

Court No. - 6

Case :- WRIT - C No. - 3000032 of 2008

Petitioner :- Mohd. Yaseen

Respondent :- State Of U.P.Through Collector Shrawasti And 7 Ors.

Counsel for Petitioner :- Mohan Singh,Ansar Ali,Arvind Kumar Kushwaha,Mamta Tripathi,Shrikant Tripathi,Vinod Kumar Tripathi

Counsel for Respondent :- C.S.C.,A.N. Srivastava,Kirti Kar Tripathi,Shrikant Tripathi,Shrish Kumar Gaur

with

Case :- WRIT - C No. - 3000074 of 2008

Petitioner :- Nankau

Respondent :- Additional Commissioner Devi Patan Mandal

Counsel for Petitioner :- Amar Nath Sritava,Rama Kant Dixit,Shrish Kumar Gaur

Counsel for Respondent :- C.S.C.,Mohan Singh

Hon'ble Alok Mathur,J.

1. Heard Sri Shrish Kumar Gaur and Sri Mohan Singh, learned counsels for the petitioners and also for the respondents in respective petitions along with learned Standing counsel.

2. Since both the petitions raise common questions of facts and law and arise against the common orders passed by the authorities under the proceedings of U.P. Imposition of Ceilings on Land Holdings Act, 1960 (hereinafter referred to as the Act of 1960), as such they are being heard together and decided by this common judgment and order.

3. Sri Mohan Singh has moved an application for intervention but after arguing at some length he submits that does not want to press this application in light of the fact that the Prescribed Authority has passed order in his favour and the said findings have not been disturbed by the appellate authority and consequently he submits that he does not want to press his application considering that his land already stands excluded by the order of the Prescribed Authority. Accordingly, the application for impleadment is dismissed as not pressed.

4. The petitioners have challenged the order dated 29.11.2003 passed by the Prescribed Authority under Section 10 (2) of the Act of 1960 thereby rejecting the objections filed by them as well as order dated 25.11.2008 passed by Additional Commissioner, Devi Patan Mandal, District Gonda rejecting the

appeals preferred by the petitioners and confirming the order passed by the Prescribed Authority.

5. It has been submitted on behalf of the petitioners that notice under Section 10 (2) of the Act of 1960 was issued to Ram Lautan, the father of Nankau i.e. the petitioner of writ C No.74 of 2008 in 1983. Subsequently it came to the knowledge of the Prescribed Authority that Ram Lautan had died in the year 1978 and consequently as per the provisions contained under Rule 19 of the Rules of 1961 a fresh notice was issued to his son i.e. the petitioner who was the recorded tenure holder in 1985. It seems that the petitioner did not appear before the Prescribed Authority and did not participate in the proceedings which were held ex-parte and by means of order dated 11.3.1993 the proceedings were concluded and 16.942 acres of the holdings of the petitioner was declared surplus.

6. Application for recall of the order dated 17.9.1993 was also rejected and an appeal was filed before the Prescribed Authority. The appellate authority by means of order dated 26.6.1998 allowed the said appeal and remanded the matter back to the Prescribed Authority.

7. In pursuance of the notice under Section 10 (2) the petitioner had filed objections stating that certain part of his land was a *Bagh* and also abadi is existing on the said land which deserves to be excluded from his holdings. He also contested the fact that the land was irrigated and the Prescribed Authority by means of order dated 30.9.2002 rejected the objections of the petitioner and declared 16.942 acres as surplus in terms of irrigated land.

8. It is further stated that in the meanwhile Nankau had sold 6.17 acres of land in gata No.502 in favour of Mohd. Yaseen on 28.7.1993 by means of registered sale deed and also sold 3.86 acres in favour of Moti Lal vide sale deed dated 17.5.1991. Mohd. Yaseen had filed his objections under Section 11 (2) in the remand proceedings seeking to exclude his land purchased from the recorded tenure holder but it seems that no objection under Section 11(2) was filed by Moti Lal but an application for exclusion of his land was filed under Section 12 of the Act of 1960.

9. The Prescribed Authority heard the objections together and by means of order dated 30.9.2002 rejected all the objections and declared 16.94 acres of land of the recorded tenure holder, the same area which was declared surplus previously by him, as surplus. In the said order he had observed that from plot No.502 the area of which was 12.34 acres out of minzumla measuring 2.97 hectare half of which was sold by Nankau in favour of

Mohd. Yaseen son of Ali Jan and the remaining half was sold in favour of Moti Lal. He further observed that in plot No.502 there was still remaining 6.17 acres which could be adjusted towards the surplus land which would vest in the State as per the provisions of the Act of 1960 and accordingly was of the view that the land of both the sale deed be adjusted from the land which is released in favour of recorded tenure holder.

10. Against the order dated 30.9.2002 the recorded tenure holder, namely Nankau had filed an appeal before the Prescribed Authority who by means of order dated 31.1.2003 partially allowed the appeal and remanded the matter only with regard to determination of irrigated/ unirrigated area of the petitioner and also to consider the case of the recorded tenure holder for exclusion of 2 hectares of land be released on his son attaining majority and remanded back to the Prescribed Authority. The appellate authority did not interfere with the findings of the Prescribed Authority with regard to other issues finalized by him.

