

Court No. - 5/ In Chamber

Case :- WRIT - C No. - 3000082 of 1997

Petitioner :- Krishna Pal Singh

Respondent :- State of U.P.

Counsel for Petitioner :- U.K.Srivastava, Anuj Kudesia, Umesh Kumar Srivastava, Vikas Kumar Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Irshad Ali, J.

IA No.8 of 2024

1. Heard.

2. In view of order passed on 22.8.2024, the present application for impleadment has been filed for impleadment of District Magistrate, Balrampur as District Gonda has been bifurcated and new district Balrampur has been created.

3. In view of facts narrated above, the application is allowed.

4. Learned counsel for the petitioners is permitted to carry out necessary incorporation during course of the day.

Order on Writ Petition

1. Heard Sri Anuj Kudesia, learned counsel for the petitioners and Sri Rajiv Srivastava, learned Additional Chief Standing Counsel for the State-respondent.

2. In the year 1979, notice under Sub Section (2) of Section 10 of the Act, 1960 has been issued during pendency of case a fire had taken place in Tahsil Balrampur and entire record was destroyed. In the year 1981, again, notice under Sub Section (2) of Section 10 of the Act, 1960 was issued in the name of Late Surya Narain Singh even though he already died on 8.12.1977. Again, separate notices were issued under Sub Section (1) of Section 10 of the Act, 1960.

3. Notices were issued for the land as follows :-

(a) Plot No.352 area 7.06 acres and Plot No.370 area 9.98 acres situated at Village Bhadua Shanker Nagar, Pargana and Tahsil Tulsipur District Gonda.

(b) Plot No.283 area 11.67 acres and Plot No.415 area 5.00

acres situated at Village Charan Gahiya, Pargana and Tahsil Tulsipur District Gonda.

(c) At village Kapia Khalsa Tappa Aikhin, Pargana and Tahsil Naugarh District Basti which were in the name of Smt. Jayanti Kunwar.

4. The petitioners filed separate objections, Annexure-1 (dated 7.4.1983) and Annexure-2 (dated 6.7.1983), which are as under :-

(a) Plot No.352 area 7.06 acres and Plot No.370 area 8.98 acres situated at Village Bhadua Shanker Nagar, Pargana and Tahsil Tulsipur District Gonda the entire land was *bhumidhari* land of Smt. Jayanti Kunwar and was already transferred in year 1959 by executing sale deed in favour of Ram Chandra and Paras Nath for valuable consideration and the mutation order was passed on 06.09.1974 by Consolidation Officer and the *amaldaramad* of this mutation order was not made due to mistake on the part of consolidation staff.

(b) Plot No.283 area 11.67 acres and Plot No.415 area 5.00 acres situated at Village Charan Gahiya Pargana and Tahsil Tulsipur District Gonda were wrongly shown as irrigated, while this land was unirrigated and this land was also not situated in effective command area of any lift irrigation canal or a private irrigation work and due to which, only one crop was yielded from such land.

(c) at village Kapia Khalsa Tappa Aikhin, Pargana and Tahsil Naugarh District Basti, which were in the name of Smt. Jayanti Kunwar who was owner of the land having inherited the same from her maternal grandfather and which she transferred entire land in favour of different persons by way of registered sale deed after obtaining valuable sale consideration from the transferees (sale deeds were executed on 07.04.1971, 08.06.1971 and 26.06.1971).

5. In response to objections, the State of Uttar Pradesh filed its written statement. Registered sale deed in respect of Plot No.352 and Plot No.370 situated at Village Bhadua Shanker Nagar, Pargana and Tahsil Tulsipur District Gonda were executed in year 1959 in favour of Ram Chandra and Paras Nath.

6. Impugned order dated 31.12.1991 passed by the respondent No.3 Chief Revenue officer, Faizabad (Annexure-8 to the writ petition), whereby the authority framed the following issues :-

(i) Whether the entries of C.L.H. form 3A, 3B and 3C issued to the tenure holders are correctly entered ?

