

Court No. - 17

Case :- WRIT - C No. - 3000011 of 1995

Petitioner :- Smt.Mithlesh Kumari

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Vivek Srivastava,Narendra Kumar Pandey

Counsel for Respondent :- C S C,Vivek Srivastava

Hon'ble Manish Mathur,J.

1. Heard Mr. N. K. Pandey, learned counsel for petitioner and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 01.06.1989 passed by the Prescribed Authority under Section 10(2) of U. P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Act of 1960) as well as order dated 13.01.1995 rejecting appeals no.272/660 and 273/661 under Section 13 of the Act. It has been submitted that earlier in proceedings held under Section 10 of the Act, vide order dated 26.06.1976, land held on behalf of one Jitendrakant Singh was held to be surplus. The said order was challenged in appeal before the District Judge which was allowed by means of judgment and order dated 04.01.1977 and the matter was remanded to the Prescribed Authority for decision a fresh whereafter another order was passed on 21.01.1984 which was again challenged before the District Judge concerned under Section 13 of the Act. The aforesaid appeal no.4 was again allowed by means of judgment and order dated 04.02.1987 with the finding recorded that the Prescribed Authority had failed to properly determine irrigated and unirrigated portion of the land in dispute and therefore the matter was remanded again for deciding the case afresh whereafter the impugned order dated 01.06.1989 has been passed again rejecting petitioner's contention with regard to irrigated and unirrigated land. Appeal there against has also been rejected.

3. Learned counsel for petitioner submits that once the appellate authority had specifically remanded the matter to the Prescribed Authority for determination of irrigated and unirrigated land in terms of Section 4 A of the Act to be determined on the basis of relevant Khasra, village map etc. in accordance with judgment of this Court, it was incumbent upon the Prescribed Authority to have recorded a specific finding with regard to same.

4. It is submitted that however the Prescribed Authority has

passed the impugned order rejecting petitioner's objection filed under Section 10(2) of the Act only on the ground that petitioner has been unable to substantiate his submission with regard to unirrigated portion of property. It is submitted that there is absolutely no finding recorded in accordance with the conditions indicated in Section 4 (A) of the Act and that burden of proof has wrongly been placed upon petitioner. Learned counsel has placed reliance on judgments rendered in the Full Bench Decision of this Court in the case of ***Hareshwar Dayal Seth versus Second Additional District Judge, 1982 ACJ 207*** as well as judgment rendered by Coordinate Benches of this Court in the case of ***Ram Sagar versus Civil Judge, Bahraich, 1984(2) Lucknow Civil Decisions 300*** as well as in the case of ***Kaushlendra Bahadur Singh versus State of U.P., Writ C No.3000130 of 1994***.

5. Learned State counsel on the basis of counter affidavit has refuted submissions advanced by learned counsel for petitioner with the submission that in terms of Section 4A of the Act, it is open to the Prescribed Authority to determine the irrigated and unirrigated properties of a tenure holder not only in accordance with the Khasra pertaining to 1378-1380 Fasli but also on the basis of other documents and local inspection, if required. It is submitted that once CLH Form 4 had been issued in accordance with law and was disputed by the petitioner as tenure holders, it was incumbent upon them to dispute the presumption of law. It is submitted that since petitioner have not been able to discharge their burden of proof, the Prescribed Authority has not committed any error of law in rejecting petitioner's objection.

6. Learned State Counsel had also adverted to the supplementary affidavit dated 29.02.2024 to submit that now the Khasras pertaining to Fasil years 1378-1380 have been brought on record alongwith CLH Form No.41 & 45 from which the irrigated and unirrigated portion of petitioner's tenure can be ascertained.

7. Upon consideration of submissions advanced by learned counsel for parties and perusal of material available on record, it is quite evident that earlier the matter was remanded by the appellate authority as indicated hereinabove whereafter the impugned order dated 01.06.1989 has been passed.

8. A perusal of the said order makes it evident that petitioner's objection regarding determination of irrigated portion of his tenure holding has been rejected primarily on the ground that he was unable to produce any evidence rebutting the determination already done pertaining to irrigated land. It is quite evident that

despite specific directions issued by the appellate authority to pass orders regarding such determination in terms of Section 4A of the Act which was held to be obligatory, the same has not been adhered to by the Prescribed Authority. The same finding has been reiterated by the appellate authority as well.

