

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Neutral Citation No. - 2024:AHC-LKO:31112

A.F.R.

Court No. - 19

Case :- WRIT - C No. - 3000010 of 1996

Petitioner :- Om Prakash Singh

Respondent :- State of U.P. and Others

Counsel for Petitioner :- S.P. Singh,Ajay Pratap Singh,Ashish
Kumar Pandey,M E Khan,Rajeiu Kumar Tripathi

Counsel for Respondent :- C.S.C.,Bal Gangadhar Tripathi,R.P.
Singh,Satyendra Pratap

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Rajeiu Kumar Tripathi Advocate, the learned counsel for the petitioner, Sri Dheeraj Ojha, 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 petitioner has challenged the validity of the order dated 16.02.1993, passed by the opposite party no.2/Chief Revenue Officer, District Sultanpur in Case No.74 of 1985, under Section 10 (2) of U.P. Imposition of Ceiling on Land Holdings Act (which will be hereinafter referred to as 'the Ceiling Act'), declaring 30 bigha, 16 biswa and 13 biswanshi land of the petitioner to be surplus. The petitioner has also challenged validity of the order dated 01.01.1996, passed by the opposite party no.3/Additional Commissioner Judicial, Faizabad Region, Faizabad in Appeal No.79/Sultanpur under Section 13 of the Ceiling Act, whereby the appellate authority has declared the land of Gata Nos.1487, 1488, 1489, 1490, 1492, 1494, 1496, 1497, 1498, 2093 as unirrigated and

has directed redetermination of the surplus land of the petitioner in accordance with the directions issued by the appellate court.

3. Briefly stated, the facts of the case are that Sri Badri Pratap Singh was the original tenure holder of the lands in dispute. On 22.04.1974, a notice under Section 10 (2) of Ceiling Act was issued to him proposing 32 bighas, 8 biswas and 14 dhur land situate in Village Tirhut to be declared as surplus. Sri Badri Pratap Singh has submitted his objections before the Prescribed Authority on 21.05.1974, wherein he inter alia stated that he had sold away some lands.
4. On 01.11.1974, the Prescribed Authority had passed an order declaring 32 bigha, 8 biswa and 2 dhur land of Sri Badri Pratap Singh to be surplus.
5. Sri Badri Pratap Singh had filed a Ceiling Appeal No.54 of 1974 against the aforesaid order dated 01.11.1974, passed by the Prescribed Authority, which appeal was dismissed by means of an order dated 08.01.1977, passed by the Second Additional District Judge, Sultanpur.
6. Sri Badri Pratap Singh had challenged both the aforesaid orders by filing Writ Petition No.354 of 1977, which was allowed by means of a judgment and order dated 27.11.1978, passed by this court and the orders passed by the Prescribed Authority and the Appellate Authority were quashed. The learned Prescribed Authority was directed to re-determine as to whether the land of the petitioner was irrigated land in accordance with the principles contained in Section 4-A of Ceiling Act and to redetermine the ceiling area and the surplus land of the petitioner in accordance with law. It is recorded in the order dated 27.11.1978 that no other plea was urged before this court and while remanding the matter, this court made it clear that the petitioner shall not be entitled to re-agitate any other plea before the Prescribed Authority.

7. After remand of the matter by means of order dated 27.11.1978, the Prescribed Authority decided the matter by means of an order dated 14.04.1982 holding that all the gata numbers mentioned in Ceiling Form-3 are irrigated as per the provisions contained in Section 4-A of Ceiling Act and he declared 32 bigha, 8 biswa and 2 dhur land of Sri Badri Pratap Singh to be surplus.
8. It is further mentioned in the order dated 14.04.1982 that the tenure holder Sri Badri Pratap Singh had given an option that his entire land be taken from Khata Nos.293 and 885 in Village Gajanpur Dhuria and the entire land of Khata No.156 in Village Tirhut and in case same falls short, lands be taken from Khata No.40/1. The Prescribed Authority recorded that the land Forming part of Khata No.156 was not recorded in the name of Sri Badri Pratap Singh, rather it was recorded in the name of Sukhpal Vidyalay, Tirhut. Therefore, the land offered as option could not be taken for being declared surplus land.
9. The tenure holder Sri Badri Pratap Singh again filed Ceiling Appeal No.10/82, which was decided by the Second Additional District Judge, Sultanpur by means of a judgment and order dated 25.11.1982 holding that the irrigated land was not ascertained after perusal of the entries made in the relevant khasras as was directed by this court. The appellate authority again remanded the matter to the Prescribed Authority for being decided as per directions of this court.
10. After remand of the matter to the Prescribed Authority, the Principal Sukhpal Inter College Tirhut, Sultanpur filed his objections on 18.07.1984 inter alia stating that Sri Badri Pratap Singh died in the year 1981. He had established Sukhpal Vidyalay in his father's name. He had created a waqf of his land in favour of the school in July, 1951 while the school was a Junior High School. In December, 1971 Sri Badri Pratap Singh had created waqf of 15 bigha, 12 biswa, 10 dhur land in favour of the school. Thereafter, the school needed some more land for obtaining recognition for High School – Agriculture and Sri Badri Pratap Singh had given 18 bigha, 19 biswa, 8 dhur land to the