(ii) Whether the sale deed in the respect of plot No.352 and Plot No.370 situated at Village Bhadua Shanker Nagar, Pargana and Tahsil Tulsipur District Gonda were executed in favour of Ram Chandra and Paras Nath were admissible in law, and if so, its effect ?

(iii) Whether the entire land of Charan Gahiya was unirrigated ?

(iv) Whether the sale deeds executed by Smt. Jayanti Kunwar (petitioner No.2) widow of original ceiling tenure holder Late Surya Narain Singh in respect of the land of Village Kapia Khalsa on 07.04.1971, 08.06.1971 and 26.06.1971 were legally admissible, if so, its effect ?

6. The issue Nos.1 and 3 were inter-connected and they were decided together. The prescribed authority has decided two issues in favour of the petitioners and no evidence was adduced on behalf of the state of Uttar Pradesh to establish the fact that the land of village Charan Gahiya was within the command area of canal of Bhawanpur Bandh and the statement of Lekhpal also recorded and no document was produced by him.

7. With regard to issue No.2, the plot No.352 and Plot No.370 situated at Village Bhadua Shanker Nagar, Pargana and Tahsil Tulsipur District Gonda were executed in favour of Ram Chandra and Paras Nath during the year 1959 for valuable consideration and these persons were neither family members of the tenure holder nor they were otherwise related to them and the finding recorded the name of transferees was not entered over the land but the authority did not consider that the mutation order was passed on 06.09.1974 by Consolidation Officer and the *amaldaramad* of this mutation order was not made due to mistake on the part of consolidation staff.

8. It is submitted by learned counsel for the petitioners that the issue No.4 was decided very casually and non-speaking and ignored the sale deeds were executed on 07.04.1971, 08.06.1971 and 26.06.1971 in respect of the land of Village Kapia Khalsa Tappa Aikhin Pargana and Tahsil Naugarh District Basti merely on the ground that they were executed after the appointed date of 24.1.1971 and prescribed authority did not correctly apply its mind that they were executed for adequate consideration and in good faith for the immediate benefit of the tenure holder and also the provisions of sub section (6) of Section 5 of the Act of 1961.

9. After the prescribed authority rejected petitioners' objections and determined their ceiling area by treating and clubbing the entire land covered by the aforesaid sale deeds situated in village Bhadua Shanker Nagar as well as situated in village Kapia Khalsa with the land of the tenure holder and thereby declared an area of 28.13-7 acres of land as surplus area.

10. Against the order of the prescribed authority, appeal was filed before the Additional Commissioner, Faizabad.

11. While deciding the issue Nos.1 and 3 to the effect that entire land of Village Charan Gahiya was unirrigated said by prescribed authority and no appeal was preferred by the State against aforesaid finding, but appellate court, while deciding the appeal, had no jurisdiction to hold that the land of Village Charan Gahiya was irrigated land and the finding of appellate court is manifestly perverse and contrary to law.

12. About issue No.2, Gata Nos.352 and 370 Village Bhadua Shankar Nagar, Gonda and in the year 1959 sale deeds were executed in favour of Ram Chandra and Paras Nath and statement was also given by them before prescribed authority and the mutation order was passed on 06.09.1974 which was not made due to mistake on the part of consolidation staff.

13. About issue No.4, Village Kapia Khalsa land, sale deed executed by the Petitioner No.2 for adequate consideration and in good faith for immediate benefit of the tenure holder and the purpose for agriculture the land was far from her house that's why petitioner No.2 sold her land and the name of purchaser of the land was also recorded in the consolidation record. Reference may be made on paragraph-63 of the writ petition, as stated by the petitioners' counsel.

14. In evidences of Ram Chandra and Phoolmati W/o Paras Nath, they have stated that they purchased the land after paying a valuable consideration and they have possession over it.