9. The controversy in question is clearly required to be adjudicated in terms of Section 4A of the Act which is as follows:-

*"4A. **Determination of irrigated land.** - The prescribed authority shall examine the relevant Khasras for the years 1378 Fasli, 1379 Fasli and 1380 Fasli, the latest village map and such other records as it may consider necessary, and may also make local inspection where it considers necessary and thereupon if the prescribed authority is of opinion :-*

firstly, (a) that, irrigation facility was available for any land in respect of any crop in any one of the aforesaid years; by-

(i) any canal included in Schedule NO. 1 of irrigation rates notified in Notification No. 1579-W/XXIII-62-W-1946, dated March 31, 1953, as amended from time to time; or

(ii) any lift irrigation canal; or

(iii) any State tube-well or a private irrigation work; and

(b) that at least two crops were grown in such land in any one of the aforesaid years; or

secondly, that irrigation facility became available to any land by a State Irrigation Work coming into operation subsequent to the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, and at least two crops were grown in such land in any agricultural year between the date of such work coming into operation and the date of issue of notice under Section 10; or

thirdly, (a) that any land is situated within the effective command area of a lift irrigation canal or a State tube-well or a private irrigation work; and

(b) that the class and composition of its soil is such that it is capable of growing at least two crops in an agricultural year; then the Prescribed Authority shall determine such land to be irrigated land for the purposes of this Act.

Explanation I. - For the purposes of this section the expression 'effective command area' means an area, the farthest field whereof in any direction was irrigated-

(a) in any of the years 1378 Fasli, 1379 Fasli and 1380 Fasli; or

(b) in any agricultural year referred to in the clause 'secondly'.

Explanation II. - The ownership and location of a private irrigation work shall not be relevant for the purpose of this section.

Explanation III. - Where sugarcane crop was grown on any land in any of the years 1378 Fasli, 1379 Fasli and 1380 Fasli, it shall be deemed that two crops were grown on it any of these years, and that the land is capable of growing two crops in an agricultural year."

10. It is thus evident that for the purposes of determination of irrigated land, it is incumbent upon the Prescribed Authority to take note of the khasra pertaining to Fasli years 1378, 1379 and 1380. It is open to the authority to conduct local inspection and also to take into account any other relevant revenue documents.

11. In the appellate order dated 13.01.1995, it has been specifically recorded that as per report of Lekhpal, khasras pertaining to the fasli years 1378 to 1380 were unavailable. The fact has been reiterated in subsequent portion of the order as well. It does not appear from a perusal of either of the impugned orders that any local inspection was conducted or that any other revenue documents were taken into account by the authorities concerned for determination of irrigated areas.

12. Learned State Counsel has placed reliance on judgment rendered by Co-ordinate Bench of this Court in the case of ***Shyamvir Singh versus State of U.P. and others*** reported in ***1978 AWC 263*** to submit that once the irrigated areas have been indicated in CLH Form No.4 issued in terms of Section 10 of the Act, the presumption with regard to irrigated properties was required to be refuted by the tenure holder and therefore the onus was on the tenure holder to produce evidence for rebutting the same.

13. However, it is evident from the Full Bench Decision in the case of ***Hareshwar Dayal Seth*** (supra) that the aforesaid judgment was referred for consideration by the Full Bench and the Full Bench in the case of ***Hareshwar Dayal Seth*** (supra) has specifically disapproved of judgment in the case of ***Shyamvir Singh*** (supra) in the following manner:-

"23. Once an objection has been filed, the dispute has to be decided judicially. The statement prepared by the Prescribed Authority does not carry any presumption of validity, i. e., the accuracy or correctness of its entries. The only presumption that may be drawn is that the statement has been prepared in accordance with the prescribed mode and procedure, and there this presumption ends.

26. If the presumption under section 114 (e) Evidence Act was enough, there was no need for the legislature to have provided in section 11 (1) that the Prescribed Authority may determine the surplus land in accordance with the statement prepared under section 10 (1) in case it is not disputed. In my view, in proceedings under section 12, the status of the disputed entries of the statement prepared under section 10 (1) is like the pleadings in a civil cause, whatever is not disputed and does not form part of the issues, is treated as admitted. But on matters which are disputed, the

entries in the statement have by themselves no evidentiary value.

27. The Khasra is prepared under section 28 of the U. P. Land Revenue Act provides that the entries in the Annual Registers shall be presumed to be true unless the contrary is proved. The Annual Registers are prepared under section 33 of the Land Revenue Act. They refer to the Khewat and Khatauni only. The khasra is not one of the Annual Registers. There is hence no presumption of the correctness of the entries mentioned in the khasra.

28. If section 114 (a) relates to the presumption of correctness of the contents or conclusion of the official act, then Section 44 of the Land Revenue Act was redundant because the khasra under section 28 of the Land Revenue Act is prepared by statutory Authority after going through a detailed procedure prescribed in the Land Records Manual. It is prepared as an official act of the statutory authority. But yet the Land Revenue Act does not give any presumption of correctness to its entries.

