

Court No. - 17

Case :- WRIT - C No. - 3000060 of 2001

Petitioner :- Govind Shara Singh And Others

Respondent :- Commissioner Devi Patan Mandal Gonda And Others

Counsel for Petitioner :- Q.M. Haque, Mohd. Mustafizul Haq

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner and Mr. G.K. Pathak, learned Additional Chief Standing Counsel for the opposite parties.
2. Petition has been filed challenging order dated 12.08.1996 passed under Section 13 of U.P. Imposition of Ceiling on land Holdings Act, 1960(hereinafter referred to as the Act of 1960), order dated 25.08.1999 passed by the Prescribed Authority and the order dated 18.04.2001 again passed under Section 13 of the Act of 1960.
3. It has been submitted that earlier vide order dated 18.01.1993, orders were passed by the Prescribed Authority under Section 10(2) of the Act of 1960 holding plot nos. 129 and 117 to be irrigated in nature. The said order was challenged in appellate jurisdiction resulting in passing of order dated 12.08.1996 whereby plot no.129 was found to be unirrigated but the matter was remanded for fresh consideration only so far as the question of irrigated or unirrigated aspect pertaining to plot no.117.
4. In pursuance thereof, the subsequent order dated 25.08.1999 has been passed declaring the entire Gata No.117 having an area of 19.33 acre to be irrigated. Appeal filed there-against has also been rejected vide order dated 18.04.2001.
5. Learned counsel for petitioner has submitted that impugned orders have not taken consideration of the facts required under Section 4A of the Act of 1960 and that the authorities have not

followed the specific points of remand order dated 12.08.1996 since the entries pertaining to Khasras 1378 and 1379 Faslis have been misread and misinterpreted. It has also been submitted that a perusal of appellate order dated 18.04.2001 will make it evident that only a portion of Gata No.117 was irrigated and therefore the authorities have erred in considering the entire plot of land to be irrigated and were therefore required to exclude those areas of the said plot which remained unirrigated. He has placed reliance on judgment rendered by a Division Bench of this Court in *Kallu v. State of U.P.* reported in 1979 SCC OnLine All 458.

6. Mr. G.K. Pathak, learned Additional Chief Standing Counsel for the opposite parties however has refuted the submissions advanced by learned counsel for petitioner with submission that provisions of Section 4A of the Act of 1960 have been completely taken into consideration while passing the impugned orders. It is submitted that the orders clearly indicate the fact that Gata No.117 was irrigated by tube-well no.133 and the entire area of Plot No.117 was coming within the command area of aforesaid tube-well due to which it has been rightly considered to be irrigated.

7. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material record, it is evident that although challenge has been raised to order dated 12.08.1996 but in effect the challenge is infructuous since fresh orders were passed in pursuance thereof vide order dated 25.08.1999, which is also under challenge.

8. A perusal of impugned order dated 25.08.1999 and appellate order dated 18.04.2001 makes it evident that Gata No.117 having an area of 19.33 acres has been taken to be irrigated on the basis of fact that it was coming within the command area of

tube-well no.133. Appellate order dated 18.04.2001 has also adverted to Khasras of Fasli years 1378 and 1379 to indicate the nature of the plot in question and the crops which were grown thereupon. The order also indicates that the entire Gata no.117 was within the effective command area of the aforesaid tube-well.

9. In view thereof, the only aspect required to be considered is whether the entire Gata No.117 was required to be considered irrigated or only a portion thereof.

10. The aforesaid aspect has already been dealt with in **Kallu**(supra) in the following manner:-

"15. The basis for determination of the 'ceiling area' under the Act as originally enforced was fair quality land. Since the amendments introduced by U.P. Act 18 of 1973 and subsequently by U.P. Act 20 of 1976 'ceiling area' and 'surplus land' require determination with reference to the assured irrigation facilities available to land held by a tenure-holder. Cl. 'firstly' of Section 4-A requires the Prescribed Authority to form an opinion as to whether during the material Fasli years irrigation facilities were available from such sources as are enumerated there in respect of any crops. The relevant consideration is merely the existence of irrigation facilities and not its actual utilization. This understandably so because if facilities are available and yet a tenure-holder neglects to make use of them there is no justifiable reason why he should have an advantage over those who have been up and doing while he has chosen to be idle and asleep. We have already held that land' and 'plot' cannot be equated. If irrigation facilities of the nature mentioned in sub-cl. (a) of cl. 'firstly' of Section 4-A are available only to a part of the total area of which a plot is comprised it cannot be held that irrigation facilities were available for the entire plot. In such cases the prescribed authority on a correct interpretation of sub-cl. (a) of cl. 'firstly' will have to treat only that area of a tenure-holder's plot as 'irrigated land' to which irrigation facilities were available. We are consequently of the opinion that if a large plot consists partly of an area to which irrigation facilities are available as also some to which irrigation facilities are not available only that area thereof will be covered by sub-cl. (a) of cl. 'firstly' to which irrigation facilities were in fact available. Of course 'usar land' as defined in the Act and determined in the manner provided by the Rules will have to be excluded even though irrigation facilities may have been available to it. Similarly other varieties of land exempted under S. 6 will have to be excluded from consideration."

