

Court No. - 19

Case :- WRIT - C No. - 3000183 of 1998

Petitioner :- Goklendra Bahadur Singh

Respondent :- State Of U.P. Through Collector Kheri And Others

Counsel for Petitioner :- D.C.Mukerjee,Adnan Ahmad,Arun Kumar Shukla,L.M. Khare,Munni Lal Yadav

Counsel for Respondent :- Chief Standing Counsel,Ashok Kumar,Avadhesh Kumar,G.S. Nigam,I.D.Shukla,Munni Lal Yadav,O.P. Vishwakarma,Rajiva Dubey,Ram Lagan Misra,S.K.Mehrotra,Som Kartik Shukla,V.B.Verma,Vinod Kumar Pariyani

Hon'ble Subhash Vidyarthi,J.

1. This application has been filed by the applicants-Afak Ali and Altaf, sons of Kasim Ali for impleadment in the writ petition on the ground that the patta in respect of part of surplus land has been executed in favour of the applicants on 15.04.1990. The petitioners have filed objections against the impleadment application.

2. The learned counsel for the petitioners has relied upon a judgment rendered by a coordinate bench of this court in the case of 3000078 of 2008, wherein relying upon an earlier decision in the case of ***Ram Asrey and others Vs. Additional Commissioner (Administration), Jhansi Division Jhansi and another: 2008 (8) ADJ 691***, wherein relying upon an earlier decision in the case of ***Raj Bahadur and others Vs. District Judge, Hamirpur: 1984 ALJ 403***, this court has held that no allotment could be made before finalization of the ceiling proceedings and any such allotment made before finalization of the ceiling proceedings would not confer any enforceable right upon the transferee.

3. Accordingly, as the patta in question has been executed in favour of the parties seeking impleadment before finalization of ceiling proceedings, no vested right of those parties is involved in the present case and, therefore, they have no right to oppose the writ petition.

4. Accordingly, the impleadment application stands **rejected**.

(Order on memo of the petition)

5. Heard Sri Adnan Ahmad, learned counsel for the petitioner, Sri Avdhesh Kumar, Sri Som Kartik Shukla and Sri Durgesh Kumar Pathak, Advocate holding brief of Sri I.D Shukla, the learned counsel for the private respondents.

6. The instant writ petition has been filed under Article 226 of the Constitution of India, challenging the validity of an order dated 08.10.1997 passed by the Prescribed Authority Ceiling/ Additional Collector, Lakhimpur Kheri in Case No. 593/4/4/4/32/9/6/4/3 under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act as well as the order dated 06.10.1998 passed by the Additional Commissioner (Administration) Lucknow Division, Lucknow in Appeal Nos.305 (97-98) and 341(97-98) filed against the aforesaid order of the Prescribed Authority.

7. Briefly stated, facts of the case are that the petitioner was recorded tenure holder on 151.72 acres of agricultural land spread in several villages in District Lakhimpur Kheri and District Sitapur, out of which some land was cultivatory land and the rest was grove and abadi land. A notice under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act (hereinafter referred as 'Ceiling Act') was issued to the petitioner on 28.09.1991 showing a total area falling in the petitioner's share as 107.67 acres in terms of the irrigated land out of which 18.038 acres irrigated land was proposed to be left

with the petitioner and remaining 89.63 acres irrigated land was proposed to be declared as surplus.

8. The petitioner filed objections inter alia stating that Plot Nos. 1125 measuring 0.52 acres, 1130 measuring 0.83, 1131 measuring 0.63 acres and grove plot No. 1127 measuring 0.39 acres of Village Rajapur Tehsil, District Lakhimpur Kheri belonged to the petitioner exclusively and the opposite parties no. 4 and 5 and the predecessor of the opposite parties No. 6-10 had no share in the aforesaid plots and their shares have wrongly been shown in CLH Form and petitioner's share was wrongly shown to be 7/16. The petitioner had raised some other objections also, but the correctness of the findings in regard to those objections has not been assailed before this Court and, therefore, there is no need to make a mention thereof in this order.

9. The Prescribed Authority decided the objections by means of the impugned order dated 08.10.1997. The issue number six framed by the Prescribed Authority was whether land bearing Gata No. 377 area 6.14 acres, 382 area 5.26 acres and 385 area 6.34 acres situated in Village Mahewa of District Kheri were grove lands and whether there is no other shareholder in this land.

10. While deciding the aforesaid issue, the Prescribed Authority held that the document 11B available on the paper book is a compromise filed in an interpleader suit. The properties mentioned in List A forming a part of the compromise are the exclusive properties of the petitioner- Goklendra Bahadur Singh, which includes the land bearing Gate No. 375/6-14, 402/5-26 and 405/6-34 situated in Village Mahewa Pargana, Srinagar, which establishes that the petitioner Goklendra Bahadur Singh is the exclusive tenure holder of the aforesaid

land. CH 41 relating to Village Mahewa shows that Gata No. 375/6-14 has been allotted new number 377 and Gata No. 402 and 405 have been allotted new nos. as 383 and 385.

