

Court No. - 6

Case :- WRIT - C No. - 3000020 of 2007

Petitioner :- Nirmohan Singh

Respondent :- State Of U.P.Through Collector Kheri And 4 Others

Counsel for Petitioner :- U.S.Sahai

Counsel for Respondent :- C.S.C.,Deepak Chandra Jain

Hon'ble Alok Mathur,J.

1. Heard Sri U.S. Sahai, learned counsel for petitioner as well as learned Standing Counsel for respondents.

2. The petitioner by means of present writ petition has challenged the order dated 26.02.2005 passed by prescribed authority whereby he has rejected the objections filed by the petitioner as well as the order dated 26.02.2007 passed by Additional Commissioner, Lucknow Division, Lucknow whereby the appeal preferred by the petitioner against the order of prescribed authority has been dismissed.

3. Brief facts of the case are that the petitioner who is the recorded tenure holder was served with a notice under Section 10(2) of the Uttar Pradesh Imposition of Ceiling of Land Holdings Act, 1960 on 19.11.1974 indicating his holdings to be 80.04 acres out of which 77.25 acres were shown irrigated land while 2.79 acres were shown as a bagh. In the said notice, 50.442 acres was proposed to be declared as surplus. The petitioner had filed his objections stating that in his land, the holdings of Ramendra Singh, Ravindra Singh and Surjit Kaur W/o of Harvinder Singh has wrongly been included and prays for exclusion of the said land.

4. He has further stated that the entire land was unirrigated and it was wrongly shown in the notice that the land was irrigated. The prescribed authority after considering the objections rejected the same by means of order dated 25.01.1975 and declared 50.442 acres as surplus. The petitioner had filed an appeal which was dismissed and subsequently a writ petition was also filed before this Court.

5. The matter was remanded to the prescribed authority who again rejected the objections by means of order dated

17.01.2001. While rejecting the objections, he held that Ramendra Singh and Gurmohan Singh were the sons of the petitioner and consequently the sale deeds in their favour have been made only for the purpose of evading the proceedings under the Act of 1960 and there was no material that the said transaction were bonafide or for adequate consideration and consequently refused to exclude the said land from the holding of the petitioner. It was also brought before him that despite the execution of the said sale deeds, the petitioner was still in possession of the said land and consequently the sale deeds were not bona fide.

6. Against the order dated 17.01.2001, the petitioner had preferred an appeal where again he sought exclusion of the land which has been sold to his sons and further canvas the issue pertaining to the fact that the land were unirrigated and the prescribed authority had wrongly shown them to be irrigated. The appellate authority while considering the appeal was of the view that the prescribed authority has not duly considered the sale deeds by which the sale deeds have been executed in favour of the sons and also as to whether adequate consideration was received and whether the petitioner was entitled for the benefit under Section 5 Sub-Clause 6 of the Act of 1960 and consequently for this reason remanded the matter back to the prescribed authority for consideration on these aspects.

7. With regard to the issue whether the land was irrigated, a finding was recorded in favour of the petitioner holding that even as per the revenue records pertaining to fasli year 1378-1380, the land had been shown as unirrigated and the provisions for irrigation were made only after the cut off date and consequently the land could not be held to be irrigated.

8. In the remand proceedings, the only issue before the prescribed authority was the matter pertaining to the exclusion of the lands which were sold to his sons, namely Rameder Singh and Gurmohan Singh to whom the sale deeds were executed on 28.10.1971 and 27.10.1971 respectively by the petitioner. He has stated that notices were sent to the petitioner and he was also given an opportunity to adduce evidence. Despite granting of the opportunity, no documentary evidence was filed by the petitioner and he merely reiterated that the said lands deserve to be excluded from the holdings of the petitioner. He has further noticed that both the sale deeds were excluded between 28.10.1971 and 27.10.1971 which are after the two cut off dates prescribed under the Act of 1960 and no evidence was adduced by the petitioner which can indicate that he had received adequate consideration for the sale of land and

only reason stated by the petitioner was that only for the marriage of his daughter he had sold the lands.

9. The prescribed authority had recorded that it is not believable that a person would sell the land to his sons to get money for the wedding of his daughter and considering the fact that the land has been sold to his sons, it cannot be said that the sale is bonafide but it seems that an effort was made to evade the provisions of Ceiling Act of 1960 and hence rejected his objections. He further noticed that no option has been given by the petitioner as per the provisions of Section 12 of the Act of 1960 and hence while decided the matter, declaring 17.302 acres as surplus land in terms of irrigated land. The petitioner being aggrieved by the said order had preferred an appeal.

