

Court No. - 17

Case :- WRIT - C No. - 3003364 of 1985

Petitioner :- State Of U.P. Thru Collector Kheri

Respondent :- Karamjeet Singh And Others

Counsel for Petitioner :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard Mr. G.K. Pathak, learned State Counsel appearing for petitioner. Notice to opposite party no. 7 being merely proforma in nature is dispensed with.

2. Earlier notices had been issued to the opposite parties no. 1 to 6 vide order dated 15.07.1985. As per office report dated 06.06.1988, service was not effected upon opposite parties no. 1, 2, 3, 4, 5 & 6. It appears that subsequently notices have been issued again which also could not be served and in the meantime the opposite parties no. 2, 3, 4 & 6 passed away due to which application for substitution of their heirs was filed alongwith applications for condonation of delay in setting aside abatement. Notice was also issued on the aforesaid application on 13.10.2022 and subsequently as well and as per office report dated 04.07.2023, was deemed sufficient upon proposed opposite parties no. 2/1 to 2/3 as well as opposite party no. 4/1. So far as opposite party no. 3/1 and 6/1 was concerned, publication was directed for opposite party no. 3/1 and compliance affidavit has been filed to submit that publication has been effected on 05/06.04.2024 as has been noticed vide order dated 25.04.2024. The office report dated 25.04.2024 also indicates that opposite party no. 6/1 does not now reside at the address indicated in the petition.

3. In view of aforesaid, the Applications No. 1 of 2022 and 2 of 2022 are hereby allowed condoning delay and setting aside abatement with regard to substitution for the aforesaid opposite parties. The Application No. 3 of 2022 seeking substitution of legal heirs of the opposite parties no. 2, 3, 4 & 6 is also allowed.

4. Consequential amendments in the memorandum of petition shall be incorporated during the course of day.

5. In view of narration of facts and orders as indicated hereinabove, it is evident that sufficient notice has been provided to the opposite parties to represent their case in the

present petition but no one has put in appearance on their behalf.

6. The petition pertains to the year 1985 and is therefore being decided on its own merits.

7. Petition has been filed by the State challenging judgment and order dated 09.04.1984 passed in Rent Appeal No. 56 of 1981 whereby appeal preferred by the initial tenure holders has been allowed.

8. It has been submitted that earlier notice under Section 10 (2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 was initiated against the original tenure holder Swroop Singh and the proceedings were concluded by passing of order on 22.02.1975 whereby an area of 17.822 acres was declared surplus. Subsequently in accordance with amendment incorporated vide Act No. 20 of 1976, fresh notice under Section 10 (2) of the Act was issued to the said tenure holder which was replied to by him resulting in passing of the initial order dated 28.10.1978 in which properties pertaining to present opposite parties no. 1 to 5 were included in the holding of Swroop Singh whereas the holding of certain other persons was excluded therefrom.

9. It is submitted that thereafter the present opposite parties no. 1 to 5 filed an application for recall of the aforesaid ex parte order which was allowed vide order dated 27.02.1979 whereafter order was passed by the prescribed authority on 31.03.1981 upholding inclusion of the properties of opposite parties no. 1 to 5 in the holding of said Swroop Singh. The said order dated 31.03.1981 was thereafter challenged in Rent Appeal No. 56 of 1981 which has been allowed by means of impugned judgment and order dated 09.04.1984.

10. It has been submitted that the appeal has been allowed only on the single ground regarding applicability of Section 31 (3) of U.P. Act No. 20 of 1976 on the ground that proceedings re-initiated under Section 10 (2) of the Act were required to be completed within a period of two years from 10.10.1975, which is the date on which the amending act came into force. It is submitted that the appellate authority has completely misconstrued the provisions of Section 31 (3) of the Act No. 20 of 1976 wherein under only notice was required to be issued under Section 10 (2) of the Act within a period of two years and the limitation did not apply to final determination. Learned counsel has placed reliance on judgment rendered by Hon'ble Supreme Court in the case of **Darshan Prasad and others versus Civil Judge II, Gorakhpur and others** reported in

1992 RD 245 to buttress his submissions. It is submitted that the appellate Court has wrongly placed reliance on judgment rendered in the case of **Smt. Mithlesh Kumari versus State of U.P.** reported in **1985 ALJ 33**.