"16. As far as sub-cl. (b) of cl. 'firstly' is concerned, the requirement is that at least two crops were grown in such land in any one of the aforesaid years (emphasis supplied). The expression 'such land', it is obvious, means land referred to in sub-cl. (a) of cl. 'firstly'. The word used in sub-cl. (b) is 'in' and not 'over' and consequently if two crops were grown in 'any portion of the area of a plot to which irrigation facility was available under sub-clause (a) of cl. 'firstly', the entire area to which irrigation facility was available shall have to be treated as land in which two crops were grown. The requirement of sub-cl. (b) of cl. 'firstly' of S. 4-A is not that every inch of the land to which irrigation facilities were available in the material years should have grown double crops. To take a hypothetical example, if to a plot of land consisting of 50 acres irrigation facilities were available to an area of 20 acres and on any portion of such 20 acres at least two crops were grown in any of the years 1378 Fasli to 1380 Fasli, the entire area of 20 acres to which irrigation facilities were available will have to be treated as 'irrigated land' for the purpose of sub-cl. (b) of clause firstly of S. 4-A. The word 'in' is one of common use. If it is said that an individual lives in a particular building or locality it does not convey that he is in occupation of the entire building or locality. Similarly when it is said that one has grown trees in a piece of land or raised crop therein, it does not signify that he has grown trees or raised crop over the entire land."

When the legislature by amending the Act made availability of irrigation facilities the basis for determination of the ceiling area and surplus land instead of the quality of the land it must have had some purpose in mind. During the last decade farm technology and agricultural science have made rapid progress and human ingenuity coupled with labour and application of scientific know-how has successfully converted even deserts into green belts provided water was available. Application of scientific methods has made possible improvement in soil quality and its fertility. It is not unreasonable to infer that when the Act was amended the legislature intended that if any land has irrigation facilities available to it and is not 'usar land' and in some part of it 'dofasli' crops have in fact been raised in any of the relevant 'Fasli' years a willing and hardworking tenure-holder by application of modern agricultural appliances and fertilizers can improve the productivity of the land and consequently no premium should be available to those who fail to do so."

"17. In this view of the matter to take a concrete case to compute the area of a tenure-holder's 'irrigated land' under cl. 'firstly' of S. 4-A the Prescribed Authority must find out the area of land to which irrigation facilities of the prescribed nature was available for any crop during the relevant Fasli years, exclude therefrom 'usar land' etc. and if it finds that over any part of such area at least two crops were grown it must hold the entire area as irrigated land'. Such an interpretation resolves the problem which the prescribed authority would be faced with in determination of the 'irrigated land' of a tenure-holder where records reveal the growing of two crops on varying areas of his holding during the material Fasli years."

"18. For the reasons given, our answer to Question No. 1 posed by the learned single Judge is as follows:—

"If in any portion of an area of plot or plots to which during the Fasli years 1378 to 1380 irrigation facilities were available and over any portion of such area double crop had in fact been grown the entire area of the plot to which irrigation facilities were available will be covered by clause 'firstly' of Section 4-A since both the conditions laid down in sub-cl. (a) and (b) will be complied with."

11. Upon applicability of aforesaid judgment, it is evident that irrigation facilities were available for the entire Gata no.117 and concurrent finding of fact has been recorded that the entire Gata was under the effective command area of the tube-well. The order also indicates that sugar cane was grown in at least one of the Fasli years and therefore also the Explanation III would be applicable and it shall be deemed that two crops were grown in the plot in any of the years, and that the land is capable of growing two crops in an agricultural year.

12. In view of aforesaid discussion, it is evident that the entire Gata No.117 was within the effective command area of the tube-well and also upon applicability of judgment indicated herein above, the petition being devoid of merit is dismissed. Parties to bear their own costs.

Order Date :- 15.5.2024

kvg/-