10. The matter pertaining to exclusion of the land sold to his sons was again agitated before the appellate authority. The appellate authority also recorded that no evidence has been filed by the petitioner from which it can be demonstrated that the sale deeds were bonafide and for adequate consideration. He has stated that out of four sale deeds, two sale deeds were in favour of his sons while the rest two sale deeds which were in favour of other persons have already been excluded. Even before the appellate authority, it was submitted that for the purpose of marriage of his daughter, the land was sold to his sons. It could not be demonstrated that the sons had capacity to pay for the said land or that the consideration as shown in the sale deeds was adequate considering the location of the land and it could not be shown that after the said sale deeds the sons were in occupation of the said land and performing agricultural activities themselves. While on the contrary, there was material on record to show that despite the execution of the sale deeds the petitioner continued to have possessory rights over the land and consequently in absence of any material to show that there was compliance of statutory provisions contained in Section 5 Sub-Clause 6 (b) of the Act of 1960, this issue was rejected.

11. With regard to issue pertaining to irrigated or unirrigated land, the appellate authority has relied upon the revenue records pertaining to the khasra for fasli years 1370 and 1379 where the said land was shown to be irrigated and the petitioner was obtaining two crops and hence after observing the said facts he found that no interference in this regard was also required and hence rejected the appeal of the petitioner.

12. Sri U.S. Sahai, learned counsel for petitioner has reiterated all the issues. He has submitted that the said sale deeds executed in favour of sons by the petitioner were for adequate consideration and bona fide and hence deserves to be excluded

from the holding of the petitioner and submitted that the finding recorded by the prescribed authority and the appellate authority require interference by this Court.

13. When a pointed query was put to him as to the material which was placed by him either before the authorities below or before this Court to demonstrate as to whether the said sale deeds were for adequate consideration and bonafide, he submitted that apart from oral testimony there was no other material. He has submitted that the reasons stated before the authorities below was that for the purpose of marriage, the land was sold by the father to his sons and that was the reasons sufficient itself for exclusion of the lands from the holdings of the petitioner.

14. Learned Standing on the other hand has opposed the writ petition. He has submitted that the mere fact that the father has sold his properties to the sons a presumption and suspicion arises that the said transfer of the land has been made by the tenure holder only for the purposes of evading from the clutches of the provisions of Ceiling Act of 1960. He has stated that before the prescribed authority and appellate authority there was material to indicate that despite the said sale deeds the land continued to be in possession of the recorded tenure holder and accordingly submitted that the said sale deeds were a mere sham and not entered into for the purpose of transferring the lands in the hands of his sons. He has further submitted that onus lay upon the petitioner to adduce evidence to show that after execution of the said sale deeds the sons had possessory rights over the said land and were in fact cultivating the land themselves to the exclusion of the recorded tenure holder. He has further submitted that no exemplars were filed by the petitioner to show that the consideration paid by his sons for purchase of the land was adequate.

15. In absence of any material or evidence adduced by the petitioner, both the authorities below could not have recorded any finding in favour of petitioner who has failed to demonstrate that the said sale deeds were executed for adequate consideration and were bonafide. Accordingly, he stated that there is no infirmity in the order of prescribed authority or the appellate authority and consequently the writ petition deserves to be dismissed.

16. I have heard learned counsel for respective parties and also perused the record.

17. With regard to issue pertaining to the exclusion of the land for which the petitioner has entered into a sale deed and sold the

said lands to his sons by registered sale deed on 28.10.1971 and 27.10.1971. According to the provisions contained in the Act of 1960, no alienation or transfer of land is permitted after the cut off date or any such alienation or transfer is liable to be ignored by the prescribed authority while considering the land to be declared surplus at the hands of the recorded tenure holder.

18. As per Section 5 of the Act of 1960, on or from of the commencement of the Act of 1960, no tenure holder is entitled to hold aggregate any land in excess of the ceiling area applicable to him and while determining the ceiling area all lands 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. According to Explanation - 2 of Section 5, where a person continues to be in actual cultivatory possession even if the said land is recorded in the name of any other person, it shall be presumed, unless the contrary is proved that the first person continues to hold the land so held by him even if it is recorded in the someone else name.

19. Under Section 2 of Section 5 under such a situation, the land of the recorded tenure holder can be excluded and according to Sub-Section 6, any transfer of land made after 24.01.1971 if made in good faith and for adequate consideration under an irrevocable instrument not being a benami transaction or for immediate or deferred benefit would be excluded. To seek the benefit of such exclusion, as is being sought by the petitioner in the first case it has to be demonstrated by him to the satisfaction of the prescribed authority that the said transaction is in good fair and for adequate consideration under the sale deed which is not a benami transaction.

20. In order to bring his case within the purview of Proviso (b), the tenure-holder has to show-

(i) that the transfer has been made in 'good faith';

(ii) that it is a transfer for adequate consideration;

(iii)that it has been made under an irrevocable instrument; and

(iv) that it is not a benami transaction or for immediate or deferred benefit of the tenure- holder or other members of his family.