29. Under section 4-A, the Prescribed Authority is enjoined, inter alia, to look into the khasra for the relevant years and such other records as it may consider necessary. The khasra as well as other records which the Prescribed Authority may have taken into consideration while preparing the statement, will, when a judicial enquiry is being conducted under section 12, form part of the record of the case. Such khasra and other materials which have been examined by the Prescribed Authority ought to be present on the record. If they are not present on the record and even if the tenure holder does not produce them the objection cannot be thrown out merely on that ground. The Prescribed Authority should summon them. The issues are to be decided on the weight of evidence on record in accordance with law.

30. Our answer to the question referred to us is that in view of Illustration (e) to Section 114 of the Evidence Act the statement prepared under section 10 (1) of the Act may at the option of the deciding authority be presumed to have been prepared in accordance with the manner and procedure prescribed under Section 4-A of the Act, but there is no presumption as to the correctness or validity of the entries which are disputed or challenged. "

14. In view of aforesaid, it is quite evident that the statement prepared under Section 10 (1) of the Act does not attach any validity of the entries which are disputed or challenged.

15. In the case of **Ram Sagar** (supra), a Co-ordinate Bench of this Court placing reliance on the Full Bench Decision of this Court in the case of **Hareshwar Dayal Seth** (supra) has held as follows:-

"It is also equally well settled that the onus lies on the state to establish that the land which is mentioned in the notice is irrigated land when a challenge is made by the tenure-holder while filing objection. State Government is a party to every proceedings under Section 10 (2) of the 'Act'. In such a case, there is an adversary proceedings before the Prescribed Authority between the tenure-holder and the Government. It has been held in Roshan Singh's case (supra) that in such a case what

comes out is that the Government assumes the role of plaintiff and the tenure-holder that of the defendant. On the basis of the statement prepared under Section 10 and the objection filed by the tenureholder- petitioner thereto, the Prescribed Authority strikes the issue and decides the case. When it is disputed by a tenure-holder in the objection filed against a notice that any particular plot is unirrigated and that the same has been wrongly treated as irrigated land, the onus lies squarely on the State to establish that any land treated as irrigated land in the notice actually bears that character. It is not for the tenure-holder to establish in negative that the land is unirrigated and that it has been wrongly treated to be irrigated land in the notice. It is incumbent upon the Prescribed Authority to examine the relevant Khasras for the years 1378, 1379 and 1380 Fs. in order to ascertain the nature and character of the land in question."

16. The same reasoning has thereafter been recorded in the case of **Kaushlendra Bahadur Singh** (supra) as well.

17. Upon examination of aforesaid judgments and their applicability in the present facts and circumstances of the case, it is thus evident that no presumption of genuineness or correctness can be attached to the entries indicated in CLH Form 4 issued under Section 10 (1) of the Act and that even if presumed to be correct, are rebuttable at the instance of the tenure holder whereafter the Prescribed Authority is required to determine the irrigated or non-irrigated areas of holding of the tenure holder in accordance with Section 4A of the Act Which mandates examination of khasras pertaining to the Fasli years 1378 to 1380. In case such a procedure is not followed, it renders the entire proceedings vitiated.

18. In the present case, it is quite evident that determination in accordance with Section 4A of the Act has not been done either by the Prescribed Authority or even by the Appellate Authority who in fact has clearly recorded the statement/report of the Lekhpal concerned that khasras pertaining to the Fasli years 1378 to 1380 were unavailable.

19. So far as the supplementary affidavit filed by the State in the present writ is concerned, it is evident from a perusal of the same that it does not indicate any year of its preparation nor does it carry any seal of the concerned authority at the time of its alleged preparation. The indication of the khasras pertaining to year 1378 has been superimposed subsequently. The same is the situation with regard to document brought on record as CH Form Nos. 41 and 45. In the affidavit filed in support of application, there is absolutely no mention or explanation of the fact as to how the State has subsequently been able to procure the aforesaid documents particularly in view of finding recorded by the appellate authority earlier that such records were unavailable. Considering the aforesaid facts, the additional documents sought to be brought on record are rejected.

20. In view of discussion made hereinabove, it is evident that the authorities concerned despite remand of the dispute twice have not been able to adhere to specific and mandatory conditions of the Act thereby vitiating the orders impugned.

21. Consequently the impugned orders dated 01.06.1989 and 13.01.1995 are hereby set aside and the writ petition consequently stands ***allowed***. Parties to bear their own costs.

22. Consequences to follow.

Order Date :- 24.4.2024

Subodh/-