15. The instant supplementary affidavit bringing on record the form CH-41, CH-23, CH-11, CH-45 Khatauni of Aadhar year, 1359 Fasli and 1356 Fasli, whose certified copies have been obtained by the petitioners from the revenue record of the office of District Collector, Balrampur on 18.07.2024, whereby it is evident that Gata No.352 and Gata No.370 situated at village Bhadua Shankar Nagar, Pargana and Tehsil- Tulsipur, District-Gonda, have been renumbered during consolidation proceedings which have been sold in year 1959, whose old numbers were 2258, 2259, 2260, 2261, 2267 and 2268, meaning thereby, the properties are the same as per Form- 23.

16. In respect of Gata No. 283 and Gata No. 415 situated at village Charan Gahiya, Pargana and Tehsil - Tulsipur, District-Gonda, is unirrigated land as per Form CH- 41 and 45 in the revenue record but the revenue authorities have treated the same as irrigated land.

17. Learned counsel for the petitioners placed reliance upon the following judgments :-

(i) Ramadhar Singh Vs. Prescribed Authority & others [1994 Supp (3) Supreme Court Cases 702]. Relevant paragraph-2 is being quoted below :-

"2. "It has to be seen under what provision of the Act can the validity of the sale executed prior to January 24, 1971, the appointed day, be gone into? Sub-section (6) of Section 5 of the said Act says that in January, 1971, which but for the transfer would have been declared as surplus land under the Act shall be ignored and not taken into account. The proviso (b) thereto, inter alia, provides that a transfer proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and an irrevocable instrument, not being of benami transaction or for immediate or deferred benefit for the tenureholder or other members of the family, is outside the scope of the aforesaid sub-section. Thereafter explanation II provides that the burden of proving that a case falls within clause (b) of the proviso shall rest with the party claiming its benefit. Apparently, it is under this provision of law that the validity of the sale deed dated April 22, 1969 was put to test. The authorities under the Act took the view that the sale deed was not genuine because no consideration appears to have passed before the Sub-Registrar and that it was a transfer between father and son raising a dust of suspicion. Otherwise it was not disputed on fact that the sale had been effected by means of a registered deed in which the passing of consideration was mentioned as a recital. The existence of the sale deed being not disputed and it having taken place, as said before, on February 24, 1969, prior to the appointed day that is January 24, 1971, the inquiry regarding the validity of the sale deed under sub-section (6) of Section 5 was totally misplaced. Thereunder, as it appears to us, the appropriate authority had no jurisdiction to be put the validity of the sale deed to test since his jurisdiction arose only when the deed of transfer had been effected on or after the appointed day. Not only the first and the appellate authority under the Act persisted in that view, but the High Court too proceeded on that basis. The effort of the appellant to have it declared that the authorities had no jurisdiction to invalidate the sale under sub-section (6) of Section 5 when read with Explanation II to sub-section (1) of Section 5 also was a futile attempt because the High Court followed the path, as did the authorities under the Act, and rejected the writ petition. We are of the view that this was a wholly erroneous approach. Sub-section (6) of Section 5 did not confer jurisdiction on the authorities to determine the validity of the sale and if that is so any finding of theirs as to the contents of the sale is of no assistance. In the result the appeal must succeed. Accordingly, allowing the same we set aside all the orders of the authorities below as also that of the High Court. No costs."

(ii) Ram Chandra Vs. State of U.P. & others [2020 (4) ADJ

535 (LB)]. Relevant paragraphs-31 to 41 are being quoted below :-

"31. In the instant case the petitioner got the right to possession by virtue of succession to the six plots of land in village Magrapur on death of his father in September 1979 only. However, in the extract of Khatauni considered by the Prescribed Authority of the year is 1407 to 1412 Fasli, the term of cultivatory possession was mentioned as since before 1373 Fasli.

32. Moreover, the Appellate Authority rightly interpreted [section 29](#) of the Act and came to a conclusion that determination of ceiling area is to be done with reference to the date the petitioner was recorded as tenure holder i.e. with effect from September 1979 and not with reference to 08.06.1973, the date of the enforcement of the Amendment Act.

