

Court No. - 19

Case :- WRIT - C No. - 3000043 of 2007

Petitioner :- Shri Krishna And 4 Ors.

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

Counsel for Petitioner :- Avadhesh Kumar, Ankur Sinha

Counsel for Respondent :- C.Sc..

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Avadhesh Kumar, the learned counsel for the petitioner, Sri S. K. Khare, the learned Standing Counsel for the State and perused the records.
2. By means of the instant writ petition filed under Article 226 of the Constitution of India, the petitioners have challenged the validity of an order dated 30.11.2006, passed by the learned Prescribed Authority (Ceiling)/Uppar Collector, Kheri in Case No.17/2004-05, under Section 10 (2) of Uttar Pradesh Imposition of Ceiling on Land Holdings Act (hereinafter referred to as the Ceiling Act) declaring 2.951 Hectare land of the petitioners to be surplus. The petitioners have also challenged validity of an order dated 01.05.2007, passed by the learned Additional Commissioner (Administration), Lucknow Division, Lucknow in Appeal No.86/2006-07, under Section 13 of Ceiling Act, affirming the judgment dated 30.11.2006, passed by the learned Prescribed Authority.
3. Briefly stated the facts of the case are that the petitioner nos. 1 and 2 are sons of late Dularey and the petitioners no.3, 4 and 5 are grandsons of late Dularey and sons of late Puttu Lal.
4. A notice under Section 10 (2) of Ceiling Act was issued against Dularey, predecessor in interest of the petitioners. Dularey had filed objections contending that he had three adult sons in his family and requisite relaxation on this ground has not been given to him. He had further stated that most of his lands were unirrigated, the land bearing no.144 was abadi land and one acre land was grove.
5. The proceedings were decided by means of an order dated 28.01.1975, whereby the relaxation admissible to Dularey on the ground of his having three adult sons was given to him. 1.44 acre land

was left out as being abadi land. It was also accepted that out of 15.54 acre land of Gata No.156, only 8.80 acre was irrigated and remaining 6.74 acre land was unirrigated. Dularey's plea that one acre land was grove land was also accepted. His further plea that some portions of land bearing Khasra Nos.159, 258, 118 and 200 were unirrigated was also accepted. After accepting the objections of Dularey, 1.93 acre irrigated land was declared as surplus.

6. On 20.09.2004 a notice under Section 10 (2) of Ceiling Act was issued against the petitioners proposing to declare 8.951 Hectare irrigated land to be surplus. The petitioners filed objections against the notice inter alia stating that earlier also a notice under Ceiling Act was issued to them but the same was revoked on 13.12.1999.
7. In the objections filed by the petitioner no.1 it was stated that Dularey died about 10-11 years ago. In the statement recorded on 20.03.2006 the petitioner no.1 stated that his father Dularey died about 20-22 years ago.
8. The learned Prescribed Authority passed the impugned order dated 30.11.2006 holding that although a notice under Section 10 (2) of Ceiling Act had been issued earlier, the same was revoked by means of an order dated 13.12.1999 on the ground that the land bearing Khata no.77 having area of 5.119 hectare had erroneously been left out from being included and thereafter a fresh notice was issued on 20.02.2004 after including the land that had earlier been left out erroneously. The learned Prescribed Authority had also examined the record of Case No.53 of 1973 decided on 28.01.1975 as also Case no.99/13 under Section 10 (2) of Ceiling Act, which was in respect of a total of 29.82 acre (i.e. 12.677 Hectares) irrigated land, whereas the present proceedings were drawn in respect of 16.251 hectare irrigated land after leaving aside 1.018 hectare land entered as talab and abadi. The learned Prescribed Authority also took into consideration the averments made in the objections filed by the petitioner no.1 that Dularey had died about 10-11 years ago from which it appears that Dularey died in the year 1988 and thereafter his land devolved upon

the petitioners. The eldest son of Dularey, Puttu Lal (father of petitioner nos.3, 4 and 5) had died during lifetime of Dularey but he was alive on 08.06.1973. The notice in question was issued treating Dularey to be the tenure holder as on 08.06.1973 and relaxation of 2 hectare per adult son of Dularey was given to him.

9. The learned Prescribed Authority further found that although the petitioners had claimed some land to be unirrigated and bearing one crop only, in the relevant extracts of Khasra relating to year 1378-F, 1379-F and 1380-F it was recorded that crops of sugarcane, paddy and wheat etc. were sown on the land. Khasra of the year 1378-F mentioned a tube-well on Plot Nos.156 and 106 and Khasra of the year 1380-F relating to Gata Nos.258, 106, 118, 159, 158 and 180 also mentioned a tube-well. Khasra of 1414-F mentioned crops of sugarcane, paddy and wheat, from which the learned Prescribed Authority came to a conclusion that the lands were irrigated and bearing two crops per year. Dealing with the petitioners' contention that 3.7 acre land was grove land, the learned Prescribed Authority found that in the relevant extracts of khasra in respect of Gata Nos.254 and 146 relating to the year 1414-F, paddy crops are entered which indicates that the land bearing the aforesaid gata numbers is not grove land and it is agricultural land. In view of the aforesaid discussions, the learned Prescribed Authority found a total of 2.951 acre land of the petitioners to be surplus.
10. The petitioners filed an appeal no.86/2006-07 against the aforesaid order, which was dismissed by means of an order dated 10.05.2007 passed by the learned Additional Commissioner (Administration), Lucknow Division, Lucknow. In appeal the petitioners had contended that a notice under Section 10 (2) of Ceiling Act was issued against Dularey but it was revoked by means of an order dated 13.12.1999 and no fresh notice could be issued to them. The appellate authority found that earlier notice had been revoked on 13.12.1999 merely because the land bearing Khata No.77 having an area of 5.119 hectare had been left to be included in the notice erroneously and therefore the

notice was revoked and in these circumstances no illegality was committed by issuing a fresh notice.

11. The learned counsel for the petitioners has submitted that any fresh notice could not have been issued against the petitioners after revocation of the earlier notice.
12. Replying to the aforesaid submission Sri S.K. Khare, the learned Standing Counsel has submitted that the notice issued earlier was revoked because it was defective as some land had erroneously been left from being incorporated in the notice. The matter was not decided finally on merits and, therefore, the principles of *Res Judicata* will not apply to case.
13. This point has rightly been dealt with by the learned Prescribed Authority and by the appellate authority by holding that the earlier notice was revoked merely because earlier non-inclusion of some land and in these circumstances issuance of fresh notice by correcting the error and including the land that had been left to be included, does not suffer from any illegality. The principle of *Res Judicata* will apply only where the earlier matter was decided on merits, which is not the case here.
14. There is no illegality in the impugned order dated 30.11.2006, passed by the learned Prescribed Authority (Ceiling)/Uppar Collector, Kheri in Case No.17/2004-05, under Section 10 (2) of the Ceiling Act declaring 2.951 Hectare land of the petitioners to be surplus or in the order dated 01.05.2007, passed by the learned Additional Commissioner (Administration), Lucknow Division, Lucknow in Appeal No.86/2006-07, under Section 13 of Ceiling Act, affirming the order dated 30.11.2006, passed by the learned Prescribed Authority.
15. The Writ Petition lacks merits and the same is hereby **dismissed**.

(Subhash Vidyarthi, J.)

Order Date: 10-04-2024

Ram.