school for this purpose, but he could not execute a gift deed as ceiling proceedings were going on. The school was granted recognition for High School – Agriculture, but recognition for Intermediate – Agriculture was not given to the school. The school had given an application to the Chief Minister requesting that while determining the school land in proceedings under the Ceiling Act, the land in possession of the school be not take into consideration as the land of tenure holder Sri Badri Pratap Singh as although mutation could not be carried out in favour of the school, the school was in possession of the land. It was stated in the objection that subsequently school was granted recognition for Intermediate Agriculture, but the date of recognition has not been disclosed in the objection.

11. After remand, the Prescribed Authority passed an order dated 16.02.1993 whereby a total of 130 bigha, 16 biswa, 13 biswansi irrigated land was declared surplus. The Prescribed Authority found that the Khasra for the year 1978 mentions 2 crops on lands bearing Gata nos. 1474 to 1490 and the lands were irrigated from the tube-well installed in gata no. 1801. Two crops were recorded in respect of lands bearing Gata nos. 1492, 1494, 1495, 1496 and 1497. Khasra of 1378 Fasli mentions 2 crops on Gata nos. 2093 and 1495 and there is a sign of a tube-well on gata no. 1001. Therefore, all the gatas will be treated to be irrigated / unirrigated as per the preliminary report.
12. Sri Badri Pratap Singh died and the petitioner Sri. Om Prakash Singh filed Appeal No.79, under Section 13 Ceiling Act against the order dated 16.02.1993 passed by the Prescribed Authority, claiming himself to be the successor of Late Badri Pratap Singh on the basis of his last. Two points for determination were framed in the appeal – (1) whether the land in respect whereof a waqf had been created in favour of Sukhpal Vidyalay, should be treated to be the land of the tenure holder or not and (2) Determination of irrigated and unirrigated land mentioned as such in the notice given under Section 10(2) of the

Ceiling Act. The appeal was decided by means of an order dated 01.01.1996 which is under challenge in this writ petition.

13. While deciding the first question, the appellate Court observed that Sri Om Prakash Singh had filed additional objection on 24.01.1992 before the Prescribed Authority stating that certain land had been entrusted to Sukhpal Vidyalay on 31.12.1971 and those should not be taken into consideration while declaring surplus land of the original tenure holder. The appellate court found that the registered waqfnama dated 31.12.1971 had been executed after the reference date 24.01.1971. Moreover, the Management of Sukhpal Inter College had not filed any application for treating the land of the tenure holder to be belonging to the intermediate college. From this the appellate court inferred that the Management of the school and the objector were acting in collusion with each other. This plea had not been raised by any person since 31.12.1971, the date of execution of the registered deed. A notice under Section 10 (2) of Ceiling Act was given to the tenure holder in the year 1974. The matter had been decided by the Prescribed Authority on two previous occasions. This point was not raised even before this court in Writ Petition No.354 of 1977. In the order dated 27.11.1978, passed in the aforesaid writ petition this court had clarified that besides point of the land being irrigated or not, no other point will be raised before the Prescribed Authority. Therefore, it was not open to the appellant to raise this plea.
14. While deciding the second point for determination, the appellate authority observed that as per the order dated 27.11.1978 passed by this Court, the irrigated and unirrigated lands were to be determined as per the provisions contained in Section 4-A of the Ceiling Act. There were discrepancies in the copies of Khasra filed by the tenure-holder and the State Government and, therefore, those appeared to be suspicious. Either the copies of Khasra had not been prepared properly or entries had been modified in the original Khasra. A spot inspection report was submitted by the Naib Tehsildar, which stands

affirmed by the Consolidation Form 41, 45 and base year khatauni against which none of the parties have filed any objection. The appellate Court found that the copy of last Khasra was filed by the State Government as paper no. 150 and it appears to be just to take a decision as per this document. It shows lands bearing Gata nos. 1487, 1488, 1789, 1490, 1492, 1493, 1494, 1495, 1496, 1497, 1498 and 2093 to be unirrigated. The appellate Court declared the land bearing Gata Nos.1487, 1488, 1489, 1490, 1492, 1494, 1496, 1497, 1498, 2093 as unirrigated and surplus land and affirmed the inspection report submitted by the Naib Tehsildar on 08.11.1983 which was sent to the Pargana Adhikari on 22.11.1993.