33. The language of Section 5 (1) "on and from the date of commencement" of the amendment act i.e. 08.06.1973, ceiling area has to be determined taking into account all the lands held by such a person throughout the State, in any capacity, whatsoever. The date of 08.06.1973 is relevant date only for the purpose of defining "ceiling area", it is not relevant for the purpose of determining the area of the holding of a tenure holder. If the petitioner's argument is to be believed it would mean that only if a person has land in excess of "ceiling area" on 08.06.1973 then alone he shall come under the clutches of the Act. This would do violence to the very language of the Act, and the purpose for which it was enacted. The language of [Section 5 \(1\)](#) of the Act starts with the phrase "on and from" Commencement of the Act.

34. The date of commencement of the Amendment Act is 8th June 1973, hence, the computation of a holding of a tenure holder would depend on either the date of commencement of the Act, or from the commencement of the Act to any other point of time in the future. The operation of the Act is a continuing process. It does not stop merely on the date of 8th June 1973, when the Amendment Act came into operation but from the date of such commencement the determination of surplus land will be done as and when a tenure holder comes into possession and holds land the aggregate of which is more than the ceiling area permissible under the Act.

35. It is clear from the Long Title and Preamble of the Act that the object of the act is to impose ceiling on land holdings in Uttar Pradesh. [The Act](#) does not take away any rights of the tenure holder but only restricts the area he can hold to allow for a more equitable distribution of a scarce resource among the States' entire population in the interest of the community, to ensure increased agricultural production and to provide land for landless agricultural labourers and for other public purposes as best to subserve the common good. The argument of the learned counsel for the petitioner that since he did not hold surplus land on the date of commencement of the Amendment Act, any land which came into his possession by succession thereafter should be ignored, is rejected as misconceived.

36. The next contention of the learned counsel for the petitioner is that under section Under section 3 (7) the definition of family has been given and in relation to a tenure holder it means himself or herself and the spouse, other than a judicially separated spouse, minor son and minor

daughters, other than married daughters. Under Sub-section (3) of Section 5 for Computation of Ceiling Area in case of a tenure holder the number of family members has to be done taking into account. In case the family members are not more than five, only 7.30 hectares of irrigated land is permissible. However, if the family members are more than five, then 2 additional hectares of land is admissible subject to a maximum of 6 hectares of such additional land.

37. For each adult son the tenure holder is entitled to 2 hectares of additional land, subject to a maximum of 4 hectares of additional land. Provided that such adult sons are not independent tenure holders in their own right having more than 2 hectares of irrigated land in their possession.

38. A careful perusal of the aforesaid provision clearly shows that if the member in the family exceeds five, the tenure holder is entitled for additional land provided that none of such member is a tenure holder in his/her own right. Similarly, it also provides that even if there are no adult sons, but if the strength of the members of the family is more than five, then the tenure holder is entitled to additional land of 2 hectares for each member of the family subject to a maximum of 6 hectares of additional land. It is not in dispute in the present case that the strength of family members of the petitioner was Eight at the time when notice was issued to him on 02.11.2000. The petitioner brought on record the High School pass Certificates of his three daughters and three sons. However, the Prescribed Authority and the Appellate Authority refused to grant benefit of additional land for each member of the family in addition to the five members as the petitioner did not produce relevant extract of the Family Register and on 08.06.1973 none of the petitioner's children was born. The logic applied by the Prescribed Authority and the Appellate Authority is incomprehensible. According to the respondents, the date of determination of family members has been taken as 8th June 1973, but the date of determination of ceiling area has been taken as the date when the Prescribed Authority was deciding the case.

39. In my considered opinion even though the petitioner's family consisted of only two members i.e. himself and his wife on 8th June 1973, at the time of issuance of notice under [Section 9](#), on 02.11.2000, all of his six children had been born. Three of his daughters were married but there were at least three sons who were living with him. None of them has been shown to be an independent tenure holder having more than 2 hectares of land by the State respondents, in their Counter affidavit. For the purpose of determination of ceiling area the petitioner was entitled to 2 additional hectares for at least one of his sons namely Shyam Srivastava who was major at the time.

