

Court No. - 17

Case :- WRIT - C No. - 3000103 of 1996

Petitioner :- Avadhesh Paratap Singh And Others

Respondent :- Commissioner And Others

Counsel for Petitioner :- S.K.Tiwari,S.C. Sitapuri

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

I.A. No. 8 of 2024

Application has been filed seeking restoration of this petition to its original number by recalling order dated 15.03.2024 whereby petition had been dismissed for want of prosecution. The application is within time and no objections thereto have been filed by the opposite parties. Cause shown in the affidavit filed in support of application is sufficient and therefore the order dated 15.03.2024 is recalled restoring the petition to its original number.

Order on Memo of Petition

1. This petition has been restored to its original today by recalling the earlier order dated 15.03.2024 dismissing the petition for want of prosecution.
2. By consent of learned counsel for parties, the petition being old is being adjudicated upon today itself.
3. Petition has been filed challenging order dated 15.01.1988 passed under Section 10 (2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 as also the appellate order dated 07.02.1996.
4. It has been submitted that initially a notice dated 22.03.1974 was issued under Section 10 (2) of the Act of 1960 to Late Orauni Singh, predecessor in interest of petitioners. Objections thereto were filed by petitioners since in the meantime the original tenure holder Orauni Singh passed away on 24.06.1973. The notice was discharged by the prescribed authority by judgment and order dated 30.11.1974 whereagainst appeal was filed by the State and was allowed by means of judgment and order dated 11.03.1976 remanding the matter. Upon remand, the prescribed authority vide order dated 29.12.1976 rejected the objections. Appeal filed thereagainst was allowed on 14.12.1979 remanding the dispute whereafter impugned orders have been passed.
5. Learned counsel for petitioner submits that after remand, the

prescribed authority framed two issues with first issue pertaining to whether the original tenure holder passed away leaving behind two widows and as to the number of family members surviving. Second issue pertained to property which came under irrigated or unirrigated purpose.

6. It has been submitted that the first issue was decided in favour of petitioners whereas the second issue has been decided without adverting to the norms required to be followed in terms of Section 4A of the Act and is based merely on the reports submitted by Naib Tehsildar, which also is not based on the requirements of Section 4A of the Act.

7. At this stage, learned counsel for petitioners submits that petitioners are restricting their grievance with regard to finding recorded by the prescribed authority pertaining to irrigated land since the mandatory conditions of Section 4A of the Act have been ignored by the authorities concerned including the appellate authority.

8. Learned State Counsel on the basis of counter affidavit filed has refuted submissions advanced by learned counsel for petitioner with the submission that the prescribed authority has clearly based its order on the report of Tehsildar which corroborated the entries of khasra for the year 1392 fasli which were filed by petitioners and therefore the orders have been passed on the basis of admitted situation.

9. It is therefore submitted that the orders under challenge have been passed on the basis of documentary evidence on record and as such being concurrent in nature do not require any interference.

10. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that the matter had been remanded by the appellate authority for consideration of dispute pertaining to family members of the original tenure holder as well as for the purposes of determining irrigated land under their possession. The prescribed authority framed two issues with the first being with regard to the total family members of the original tenure holder as well as the fact whether he passed away leaving behind two widows. The second issue framed was with regard to irrigated land in possession of the tenure holder.

11. The first issue has been decided in favour of petitioners and learned counsel for petitioners upon instructions does not raise any grievance with regard to that and is emphasizing on dispute only with regard to issue no. 2 pertaining to determination of

irrigated land in possession of the original tenure holder.

12. The aspect of requirements which are to be considered by the prescribed authority pertaining to irrigated or unirrigated land in possession of the tenure holder is to be seen in the context of Section 4A of the Act of 1960 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."

13. The Full Bench of this Court in the case of **Hareshwar Dyal Seth versus Second Additional District Judge and others** reported in **1978 ALJ 728** upon reference has clearly held that the notice issued indicating extent of irrigated land in the CLH Form 4 is not binding on the prescribed authority and in fact the burden is upon the State to prove the same once it is rebutted by the tenure holder. Relevant portion of the judgment is 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.

24. When an objection is filed, normally, issues are framed on the disputed points and parties are required to lead evidence on these disputed points and the matter is liable to be decided according to law without there being any presumption in respect of the correctness of the statement on matters covered by the issue.

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."

15. Upon applicability of aforesaid judgment in the present facts and circumstances of the case, it is evident that after remand, the prescribed authority while determining the issue no. 2 was required to affix burden of proof upon the State to substantiate entries indicated in CLH Form 4 issued under Section 10 of the Act.

16. In the case of **Kallu versus State of U.P** reported in **1979 All LJ 1113** a Co-ordinate Bench of this Court has held that the provisions of Section 4A of the Act are required to be followed by the prescribed authority while determining irrigated or unirrigated land in the possession of tenure holder.

17. Upon perusal of the impugned order passed by prescribed authority dated 15.01.1988, it is evident that there is absolutely no discussion with regard to the factors required to be seen in Section 4A of the Act and is in fact based only on the report dated 20.11.1974 submitted by the Naib Tehsildar. The aforesaid report has been brought on record by the opposite

parties by means of supplementary counter affidavit dated 05.04.2023, a perusal of which also indicates that the Naib Tehsildar's report is not based on any of the factors indicated in Section 4A of the Act.

18. It is quite evident that in terms of Section 4A of the Act, it was incumbent upon the prescribed authority to have determined the irrigated land after examination of relevant khasras for the years 1378, 1379 and 1380 fasli or in absence thereof, the latest village map and other such records as would be considered necessary and would also be based on the local inspection where it is considered necessary.

19. In the present case, it is evident that the khasaras for the aforesaid three years have not at all been adverted to with the appellate Court recording that khasras for the aforesaid years were not available. Even if the said fact was correct, it was incumbent upon the prescribed authority to have insisted on an inspection or to have based finding on other documentary evidence such as revenue records. Such a course of action having not been followed by the opposite parties renders the order vitiated with regard to issue no. 2.

20. The appellate Court in its judgment and order dated 07.02.1996 has not even bothered to advert to Section 4A of the Act and has straight away held the order of prescribed authority to be correct only on the basis of report dated 20.02.1974.

21. In view of discussion made hereinabove, it being evident that the impugned orders dated 15.01.1988 passed by the prescribed authority and the appellate judgment dated 07.02.1996 not being in accordance with the mandatory provisions of Section 4A of the Act are vitiated and are therefore set aside only so far as it pertains to determination of issue no. 2. The matter is remanded to the prescribed authority for determination afresh of the issue no. 2 pertaining to irrigated/unirrigated land in the possession of petitioners as on the date of issuance of notice under Section 10 (2) of the Act for which purpose the prescribed authority shall take into consideration the aspects indicated in Section 4A of the Act of 1960. Since the matter is old, the prescribed authority is directed to pass appropriate orders expeditiously.

22. Resultantly, the petition succeeds and is partly **allowed** to the aforesaid extent pertaining to issue no. 2. Parties to bear their own cost.

Order Date :- 13.5.2024/Satish