh filed his objections but later on he filed an application on 28.5.1976 that he does not want to contest the case and gave his choice of plots which could be declared as surplus under the Act of 1960 and, accordingly, the proceedings of the Prescribed Authority became final vide order dated 31.5.1976.

The petitioners claim that they are the owners of the relevant plots in question the choice of which was given by Ayodhya Singh in the proceedings before the Prescribed Authority which became final by means of order dated 31.5.1976. He stated that, in fact, the petitioners are owner of the said land and the said land had come into the hands of the petitioners by means of settlement wherein the Ayodhya Singh himself was a party and a compromise was arrived at on 25.02.1958 before the 'Munsif' (South) Sultanpur.

It is stated that during the consolidation proceedings the said settlement was accepted by the revenue authorities and the name of the petitioners was also mutated in the revenue records.

It is in the aforesaid circumstances that objection under Section 11 (2) of the Act of 1960 was filed by the petitioners before the Prescribed Authority stating that the order dated 31.5.1976 deserves to be set aside to the extent it declares the land owned by the petitioners to be surplus at the hands of the original tenure holder, i.e., Ayodhya Singh. He had filed all the relevant documents before the Prescribed Authority.

The Prescribed Authority by means of the order dated 19.11.1999 held that the plots in question of which the choice was given by the original tenure holder Ayodhya Singh actually belong to the petitioners and, accordingly, after recording his satisfaction excluded the said plots from the holdings of the Ayodhya Singh and directed that surplus lands be declared from the other holdings of the Ayodhya Singh.

The legal heirs of Ayodhya Singh filed an appeal against the order of the Prescribed Authority, i.e., against order dated 19.11.1999 before the learned Additional Commissioner (Administration) Faizabad Mandal, Faizabad.

It was stated that in case the said plots are excluded from the holdings of the original tenure holder Ayodhya Singh then the entire matter will

have to be relooked and determined as to whether the said land falls under the mischief of the Act of 1960 and redetermination of the entire plots will have to be taken and order of the Prescribed Authority simplicitor directing that the other lands of the original tenure holder be taken as surplus, would become arbitrary.

The appellate authority being satisfied by the arguments raised on behalf of the original tenure holder Ayodhya Singh set aside the order of the Prescribed Authority dated 19.11.1999 and remanded the matter to the Prescribed Authority for fresh determination

The Prescribed Authority in the remand proceedings excluded the lands of the petitioners from the holdings of the Ayodhya Singh and declared other lands of the original tenure holder to be surplus.

It is against the order dated 16.8.2004, passed by the Prescribed Authority that appeal was filed by the legal heirs of the original tenure holder Ayodhya Singh.

In the appeal the appellate authority by means of the order dated 18.8.2008 which has been impugned in the present writ petition, has allowed the appeal and set aside the order of the Prescribed Authority dated 16.8.2004 and it has been held that once the lands of which the petitioners claim to be owner are excluded from the holding of the original tenure holder then a redetermination will have to be made and, consequently, the matter deserves to be remanded to the Prescribed Authority.

He was further of the opinion that considering the large chunk of the land which has been excluded from the holding of the original tenure holder it has also to be determined by the Prescribed Authority as to whether the petitioners would come into ambit of the mischief of the Act of 1960 and whether their holdings also liable to be declared surplus.

The petitioners while assailing the order dated 18.8.2008 has submitted that previously the holdings of the petitioners were also subjected to the proceedings under the Act of 1960. The petitioners had filed their objections before the Prescribed Authority and the proceedings were concluded on 25.8.1998 discharging the notice issued to the petitioner.

He submits that once the proceedings against the petitioners under the Act of 1960 have already taken place and notice have been discharged then the findings of the appellate authority directing the Prescribed Authority to initiate fresh proceedings is illegal and arbitrary and would be barred by the principle of res judicata.

Learned Standing Counsel on the other hand has opposed the writ petition.

He has submitted that there is no infirmity in the orders passed by the appellate authority. He has stated that in case the petitioners are declared to be the owner of the plots in question on the basis of the compromise and the lands of the original tenure holder Ayodhya Singh are excluded then certainly addition made in the holdings of the petitioners would be required to be looked into by the authorities under the Act of 1960 and it would be relevant to find as to whether the said land falls within the mischief of the Act of 1960.

He submits that a perusal of the previous order of the Prescribed Authority dated 25.8.1998 which has been annexed by the petitioners in the supplementary affidavit would indicate that Prescribed Authority has discharged the notice not on merits but merely on the ground that notice did not contain adequate material from which it could be declared that the said lands were either irrigated or unirrigated or that said lands could be declared surplus. He submits that there was no decision on merits of the case but merely on technicality as there was infirmity in the notice under Section 10 (2) of the Act of 1960 issued to the petitioner and, consequently, the same was

discharged.

He further vehemently submitted that the order dated 25.8.1998 itself records that whenever the State authorities gather sufficient material it will be open to them to initiate fresh proceedings against the petitioner.

