

Court No. - 17

Case :- WRIT - C No. - 3000043 of 1995

Petitioner :- Jagdambika Prasad

Respondent :- State of U.P. and Others

Counsel for Petitioner :- S.K.Kalia, Hari Om Singh, Nitin Kumar Mishra, Rajeiu Kumar Tripathi, S.P.Shukla

Counsel for Respondent :- I.D.Dwivedi

Hon'ble Manish Mathur, J.

1. Heard Mr. Rajeiu Kumar Tripathi, learned counsel for petitioner and Mr. G.K. Pathak, learned Additional Chief Standing Counsel on behalf of opposite parties no. 1 to 3. Vide order dated 07.05.2024, it has been noticed that as per service report, notice upon heirs and legal representatives of opposite party no. 4, who is passed away during pendency of this petition, is deemed sufficient. However, no one has put in appearance on behalf of heirs or the legal representatives of opposite party no. 4 and therefore the present petition is being decided in their absence.

2. Petition has been filed challenging order dated 29.12.1989 passed under Section 10 (2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960. Also under challenge is the order dated 30.03.1995 passed in appeal under Section 13 of the Act.

3. It has been submitted that initially a notice under Section 10 (2) of the Act of 1960 was issued to petitioner proposing declaration of an area of 16.672 acres as surplus. Objections to the notice were filed whereafter the prescribed authority rejected the same by means of order dated 07.02.1975 declaring an area of 10.244 acres as surplus. Appeal filed thereagainst was also dismissed on 26.09.1975 whereafter both the orders were challenged before this Court in Writ Petition No. 340 of 1975, which was subsequently dismissed as infructuous vide order dated 28.03.1975 in view of the fact that a revised notice under Section 10 (2) of the Act was issued proposing an area of 46.791 acres to be declared as surplus.

4. Against the revised notice also, petitioner submitted his objections in which it was submitted that the land belonging to the opposite party no. 4, Aditya Prasad Tiwari were wrongly clubbed with those of petitioner and were required to be deleted. Objections regarding area under irrigation was also challenged. The said objections were rejected by the prescribed

authority vide order dated 30.09.1980 declaring an area of 33.325 acres as surplus treating the same as irrigated. Appeal was thereafter filed by petitioner which was allowed by means of judgment and order dated 07.04.1981 on two issues viz clubbing of land allegedly belonging to Aditya Prasad Tiwari and the extent of irrigated land. The aforesaid appellate order was thereafter challenged by the State of U.P. in Writ Petition No. 5207 of 1981 and was dismissed by judgment and order dated 14.12.1981 whereafter upon remand, the impugned orders have been passed.

5. It has been submitted that the prescribed authority even after remand has not adverted correctly to the aspect of plot in the name of opposite party no. 4 being clubbed with that of petitioner. It is submitted that provisions of Section 5 (6) of the Act have not been considered in their correct perspective and even the aspect of land under irrigation has not been determined in terms of specific provisions of Section 4A of the Act.

6. Learned counsel further submits that it was brought on record of the prescribed authority that during consolidation operations, a compromise was entered into between petitioner and opposite party no. 4 which formed the basis of order passed by the Deputy Director of Consolidation dated 05.03.1970 granting rights over the properties in question to the opposite party no. 4 and since the aforesaid order was passed prior to the cut off date of 24.01.1971, the properties included in the name of opposite party no. 4 were therefore required to be excluded from the notice under Section 10 (2) of the Act of 1960 and the mere fact that mutation in pursuance thereof was effected only after a period of 14 years was immaterial. Learned counsel has placed reliance on judgments rendered in the case of **Ram Chandra versus State of U.P. and others; 1995 Supp (4) SCC 533** and **Smt. Mithlesh Kumari versus State of U.P. and others; Writ-C No. 3000011 of 1995**.

7. Learned State Counsel appearing on behalf of parties has refuted submissions advanced by learned counsel for petitioner with the submission that the prescribed authority has correctly included the plots allegedly recorded in favour of the opposite party no. 4 in view of Explanation-II to Section 5 (1) of the Act and has rightly reached a conclusion that the alleged compromise dated 05.03.1970 was in fact collusive and therefore required to be ignored. It is submitted that neither the order passed by the Deputy Director of Consolidation nor even the compromise indicates the necessity of such a compromise and as to why could not be effected prior to order passed by the Deputy Director of Consolidation in consolidation proceedings. It has also been submitted that even otherwise the compromise

was required to be ignored in view of provision to Section 5 (7) of the Act.

8. It is further submitted that both the authorities have therefore rightly recorded a concurrent finding of fact that the compromise dated 05.03.1970 was in fact a sham compromise which was also evident from the fact that mutation in pursuance thereof was effected only after a period of 14 years and therefore in terms of provisions of Section 5 (1) of the Act, it is petitioner who has rightly been held to be the ostensible owner of the properties in question. It has also been submitted that since findings have been recorded concurrently against petitioner, such findings of fact are not required to be interfered with in writ jurisdiction. Learned counsel has placed reliance on judgment rendered in the case of **State of U.P. versus Amar Singh and others** reported in (1997) 1 SCC 734.

9. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that impugned orders have been passed in pursuance of remand order dated 07.04.1981 whereby the earlier order passed by the prescribed authority dated 30.09.1980 was set aside. It is evident that remand has been made to the prescribed authority for consideration of two questions. The first being as to whether property recorded in the name of Aditya Prasad Tiwari have been wrongly or rightly included in the ceiling statement of tenure holder and whether the notice correctly indicates the extent of irrigated land.

10. With regard to the first question of remand, it is evident that the prescribed authority has recorded a finding that the compromise dated 05.03.1970 is a sham compromise effected only to get out of the clutches of the Act of 1960. It is on that basis that petitioner has been held to be the ostensible owner of the properties in question.

11. The prescribed authority has also relied upon the fact that mutation in pursuance of the compromise dated 05.03.1970 was effected only after a period of 14 years which clearly indicated the fact that it was an invalid compromise.

12. With regard to aforesaid findings, it would be useful to examine the provision of Section 5 sub-section (1) & (6).

13. The provisions of Section 5 (1) Explanation-II is as follows:-

"Explanation II. [If on or before January 24, 1971, any land was held by a person who continues to be in its actual cultivatory possession and the name of any other person is entered in the annual register after the said

date] either in addition to or to the exclusion of the former and whether on the basis of a deed of transfer or licence or on the basis of a decree, it shall be presumed, unless the contrary is proved to the satisfaction of the prescribed authority, that the first mentioned person continues to hold the land and that it is so held by him ostensibly in the name of the second mentioned person.]"

14. Provisions of Section 5 (6) is as follows:-

"(6) In determining the ceiling area applicable to a tenure-holder, any transfer of land made after the twenty-fourth day of January, 1971, which but for the transfer would have been declared surplus land under this Act, shall be ignored and not taken into account;

Provided that nothing in this sub-section shall apply to-

(a) a transfer in favour of any person (including Government) referred to in sub-section (2);

(b) a transfer proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a benami transaction or for immediate or deferred benefit of the tenure-holder or other members of his family.

[Explanation I. For the purposes of this sub-section, the expression transfer of land made after the twenty-fourth day of January, 1971, includes-

[(a) a declaration of a person as a co-tenure-holder made after the twenty-fourth day of January, 1971 in a suit or proceeding irrespective of whether such suit or proceeding was pending on or was instituted after the twenty-fourth day of January, 1971);

(b) any admission, acknowledgment, relinquishment or declaration in favour of a person to the like effect, made in any other deed or instrument or in any other manner.]

Explanation II. The burden of proving that a case falls within clause (b) of the proviso shall rest with the party claiming its benefit."

15. Upon conjoint reading of the aforesaid two provisions, it is evident that Explanation-II of Section 5 (1) would apply where a person is continuing in its actual cultivatory possession even after 24.01.1971 and the name of any other person is entered in the annual register after the said date in addition to or to the exclusion of the former whether on the basis of a deed of transfer, licence or decree and also indicates a presumption that the first mentioned person continues to hold the land ostensibly in the name of second mentioned person, unless the contrary is proved.

16. However, Section 5 (6) is applicable in those cases where for the purposes of determining the ceiling area any transfer of land is made after 24.01.1971 which but for the said transfer

would have been declared surplus, such transfer is liable to be ignored and not taken into account. Transfer of land has thereafter been indicated in Explanation-I and includes a declaration of a person as co-tenure holder made after 24.01.1971.

17. The corollary of Section 5 (6) of the Act would indicate that in case a transfer has been effected prior to 24.01.1971, the same is not to be ignored and shall be taken into account.

18. In the present case, it is admitted that petitioner and the opposite party no. 4 had entered into a compromise on 05.03.1970 which formed the basis of order passed by the Deputy Director of Consolidation on the same date itself. The said compromise quite evidently forms the basis of an order of a competent Court in competent proceedings and have therefore been rightly examined by the prescribed authority. However, the effect of the aforesaid compromise has been nullified on the ground that it was a collusive compromise as well as on the fact that mutation in pursuance thereof has been effected only after a period of 14 years.

19. From a perusal of the order passed by the prescribed authority itself, it is evident that no finding whatsoever has been recorded as to the actual cultivatory possession over the plot in question after 24.01.1971. The prescribed authority has only adverted to the compromise and order dated 05.03.1970 and has negatived the same. For bringing the aforesaid transaction within purview of Section 5 (1) of the Act, it was incumbent upon the prescribed authority to have recorded a finding that petitioner continued to be in actual cultivatory possession over the property in question. Once it has failed to do so, the proposition would come within the four corners of Section 5 (6) of the Act whereunder the aforesaid compromise dated 05.03.1970 was required to be taken into consideration by the prescribed authority. No specific finding has been recorded by the prescribed authority to term the compromise dated 05.03.1970 to be collusive in nature. It is also evident from record that the aforesaid order passed by the Deputy Director of Consolidation had attained finality.