11. It is in remand proceedings that the impugned order dated 25.10.2008 has been passed. In the remand proceedings again the objections of the petitioner has been rejected and it has been held that other sons were minors and consequently no benefit of the same can be granted to the petitioner and no land can be released in their favour except in favour of one of his sons, namely Dilip Kumar, who had attained majority on the cutoff date. With regard to irrigated or un-irrigated land he perused the revenue records pertaining to the fasli year 1378 to 1380 and found that the said land has been shown to be irrigated and on that basis had recorded a finding that the petitioner has not been able to demonstrate any other evidence or material from which the findings could be interfered with and accordingly rejected the arguments of the petitioner in this regard.

12. It has been further submitted that in the meanwhile Nankau had executed another sale deed in favour of Mohd. Yaseen with regard to the plot measuring one acre existing on plot No.503 vide sale deed 28.7.1993 and Mohd. Yaseen has moved an application under Section 11(2) for exclusion of 1 acre of land in plot No.503. The Prescribed Authority had duly noted the arguments of the subsequent purchaser / petitioner and had framed issue No.3 but it seems that with regard to the contentions of the Mohd. Yaseen no further discussion was made by him in that impugned order dated 29.11.2003. Mohd. Yaseen had also filed an appeal before Additional Commissioner assailing the order dated 29.11.2003 passed by the Prescribed Authority but even the appellate authority did not consider the claim for exclusion of the land of the petitioner

measuring 1 acre in plot No.503 while upholding the findings of the Prescribed Authority and consequently he has approached this Court by filing writ petition No.32 (Ceiling) of 2008.

13. Sri Shrish Kumar Gaur, learned counsel appearing for the petitioner has vehemently submitted that the only issue which remains to be decided is with regard to the nature of the land whether it is irrigated or unirrigated. He submits that the rest of the issues have attained finality as in the remand proceedings the Prescribed Authority has released 2 acres of land in favour of his son namely Dilip Kumar, who has attained majority on the cutoff date. He submits that as per Section 4 of the Act of 1960 the revenue records pertaining to fasli years 1378, 1379 and 1380 were filed before the Prescribed Authority from which it was evident that plot No.502, 503 and 543 are unirrigated.

14. A perusal of the revenue records pertaining to fasli year 1380 clearly shows that the land was unirrigated but the Prescribed Authority in a most illegal and arbitrary manner and contrary to the records had returned a finding that apart from 13.45 acres rest of the land was irrigated. In this regard the petitioner relied upon the khasras for the fasli year 1380 which shows that on gata No.503 only single crop was sown and it has been indicated to be unirrigated. Similarly against plot No.543 it is shown that *Jarhan, Makka* was sown and the same is also shown to be unirrigated and lastly with regard to plot No.502 it has been shown that *Jarhan* and one other crop was sown and the same is also unirrigated. He submits that these records pertain to fasli year 1380 and this was the only material as per Section 48 of the Act of 1960 from which it could be determined as to whether the land is irrigated or unirrigated. *Prima facie* it seems that for fasli year 1380 the said land have been shown to be unirrigated. He has not filed the records for the fasli year 1378 and 1379 as the same was not available and a copy of the same could not be procured.

15. From the aforesaid records it is clear that the said land have been shown to be unirrigated but this is question of fact and we are also aware of the fact recorded by the Prescribed Authority to the effect that after examining the records he has held the said land to be irrigated. No other evidence was produced by the petitioner in this regard, it would be in the interest of justice that when confronted with the evidence produced by the petitioner the same is re-examined by the Prescribed Authority and fresh determination is made by him with regard to the fact as to whether area remainign the land apart form 13.45 acres is irrigated or unirrigated and whether the documents as filed by the petitioner before this Court can be relied upon the same documents which are existing in the records before the

Prescribed Authority while determining the nature of the land previously.

16. With regard to the contentions made in writ petition No.32 of 2008 (Ceiling), filed by Mohd. Yaseen it is evident that the area pertaining to exclusion of area from plot No.503 was raised before the Prescribed Authority but he failed to exercise the jurisdiction vested in him and give fresh consideration to the issue raised to him and he did not return any finding in this regard. Even the appellate authority did not consider the case of Mohd. Yaseen and consequently on this ground also both the orders of the Prescribed Authority as well as appellate authority require interference as they have acted in a most illegal and arbitrary manner by not considering the case of the petitioner and not returning any findings in this regard.

17. In view of the above, both the writ petitions are **allowed**. The order dated 29.11.2003 passed by the Prescribed Authority under Section 10 (2) of the Act of 1960 as well as order dated 25.11.2008 passed by Additional Commissioner, Devi Patan Mandal, District Gonda are set aside only with regard to the following findings:-

(a) For consideration from other lands of the recorded tenure holder apart from 13.45 acres as to whether they are irrigated or unirrigated and whether the evidence filed by the petitioner can be relied upon in this regard?

(b) The matter relating to the question of one acre of land of Mohd. Yaseen deserved to be considered by the Prescribed Authority afresh while making any findings in this regard, He shall consider his case as to whether the provisions of Section 5(8) are applicable or he would be entitled to exclusion under Section 5 (6) of the Act of 1960.

18. For these two grounds the matter is remanded to the Prescribed Authority. Considering that much time has lapsed from the date of filing of these petitions before this Court it is expected that the Prescribed Authority shall consider the same expeditiously, say within a period of three months from the date of presentation of a certified copy of this order before him. The parties before this Court undertake to cooperate in the proceedings to be held by the Prescribed Authority.

19. The writ petitions stand **allowed**.

(Alok Mathur, J.)

Order Date :- 24.1.2024
RKM.