21. The primary object of the Ceiling Act, as stated in Section 5(1) is to prohibit and disentitle a tenure-holder from holding land in the aggregate in the State of Uttar Pradesh, in excess of the ceiling area, in his own right, whether in his own name, or

ostensibly in the name of any other person. The ceiling area and surplus land of a tenure-holder under the Ceiling Act, as already mentioned, are to be determined as on June 8, 1973 when the U.P. (Amendment) Act.

22. No. 18 of 1973 came into force. A transfer, therefore, made after January 24, 1971 which is designed to serve as a cloak for retention of a right or interest of the transferor in the ostensibly transferred land in excess of the ceiling area, even on or after June 8, 1973, will be patently not in 'good faith'. But the Proviso (b) to subsection (6) of Section 5 extends the negative aspect of the concept 'good faith' a little further by indicating, that even if the transfer is not an ostensible transfer and the transferor divests himself of all interest and rights in presenti in the transferred land, but reserves some benefit in futuro for himself or other members of his family, then also the transfer will be not in 'good faith'. A transfer solely for the purpose of converting surplus land into cash without any kind of need (not to be confused with legal necessity) may also lack good faith.

23. Broadly speaking, the benefit of clause (b) of the Proviso to subsection (6) is available to a transfer made in good faith, that is to a bona fide transfer whereby the tenure-holder genuinely and irrevocably transfers all right, title and interest in the land in favour of the transferee, in the ordinary course of management, of his affairs and which is not a collusive arrangement, or device or subterfuge to enable the tenure-holder to continue to hold the surplus land or any reserved interest in presenti or in futuro, therein (or merely to convert it into cash), and thus circumvent the ban under Section 5(1) of the Ceiling Act. In order to be entitled to the benefit of Proviso (b), a transfer made in good faith, must satisfy the further conditions, (ii) to (iv), enumerated in the Proviso (b). The positive conditions laid down in Proviso (b) are that the transfer should be for adequate consideration; that it should have been made under an irrevocable instrument. The negative conditions set out in clause (b) of the Proviso are that it must not be a benami transaction; that it must not be for immediate or deferred benefit of the transferring tenure-holder or other members of his family. These tests or conditions (ii), (iii) and (iv) provided in Proviso (b) may not by themselves be conclusive to hold that the transfer was in 'good faith'. For instance, another important test for judging the genuineness or otherwise of a sale would be whether or not cultivatory possession and enjoyment of the land has passed under the sale to the vendee. Even so, once it is established by the transferring tenure-holder that the transfer in question effected in the course of ordinary management of his affairs, was made for adequate

consideration and he has genuinely, absolutely and irrevocably divested himself of all right, title and interest (including cultivatory possession) in the land in favour of the transferee, the onus under Explanation II. in the absence of any circumstances suggestive of collusion, or an intention or design to defraud or circumvent the Ceiling Act, on the tenure-holder to show that the transfer was effected in 'good faith', will stand discharged, and it will not be necessary for the tenure-holder to prove further that the transfer was made for an impelling need or to raise money for meeting a pressing legal necessity.

25. Apart from oral submission, no documentary evidence or any material was adduced before the prescribed authority to enable him to record a satisfaction that all the conditions existing as per Section 5(6b) are fulfilled in the present case. The only reason given was that the money was required for the marriage of his daughter. It could not be demonstrated that the sons had the capacity to pay the amount paid in the sale deed or that after the sale deed they were in actual cultivatory possession of the said land and the said transaction was not a benami transaction. To fulfil the conditions as stated above, explicit material and evidence should have been placed before the prescribed authority so as to enable him to record the satisfaction. Both the authorities below have unequivocally stated that the petitioner had failed to adduce any material or evidence to satisfy the authorities in this regard and even before this Court no such material has been placed to indicate that there were sufficient conditions existing for exclusion of the lands sold to his sons on the ground that the sale was bonafide and for adequate consideration.

26. In light of the above, this Court is of the considered view that there is no infirmity in the order dated 26.02.2005 passed by prescribed authority whereby he has rejected the objections filed by the petitioner as well as the order dated 26.02.2007 passed by Additional Commissioner, Lucknow Division, Lucknow whereby the appeal preferred by the petitioner against the order of prescribed authority has been dismissed.

27. Lastly, it has been submitted by learned counsel for the petitioner that petitioner may be given liberty to make an appropriate application before the prescribed authority to exercise option as per provisions of Section 12 of the Act.

28. In this regard, this Court is of the view that statute itself provides that at the time of declaring any land to be surplus, the option given by the recorded tenure holder has to be given, though he has not exercised the option any time prior but the request made by the petitioner before this Court cannot be

ignored considering the statutory provisions contained in the Act of 1960.

29. Accordingly, it is provided that in case any application is made before the prescribed authority within next four weeks, the same may be considered by the said authority expeditiously in accordance with law and appropriate orders be passed after hearing all the concerned parties.

30. In view of above, the writ petition stands **dismissed**.

(Alok Mathur, J.)

Order Date :- 25.1.2024

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