20. It is also evident from a perusal of the impugned order passed by prescribed authority that mutation was effected in pursuance of the compromise dated 05.03.1970 during the consolidation operations whereafter the CH Form-45 was brought on record to substantiate the same. It is therefore evident that mutation although effected after a considerable time period was only during consolidation operations and not at the mere instance of petitioner or the opposite party no. 4. In

view thereof, it cannot be said that either the petitioner or the opposite party no. 4 had any participation in the delayed mutation in pursuance of compromise dated 05.03.1970.

21. Hon'ble Supreme Court in the case of **Amar Singh** (supra) has held as follows:-

"It is settled law that mutation entries are only for the purpose of enabling the State to collect the land revenue from the person in a possession but it does not confer any title to the land. The title would be derived from an instrument executed by the owner in favour of an alienee as per the Stamp Act and registered under the Registration Act."

22. It is therefore settled law that mutation entries are only for the purpose of collection of land revenue but title is derived only from an instrument executed by the owner in favour of an alienee.

23. Upon applicability of aforesaid judgment in the present facts and circumstances of the case, it is thus evident that the prescribed authority was required to ignore the aspect of delayed mutation and was required to concentrate either on the annual cultivatory possession of petitioner or the opposite party no. 4 or upon failure to do so to take into consideration the compromise dated 05.03.1970. Failure to do so has clearly vitiated the order passed by prescribed authority on point no. 1.

24. Learned State Counsel has cited to judgments passed in the case of **Babhutmal Raichand Oswal versus Laxmibai R. Tarte and another** reported in **AIR 1975 Supreme Court 1297** and **Basdeo versus 1st Additional Distt. Judge Shahjahanpur and others** reported in **1981 ALL. L.J. 1147** to submit that concurrent findings of fact are not required to be interfered with.

25. It is settled law that concurrent findings of fact ordinarily should not be interfered with in writ proceedings but such interference is required to be done where the orders impugned have been passed which are perverse in nature since they are based either on no evidence or in ignorance of material on record. No hard and fast rule can be indicated that writ Court cannot interfere in concurrent findings of fact at all.

26. So far as the issue of extent of land under irrigation is concerned, the order of prescribed authority has rejected the objections on the basis of reports submitted by the Lekhpal to the effect that Gata No. 907 of the opposite party no. 4 has a boring installed therein and the property under dispute is coming within its command area. The said report of Lekhpal was apparently based on spot inspection.

27. With regard to aforesaid question, it was relevant for the prescribed authority to have followed the procedure indicated under Section 4-A of the Act which is as follows:-

*"4-A. **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."

28. The provisions of Section 4A clearly prescribe that the authority is required to examine khasras of three years pertaining to 1378, 1379 and 1380 fasli, the latest village map and such other records as it may consider necessary. Discretion is cast upon the authority to make local inspection where it considers necessary and thereafter to record subjective satisfaction as indicated therein.

29. The aforesaid provisions of Section 4A of the Act make it evident that local inspection by itself cannot be a mode for determination of irrigated area. Such local inspection may be in addition to the relevant khasaras for the years 1378, 1379 and 1380, the latest village map and other records, which admittedly have not been examined by the prescribed authority.

30. In the Full Bench Decision of this Court in the case of **Hareshwar Dayal Seth versus Second Additional District Judge** reported in **1982 ACJ 207**, the Full Bench Decision has held as follows:-

"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."

31. In view of aforesaid, it is evident that the statement prepared under Section 10 (1) of the Act does not attach validity of the entries which are disputed or challenged and the same are required to be established by the State once it is disputed by the tenure holder. In the case of **Ram Sagar versus Civil Judge, Bahraich** reported in **1984 (2) Lucknow Civil Decisions 300**, it has been so held.

"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."

32. It is therefore evident that no presumption of genuineness can be attached to the CLH Forms 3 & 4 which form the basis of notice under Section 10 (1) of the Act and the same are rebuttable subject to evidence being led by the State.

33. Upon perusal of the impugned order passed by the prescribed authority, it is evident that none of the procedures indicated in Section 4A of the Act have been followed nor has the burden been discharged by the State upon denial by the tenure holder.

34. It is also evident from the memorandum of appeal brought on record that specific grounds pertaining to aforesaid had been taken by the tenure holder but have been cursorily rejected by the appellate authority without adverting to provisions of Section 4A & 5 of the Act.

35. In view of aforesaid, the impugned orders dated 29.12.1989 passed by prescribed authority in Case No. 282 under Section 10 (2) of the Act of 1960 and the appellate order dated 30.03.1995 passed in appeal No. 697/427/Bahraich are hereby set aside. Consequences to follow.

36. So far as submission of learned State Counsel pertaining to Section 5 (7) of the Act are concerned, it is evident that the same are inapplicable in the present facts and circumstances since they pertain to suits of partition and not as in the present case where property is sought to be excluded on the basis of compromise.

37. Resultantly, the petition succeeds and is **allowed**. Parties to bear their own cost.

Order Date :- 29.5.2024

Satish