15. While assailing the validity of the aforesaid orders, the learned counsel for the petitioner has submitted that the original tenure holder Sri Badri Pratap Singh had transferred the land in question irrecoverably in favour of Sukhpal Inter College on 31.12.1971 and, therefore, the aforesaid land ought not to have been taken into consideration while the ascertaining surplus land of Badri Pratap Singh. The learned Counsel for the petitioner has placed reliance on a written declaration dated 13.07.1970 (Annexure No. RA 2 to the rejoinder affidavit) made by Sri. Badri Pratap Singh on a stamp paper worth Rs.2.50 only, stating that he had established Sukhpal Vidyalay on 28.06.1951 and had created a Waqf of some of his properties for this purpose. He had further gifted some of his properties in favour of the school on 28.06.1970 as per the religious practices and that he will execute a legal document in respect of the entire gifted property or a part of it and till a mutation of names is carried out, he will continue to pay the land revenue.
16. The statutory provision in this regard is contained in Section 5 of the Ceiling Act, the relevant part whereof is being reproduced below: -

“5. Imposition of ceiling— (1) On and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no tenure-holder

shall be entitled to hold in the aggregate, throughout Uttar Pradesh, any land in excess of the ceiling area applicable to him.

Explanation I — In determining the ceiling area applicable to a tenure holder, all land held by him in his own right, whether in his own name, or ostensibly in the name of any other person, shall be taken into account.

Explanation II — If on or before January 24, 1971, any land was held by a person who continues to be in its actual cultivatory possessions 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 deed of transfer or license 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.

(2) Nothing in sub-section (1) shall apply to land held by the following classes of persons, namely :

(a) the Central Government, the State Government or any local authority or a Government Company or a Corporation ;

(b) a University ;

(c) an intermediate or degree college imparting education in agriculture or a post graduate college ;

(d) a banking company or a co-operative bank or a co-operative land development bank ;

(e) the Bhoodan Yagna Committee constituted under the U. P. Bhoodan Yagna Act, 1952.

* * *

(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 ;

(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 the immediate or deferred benefit of the tenure-holder or other members of his family. 3

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 life 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.

* * *

17. The Explanations appended to sub-section (6) of Section 5 of the Ceiling Act refer to declarations made after 24.01.1971 whereas Sri. Badri Pratap Singh had made the written declaration of 13.07.1970, which was not after 24.01.1971 so as to be covered by the Explanations appended to sub-section (6) of Section 5. Moreover, the content of the declaration was also vague, as the executed stated that he will execute a legal document in respect of the entire gifted property or a part of it. For the aforesaid reasons, this declaration will not be covered by the Explanations appended to Section 5 (6) of the Ceiling Act.
18. So far as the registered waqfnama dated 31.12.1971 is concerned, it was executed after the reference date 24.01.1971 and, therefore, it will not fall within the purview of Section 5 (6). Moreover, on the date of the alleged transfer, Sukhpal Vidyalay, in whose favour the land was transferred, was not an intermediate or degree college imparting

education in agriculture. As the transfer was not made in favour of any person mentioned in sub-section (2) of Section 5, it would not fall within the proviso (a) appended to sub Section 5 (6). The transfer was not made for any 'adequate consideration' and therefore this transfer would not fall within the proviso (b) appended to sub Section 5 (6).

19. In the written submissions, it has been contended that the Appellate Authority has found that the copies of Khasra for the years 1378 and 1380 Fasli years were incorrect, yet it has taken a copy of the khasra (paper no. 150) as true for the purposes of determination of the land being irrigated, which is in violation of the order dated 27.11.1998 passed by this Court as also the provisions of Section 4-A of the Ceiling Act.
20. Relying upon the judgments in the cases of **Hareshwar Dayal Seth versus II Additional District Judge and others**: 1982 All C J 207 and **Ram Sagar versus Civil Judge, Bahraich and others**: 1984 SCC OnLine All 404, Sri. Tripathi has submitted that the onus to prove that the land is irrigated, lies on the State.
21. Section 4-A of the Ceiling Act reads as follows: -

“4-A. 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 irrigate 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 year, 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 the two crops were grown on it in any of these years, and that the land capable of growing two crops in an agricultural year.”