11. The petitioner had filed Appeal No. 305 (97-98) against the aforesaid order and his sister Ravija Devi and had also filed an Appeal No. 341 (97-98) against the aforesaid order under Section 13 of the Ceiling Act. Both the appeals were allowed by means of an order dated 06.10.1998 and the order dated 08.10.1997 passed by the Prescribed Authority was modified by the appellate order.

12. The petitioner is aggrieved by only a portion of the appellate order whereby the finding of the Prescribed Authority on issue number six has been modified. The Appellate Court has held that the consolidation court has already determined the shares of the parties regarding the land in dispute and the Prescribe Authority under the Ceiling Act has no jurisdiction to pass any order regarding shares of the parties and as per the order dated 11.11.1975 passed by the Consolidation Officer, the petitioner Goklendra Bahadur Singh has 7/16 shares and this fact has been ignored by the Prescribed Authority.

13. Assailing the correctness of the aforesaid finding recorded by the Appellate Court, learned counsel for the petitioner has drawn attention of this Court to the copy of the compromise filed in suit no. 11 of 1952 in the Court of Civil Judge, Lakhimpur Kheri titled Goklendra Bahadur Singh Vs. Raja Jayendra Bahardur Singh and others, wherein the parties agreed that the petitioner had become the exclusive owner of properties mentioned in List-A appended to the compromise deed. List-A appended to the compromise includes land bearing Gata Nos. 375 measuring 6.14 acres, 402 measuring 5.26 acres and 405 measuring 6.34 acres situated at Village Mahewa, Pargana,

Srinagar. Plots Nos. 1981, 1982, 1983, 1984, 1988, 1990, 1991 and 1979 were also mentioned in List A, which fell within the exclusive share of the petitioner. Plot no. 1981 has been allotted new No. 1131, Plot nos. 1982, 1983 and 1984 have collectively been allotted a new no.1130, Plots no. 1188 and 1990 have collectively been allotted a new no. 1125 and Plot no.1991 has been allotted a new no. 1124 and Plot no. 1979 has been allotted a new no. 1127 and the petitioner has exclusive rights over these plots also.

14. The aforesaid suit was decreed in terms of the compromise by means of an order dated 07.04.1973 and the compromise was made a part of the decree. Thus, the petitioner became exclusive owner of the land bearing Gata Nos. 375, 402 and 405 situated in Village Mahewa, Pargana, Srinagar on the strength of the aforesaid compromise decree passed by the Competent Court in the Civil suit No. 11 of 1952.

15. A compromise in the aforesaid terms was also filed in consolidation proceedings bearing Case No. 8322 under section 9A (2) of the Consolidation of Holdings Act before the Consolidation Officer Edhak, Lakhimpur Kheri, wherein it was recorded that the aforesaid land bearing Gata Nos. 375, 402 and 405 situated in Village Mahewa, Pargana, Srinagar were the exclusive properties of the petitioner Goklendra Bahadur Singh on the strength of the decree dated 07.04.1973 passed by the Civil Judge, Lakhimpur Kheri in Suit No. 11 of 1952. The Consolidation Officer accepted the compromise and decided the case in terms thereof by means of an order dated 11.11.1975.

16. The submission of the learned counsel for the petitioner is that the decree passed by the Civil court has decided the shares between the parties to the suit, as per which the petitioner is the exclusive tenure holder of land bearing Gata Nos. 475

measuring 6.14 acres, 402 measuring 5.26 acres and 405 measuring 6.34 acres. The Appellate Authority has ignored the aforesaid compromise decree between the parties while passing the impugned order.

17. The learned Standing Counsel and the private respondent opposed the writ petition, but they could not dispute the fact of the compromise decree between the parties and the binding affect thereof. Sri S.P. Maurya, the learned Standing Counsel has submitted that the order dated 11.11.1975 was passed by the Consolidation Officer after the cut off date and therefore, it would not affect the proceeding instituted on the basis of notice under section 10(2) of the Ceiling Act. However, he could not dispute the fact that the compromise decree was passed by the competent civil court prior to it.

18. Although there is a prayer in the writ petition for quashing of the order dated 08.10.1997 passed by the Prescribed Authority also, the learned counsel for the petitioner states that he does not want to press that prayer and he limits his challenge to the Appellate Order dated 06.10.1998 only.

19. Accordingly, the present writ petition is **allowed** and the impugned order dated 06.10.1998 passed by the Additional Commissioner (Administration) Lucknow Division, Lucknow in Appeal Nos. 305 (97-98) and 341(97-98) is hereby quashed.

20. The matter is remanded to Appellate Court i.e Commissioner, Lucknow Division, Lucknow to be decided afresh, expeditiously without granting any unnecessary adjournment to any of the parties within a period of six months from today, keeping in view the observations made in this order.

(Subhash Vidyarthi,J.)

Order Date :- 23.4.2024/Preeti.