11. Upon consideration of submissions advanced by learned counsel for petitioner, the facts as narrated hereinabove are undisputed. It is quite evident that initially notice under Section 10 (2) of the Act was issued to the original tenure holder Swroop Singh which was decided vide order dated 28.10.1978 ex parte against the opposite parties no. 1 to 5. The said ex parte order was recalled on 27.02.1979 whereafter the order dated 31.03.1981 was passed upholding the surplus land indicated earlier and the said order was challenged in rent appeal culminating in passing of the impugned order.

12. A perusal of the impugned order will make it evident that appeal of opposite parties no. 1 to 5 has been allowed only on the ground of Section 31 (3) of the Act No. 20 of 1976.

13. For better appreciation, the aforesaid provision is quoted as follows:-

"31. Transitory Provisions- (1) All proceedings under sub-ss. (3) to (7) of S. 14 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Ordinance, 1976, pending before any Court or authority immediately before the date of such commencement shall be deemed to have abated on such date.

(2) Where an order determining the surplus land in relation to a tenure-holder has been made under the principal Act before Jan. 17, 1975 and the Prescribed Authority is required to redetermine the surplus land under S. 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974, then notwithstanding anything contained in sub-s. (2) of S. 19 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, every appeal under S. 13 of the principal Act or other proceedings in relation to such appeal, preferred against the said order, and pending immediately before the tenth day of Oct. 1975, shall be deemed to have abated on the said date.

(3) Where an order determining surplus land in relation to a tenure-holder has been made under the principal Act before the tenth day of Oct. 1975, the Prescribed Authority (as defined in the principal Act) may, at any time within a period of two years from the said date, redetermine the surplus land in accordance with the principal Act as amended by this Act, whether or not any appeal was filed against such order and notwithstanding any appeal (whether pending or decided) against the original order of determination of surplus land.

(4) The provisions of S. 13 of the principal Act shall mutatis mutandis apply to every 'order redetermining surplus land under sub-s. (3) of this section or S. 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974;

Provided that the period of thirty days shall, in the case of an appeal against the order referred to in S. 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974, be computed from the date of such order or Oct. 10, 1975, whichever is later.

(5) The provisions of S. 13-A of the principal Act shall mutatis mutandis apply to every redetermination of surplus land under this section or under S. 9 of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1974.

(6) Where any assessment Roll has become final under sub-s. (4) of S. 21 before the sixteenth day of Feb. 1976, the same shall not be reopened, notwithstanding any amendment made in Chap.III of the principal Act read with the Schedule thereof by this Act."

14. The appellate Court has placed complete reliance on judgment rendered by this Court in the case of **Smt. Mithlesh Kumari** (supra).

15. The aforesaid judgment has clearly been passed on an appreciation of Section 31 of U.P. Act No. 20 of 1976 which pertains to transitory provisions and stipulates that where order determining surplus land in relation to a tenure holder has been made under the principal Act before 10th day of October, 1975, the prescribed authority may at any time within a period of two years from the said date, redetermining the surplus land in accordance with the principal act.

16. After appreciating the aforesaid aspect, the learned Judge has held as follows:-

"13. Now I go on to deal with the second submission of the learned Standing Counsel. As stated above, he made a point that what S. 31(3) requires by laying down the rule of two years is that the fresh proceedings should be initiated within a period of two years and it is not necessary that they should be completed also within a period of two years. In support of this contention as I have already said above, he placed reliance on the parent Act which nowhere lays down any time-limit within which the ceiling proceedings have to be completed. It may be seen that the mere fact that in the parent Act no such time limit has been laid down, can have no relevance to decide whether such a time limit has been placed for the subsequent proceedings taken for redetermination of the surplus land. It is quite possible to think that the Legislature in its wisdom did not think it necessary to lay down any rule of limitation for the original proceedings but thought it necessary that when a revision was called for, that should be accomplished in an expeditious manner within a time limit. In any case, the controversy will have to be decided with reference to the rule contained in the Amending Act viz, under S. 31(3) of the U. P. Act No. 20 of 1976. There can be no denying the fact that it does lay down a rule of limitation. It should be seen that if one were to accept the contention of the learned Standing Counsel then there should have been no rule of limitation at all in this sub- section because under S. 10 of the parent Act no time limit has been laid down for the issuance of the notice under the said provision of the Act. In the same manner there is no time limit laid