He submits that in light of the findings of the Prescribed Authority dated 25.8.1998 it cannot be said that any order was passed on merits in favour of the petitioner to indicate that his lands have been excluded from the Act of 1960 and also submitted that in absence of any finding on merits it cannot be said that the impugned order would be hit by the principle of *resjudicata*.

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

It is noticed that the land at the hands of the original tenure holder Ayodhya Singh was declared surplus on the basis of the choice given by him before the Prescribed Authority who passed the order dated 31.5.1976. It is stated that when the petitioners came to know that their lands have been declared to be surplus on the basis of choice given by the original tenure holder Ayodhya Singh, they filed objections before the Prescribed Authority. The Prescribed Authority after examining entire material submitted by the petitioners was of the considered view that the land of the petitioners deserves to be excluded from the original holding of the Ayodhya Singh. He further was satisfied that on the basis of the mutual agreement resulting in the decree passed by the Munsif South, Sultanpur, the said land has come into the hands of the petitioners in 1958 and if that is the case then the same was prior to the cut off date and, consequently, the said land deserves to be excluded from the holding of the original tenure holder Ayodhya Singh.

The legal heirs of the original tenure holder Ayodhya Singh filed an appeal against the order of the Prescribed Authority urging that once the lands have been excluded then the redetermination of

the lands would be necessary rather than passing an order simpliciter taking surplus land from the other holding of the original tenure holder.

This argument found favour with the appellate authority due to which the appeal was allowed and remitted to the Prescribed Authority.

The Prescribed Authority proceeded to pass the same order which was again subjected to an appeal resulting in the impugned order dated 18.8.2008.

This Court is of the considered view that the appellate authority has rightly considered the fact that once the petitioners are declared to be the owner of the plots in question which were treated to be the original holdings of the original tenure holder Ayodhya Singh then the said plots deserves to be excluded from the holding of the original tenure holder Ayodhya Singh. Once the said plots are excluded then the redetermination with regard to the surplus land has to be done by the Prescribed Authority and this exercise was never conducted by him despite a specific finding being recorded by the appellate authority by means of order dated 28.11.2000.

It is in the aforesaid circumstances that he has allowed the appeal and set aside the order of the Prescribed Authority. It is further noticed that the appellate authority has also directed the Prescribed Authority to look into the holdings of the petitioners, specially in light of the fact that the plots of which the petitioners have been declared to be owners now have to be treated as lands in their hands and consequently they are also liable to be dealt with under the Act of 1960.

It is in the aforesaid circumstances the direction has been issued by the appellate authority to the Prescribed Authority.

Learned counsel for the petitioners submits that this portion of the order of the appellate authority is without jurisdiction and liable to be interfered with.

Considering the submissions of the learned counsel for the petitioners this Court is of the considered view that the appellate authority is also an authority under the Act of 1960 and all directions for implementation of the Act of 1960 can be given by him in appropriate cases.

In the present case the direction given by him are clearly borne out from the record that a large tract of the land has been excluded from the holding of the original tenure holder Ayodhya Singh and added to the holdings of the petitioners. Once any addition is done to the original holding of any person then sufficient powers are there under Section 38 A of the Act of 1960.

Section 38 A of the Act of 1960 are sufficient to require the tenure holder to furnish such particulars with regard to the land held by him and members of his family as prescribed.

For the sake of convenience Section 38 A of the Act of 1960 is reproduced below :-

“38-A. Power to call for particulars of land from tenure holders - (1) Where the Prescribed Authority or the appellate Court considers it necessary for the enforcement of the provisions of this Act, it may, at any stage of the proceedings under this Act, require any tenure holder to furnish such particulars by affidavit in respect of the land held by him and members of his family as may be prescribed.

(2) The particulars of land filed under sub-section (1) may be taken into consideration in determining the surplus land of such tenure holder.”

Considering that specific powers have been given to the appellate authority for calling for record from the tenure holder with regard to his holdings, this Court is of the considered view that the directions issued by the appellate authority are in conformity with the provision of the Act of 1960.

This Court is also of the view that the previous proceedings in light of the order of the Prescribed Authority dated 25.8.1998 would not bar the

proceedings under the Act of 1960 as no findings were recorded on the merits by Prescribed Authority and proceedings were dropped merely on account of the inadequacy of material. It was clearly recorded that whenever the State have sufficient material they will be free to proceed against the petitioner in accordance with law.

In light of the above, this Court is of the considered view that there is no merit in the present writ petition.

The writ petition is accordingly dismissed.

Considering the fact that due to the interim order of this Court the order of the appellate authority could not be complied with, consequently, the Prescribed Authority is directed to proceed and comply with the order of the appellate authority dated 18.8.2008 expeditiously.

With the aforesaid directions the petition is dismissed.

It is made clear that we have not interfered with the order of the appellate authority and the Prescribed Authority shall comply the same.

Order Date :- 16.11.2023

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(Alok Mathur, J.)