40. Though this Court is not convinced with the argument of the learned counsel for the petitioner regarding the applicability of the cut-off date of 08.06.1973 for determining ceiling area on the basis of [Section 29](#) of the Act and holds that the petitioner was independent tenure holder of eight plots of land ad-measuring 8.546 hectares in villages Magrapur and Baddupur in Tehsil Shahbad District Hardoi which in irrigated terms came out to be 7.968 hectares; the failure of the learned Court below to take into account the number of members of the petitioner's family while determining the permissible limit of land to be left with the petitioner cannot be countenanced.

41. *The Writ Petition is allowed. The orders of the Respondent nos.2 & 3 are set aside as they failed to take into account the petitioner right to additional land under Section 5(3) b of the Act. The petitioner shall be entitled to all of his land in the eight plots mentioned in CLH 3 in the two villages concerned."*

18. On the other hand, Sri Rajiv Srivastava, learned Additional Chief Standing Counsel placed reliance upon Section-5 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, which is being quoted as under :-

"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."

19. In respect of Section 5, learned Additional Chief Standing Counsel submitted that minor sons, daughters and wife is admissible in the definition of 'family'. This submission is in respect of issue No.4 of the issues framed by the prescribed authority with regard to imposition of ceiling.

20. In rebuttal, learned counsel for the petitioners submitted that after the amendment on 8.6.1973, the land sold prior to 1973 shall not be added in the ceiling proceedings.

21. After having heard the rival submission of learned counsel for the parties, I perused the material on record as well as law report cited by learned counsel for the petitioners.

22. On overall consideration, it is evident that the respondents have treated the land of Village Bhadua Shanker Nagar, Pargana and Tehsil Tulsipur, District Gonda covered by the registered sale deeds executed during the year 1959 in favour of Ram Chandra and Paras Nath, much prior to the appointed dated of 24.1.1971 to continue to belong to Smt. Jayanti Kunwar in spite of the fact that the aforesaid registered sale deeds were implemented and in pursuance of which, the names of the transferees were ordered to be mutated during consolidation operations under the orders of the Consolidation Officer, amaldaramad of which was not made in the revenue records and by doing this, the respondents have committed an error, which is not sustainable in the eyes of law.

23. On perusal of certified copies of CH-23, CH-41, CH-11 and CH-45, it is evident that Gata No.352 and 370 situated at Village Bhadua Shanker Nagar, Pargana and Tehsil Tulsipur, District Gonda, which have been sold in the year 1959, whose old numbers were 2258, 2259, 2260, 2261, 2267 and 2268, meaning thereby, the properties are the same as per form-23 of

U.P. Consolidation of Holdings Act, 1953. During the consolidation proceedings, the old Gata Nos.2258, 2259, 2260, 2261, 2267 and 2268 have been renumbered as Gata No.352 and 370, which also finds mention in sale deeds contained in Annexures-6 and 7. On perusal of the documents referred hereinabove, it is transpired that the land in question is unirrigated land. The prescribed authority as well as the Additional Commissioner have not considered the same and held that these are different numbers and land is irrigated, in fact, the land is unirrigated, which clearly demonstrates the findings of the prescribed authority as well as Additional Commissioner to be erroneous in nature.

The finding recorded by the respondents to the effect that the entire land of Village Charan Gahiya, Pargana and Tehsil Tulsipur, District Gonda is irrigated, is erroneous in law and the same has not been recorded in accordance with the statutory determination of irrigated land provided under Section 4-A of the Act of 1961 read with Rule 3 of the U.P. Imposition of Ceiling on Land Holdings Act, 1961. In fact, the non-irrigated land does not come under the ambit of ceiling.

24. The argument advanced by learned counsel for the petitioners is also supported by the judgments relied upon by him as they are totally applicable in the present case.

25. In view of the foregoing discussion and the judgments relied upon, the Court is of the opinion that the impugned orders are not sustainable in law, thus, the impugned orders dated 21.4.1997 and 31.12.1991, passed by respondent Nos.2 and 3 are hereby set aside. The writ petition succeeds and is **allowed**.

26. However, the matter is remanded back to the Additional Commissioner to decide the issue afresh in accordance with law.

Order Date :- 30.8.2024

Gautam