down under S. 9(1) or Sec. 9(2) including its proviso in respect of the general notice issued under the said provision. Where was the justification for laying down any rule of limitation under S. 31(3) of the U. P. Act No. 20 of 1976 when none existed in Ss. 9 and 10 of the parent Act? Even on the basis of the contention raised by the learned Standing Counsel he has conceded that the rule of two years' limitation must be held to be applicable at least to the issuance of the subsequent notice under S. 10(2) of the Act. Therefore, in my view, nothing hinges on the fact that in the parent Act there is no rule of limitation laid down for the completion and finalisation of the ceiling proceedings. Therefore, the only point which remains to be considered is whether when the said provision contained under S. 31(3) of the Act says that the redetermination of the surplus land in accordance with the principal Act as amended by this Act, is to be done within a period of two years, then does it mean merely issuance of the subsequent notice under S. 10(2) of the Act within a period of two years or does it prescribe that the order by the Prescribed Authority must be passed within a period of two years. In my view, looking to the scheme of the Act the order itself of the Prescribed Authority must be passed within two years from the relevant date and a mere issuance of the notice under S. 10(2) within a period of two years will not suffice. In this connection a reference may be made to S. 10 of the Act which is headed as under :

....."

17. As would be evident, the learned judge has clearly held that the period of limitation of two years indicated under Section 31 (3) of the U.P. Act No. 20 of 1976 postulated completion/re-determination of holdings of a tenure holder under Section 10 of the Act within a period of two years for which purpose the period within which notice has been subsequently issued was immaterial.

18. Learned State Counsel for petitioner has placed reliance on the case of **Darshan Singh** (supra) to submit that the aforesaid aspect has been considered by Hon'ble Supreme Court and wherein it has been held that the period of two years of limitation under Section 31 (3) is to be taken for the purposes of issuance of notice and not re-determination. However a perusal of the aforesaid judgment will make it evident that in the aforesaid case, the Hon'ble Supreme Court was examining the applicability of Sections 38A and 38B of U.P. Act No. 20 of 1976 pertaining to bar of res judicata when earlier ceiling proceedings stood concluded under Section 10 of the Act. It was in the context of examination of provisions of Section 38B of the Act that the Hon'ble Supreme Court has adverted to provisions of Section 30 (3) (sic 31 (3)) of U.P. Act No. 20 of 1976 to hold that the prescribed authority was authorized to issue fresh notice to a tenure holder and it was in this context that it was held that the bar of Section 38B would not operate as res judicata in the said proceedings. It is quite evident that the Hon'ble Supreme Court was not specifically considering the provisions of Section 31 (3) of U.P. Act No. 20 of 1976 and

therefore in the considered opinion of this Court, the aforesaid judgment would not be a proposition for consideration of applicability of Section 31 (3) of the Act.

19. Even otherwise, a bare perusal of Section 31 (3) of the Act makes it evident that the prescribed authority has been granted power to redetermine the surplus land in accordance with principal act within a period of two years from the 10th day of October, 1975. The essential wordings in the provision is the word 'redetermine'.

20. The specific wordings of Section 31 (3) of the Act make it clear that in terms of said provision, the prescribed authority at any time within a period of two years from 10.10.1975 is empowered to **redetermine** the surplus land in accordance with the principal act.

21. The provision does not indicate anywhere that the prescribed authority is required to issue notice of proceedings under Section 10 of the Act within a period of two years from 10.10.1975.

22. Hon'ble Supreme Court in the case of **All Kerala Parents' Association of Hearing Impaired and Another versus State of Kerala and Others** reported in **(2018) 2 SCC 410** has clearly held that with regard to interpretation of statutes, where the wordings are clear and unambiguous, no external aid is required to consider its impact. Upon applicability of aforesaid judgment in the present facts and circumstances, it is evident that since the wording re-determining has been used in Section 31 (3) of the Act, it cannot construe to mean issuance of notice under Section 10 of the Act within a period of two years and would in fact mean re-determination i.e. passing of final order on the notice issued under Section 10 of the Act.

23. In the impugned order, the appellate authority has clearly adverted to the fact that earlier proceedings under Section 10 of the Act were held against the tenure holder which were determined on 22.02.1975 whereafter subsequent order was made on 28.10.1978 which too was after within a period of two years from 10.10.1975.

24. In the considered opinion of this Court, the appellate Court has rightly placed reliance on the judgment rendered in the case of **Smt. Mithlesh Kumari** (supra) and it is therefore quite evident that the subsequent order dated 28.10.1978 was passed by the prescribed authority beyond the stipulated limitation of two years from 10.10.1975.

25. Considering aforesaid facts, no exception can be taken to the order under challenge.

26. The petition being therefore devoid of merit is **dismissed**.

Order Date :- 3.5.2024

Satish