22. The Prescribed Authority has recorded a finding that Khasra for the year 1978 mentions 2 crops on lands bearing Gata nos. 1474 to 1490 and the lands were irrigated from the tube-well installed in gata no. 1801. Two crops were recorded in respect of lands bearing Gata nos.

1492, 1494, 1495, 1496 and 1497. Khasra of 1378 Fasli mentions 2 crops on Gata nos. 2093 and 1495 and there is a sign of a tube-well on gata no. 1001.

23. The appellate authority found that there were discrepancies in the copies of Khasra filed by the tenure-holder and the State Government, which indicates that either the copies of Khasra had not been prepared properly or entries had been modified in the original Khasra. A spot inspection report was submitted by the Naib Tehsildar, which stands affirmed by the Consolidation Form 41, 45 and base year khatauni against which none of the parties have filed any objection. The appellate Court found that the copy of last Khasra was filed by the State Government as paper no. 150 and it appears to be just to take a decision as per this document. It shows lands bearing Gata nos. 1487, 1488, 1789, 1490, 1492, 1493, 1494, 1495, 1496, 1497, 1498 and 2093 to be unirrigated. Accordingly, the appellate Court declared the land bearing Gata Nos. 1487, 1488, 1489, 1490, 1492, 1494, 1496, 1497, 1498, 2093 as unirrigated and surplus land and affirmed the inspection report submitted by the Naib Tehsildar on 08.11.1983 which was sent to the Pargana Adhikari on 22.11.1993.
24. As per the provision contained in Section 4-A, the Prescribed Authority need not confine itself to examination of the relevant khasras for the years 1378 Fasli, 1379 Fasli and 1380 Fasli only. He has to examine the latest village map and such other records as it may consider necessary, and may also make local inspection where it considers necessary. It is settled law that the powers of the Appellate Authority are co-extensive with the original authority. When the copies of Khasra were found to be suspicious, the Appellate Court has not committed any error in relying upon those entry in the last khasra, which had been corroborated by other relevant material in the shape of spot inspection report was submitted by the Naib Tehsildar, which stands affirmed by the Consolidation Form 41, 45 and base year khatauni against which none of the parties have filed any objection.

The petitioner having not filed any objection in this regard before the Appellate Court, is stopped from raising this objection for the first time before this Court.

25. Therefore, the State has discharged its onus and there is no violation of the principles of law laid down in **Hareshwar Dayal Seth versus II Additional District Judge and others**: 1982 All C J 207 and **Ram Sagar versus Civil Judge, Bahraich and others**: 1984 SCC OnLine All 404.
26. The learned Counsel for the petitioner lastly submitted that when the objection of the petitioner regarding land in possession of Sukhpal Vidyalay had been rejected and the land was treated to be land of tenure holder, the petitioner's option to declare that land as surplus ought to have been accepted.
27. The statutory provision in this regard is contained in Section 12-A of the Ceiling Act, which provides as follows: -

12-A. In determining the surplus land under section 11 or section 12, the prescribed authority shall, as far as possible accept the choice indicated by the tenure-holder to the plot or plots which he and other members of his family if any would like to retain as part of the ceiling area applicable to him or them under the provisions of this Act, whether indicated by him in his statement under Section 9 or in any subsequent proceedings ;

Provided that —

* * *''

28. The Prescribed Authority has been given the discretion to accept the choice indicated by the tenure-holder as far as possible. Title in respect of the land, which the petitioner opted to be declared surplus, had been transferred to Sukhpal Vidyalay in violation of the provisions of the Ceiling Act. This point had not been raised by the tenure-holder since the alleged transfer made in the year 1971 and it was raised for the first time before the Appellate Court after remand of the matter, the Appellate Court found that the appellant and the

management of the Vidyalay were acting in collusion with each other. The land was not in physical possession of the petitioner and it was not available to be allotted to any other person. In these circumstances, the Appellate Court has not committed any illegality in not declaring the land which the petitioner and the Sukhpal Vidyalay claimed to have been transferred to the Vidyalay and in declaring other land held by the petitioner to be surplus.

29. No other point was pressed before me.
30. In view of the foregoing discussion, I find no illegality in the impugned orders. The Writ Petition is without any force and the same is hereby **dismissed**.

(Subhash Vidyarthi, J.)

Order Date :- 22.04.2024

Ram.