

Noorullah Vs. Additional Commissioner, Meerut Division and ors.

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Court : Allahabad

Decided On : Mar-20-2007

Reported in : 2007(4)AWC3789

Judge : S.U. Khan, J.

Appellant : Noorullah

Respondent : Additional Commissioner, Meerut Division and ors.

Disposition : Petition allowed

Judgement :

S.U. Khan, J.

1. Heard learned Counsel for the parties. Ceiling proceedings under U.P. Imposition of Ceiling on Land Holdings Act, 1960, were finalised against the petitioner and it was held that he did not possess any surplus land. Thereafter 4th notice was issued against the petitioner under Ceiling Act on 7.5.1977. The said notice was directly challenged through Writ Petition No. 1700 of 1977. Writ petition was allowed on 6.4.1979 and notice was quashed. Thereafter 5th notice was issued on 5.9.1983, copy of which is Annexure-3 to the writ petition. The said notice was issued under Section 29/30 of the Ceiling Act. Under the said provision if subsequently un-irrigated land becomes irrigated then fresh proceedings for determination of surplus area may be initiated. In the said notice it was mentioned

that two plots, i.e., plot Nos. 150 and 653 had become subsequently irrigated. Petitioner filed objections. In the said objections firstly he contested the allegations of the notice and stated that the aforesaid two plots had not become irrigated. Apart from that petitioner also contended that after finalisation of earlier proceedings he had sold some property and his sons who were minor on 8.6.1973, had become major and some cases had also been decided in between him and other private persons resulting in reduction of area of his agricultural land. Before the Prescribed Authority (Ceiling), Tehsil Jansath district Muzaffar Nagar, the matter was registered as Case No. 72 of 1975, State v. Noorullah. The Prescribed Authority held that the aforesaid two plots had subsequently become irrigated. However, the other pleas raised by the petitioner were accepted by the Prescribed Authority. Under issue No. 2 Prescribed Authority held that a suit being Suit No. 78 of 1979 had been decided on 30.11.1979 and through the said decision it was declared that Smt. Rafiya Sultana was bhoomidhar of an area of 10 bigha, 10 biswa of plot No. 653 and the said declaration was given on the basis of a Will dated 16.9.1956. Smt. Rafiya Sultana was married daughter of the petitioner and she was having two sons. The Prescribed Authority therefore excluded the said land from the land held by the petitioner.

2. The other contention raised by the petitioner was that two of his sons Mohd. Ammar and Mohd. Umair had purchased some property from a third person on 5.1.1971 and at that time they were minors hence in earlier ceiling proceedings against them the said land was clubbed with his land, however, as afterwards the two sons had become major hence the said land should not be clubbed with his land. The said contention was also accepted by the Prescribed Authority. Prescribed Authority held that in June, 1973, the ages of the two sons were 16 and 14 years respectively hence in 1975 and 1977 they became major.

3. It was also contended by the petitioner before the Prescribed Authority that through order passed by Sub-Divisional Officer, Muzaffar Nagar dated 14.5.1981 several plots admeasuring about 23 bigha had been removed from the holding of the petitioner and they had been declared to belong to the two sons of the petitioner. The order was passed in a suit under Section 176, U.P.Z.A. and L.R. Act. Number of the suit was 260. The Prescribed Authority accepted the said

contention also and held that the said land could no more be treated to belong to petitioner.

4. The Prescribed Authority ultimately through order dated 5.4.1984, held that even though the two plots mentioned in the notice had become irrigated afterwards however, after taking into consideration the aforesaid subsequent developments also petitioner was not left with any surplus land.

5. Against the order dated 5.4.1984, State filed Appeal No. 17 of 1985-86. In the appeal petitioner filed cross-objections. Cross-objections may be filed within 30 days from the date of service of appeal. Without recording any finding regarding date of service of notice of appeal cross-objections of the petitioner were dismissed as barred by time by Additional Commissioner, Meerut Division, Meerut, through judgment and order dated 30.8.1986 (through which appeal was also allowed). Appellate court held that subsequent developments of majority of the son and decision of the Courts could not be taken into consideration. Ultimately appellate court held that as the Prescribed Authority had held that the aforesaid two plots were irrigated hence petitioner possessed 3 bigha, 19 biswas and 17 biswanstes land as surplus land.

6. This writ petition is directed against the aforesaid judgment of the appellate court.

7. After the conclusion of previous ceiling proceedings in favour of the petitioner, the petitioner was at complete liberty to transfer the land. If due to subsequent development of un-irrigated land becoming irrigated or acquisition of some land by a person fresh ceiling proceedings are initiated under Section 29/30 of the Ceiling Act then 24.1.1971 or 8.6.1973, cannot be taken as cut off dates. In that eventuality the cut off date will be the date on which subsequent acquisition takes place or unirrigated land becomes irrigated. Suppose on 8.6.1973, a person has got no surplus land. Thereafter in the year 1980 he purchases some land and the land already held by him and the land purchased by him clubbed together are more than the ceiling limit then ceiling proceedings may be initiated. However in that eventuality the cut off date would be the date on which he acquired fresh land. The number of family members the minority/majority of sons will also have to be

seen on the date on which he purchased fresh land. Similarly if before purchasing the fresh land the purchaser had transferred some of his land then the said transfer will also have to be honoured and taken as correct. It cannot be said that as the said transfer is after 8.6.1973 hence it is void.

8. Appellate court wrongly reversed the findings of the Prescribed Authority. In my opinion on the basis of the said findings Prescribed Authority rightly held that tenure holder did not possess any surplus land.

9. Accordingly, writ petition is allowed. Impugned order passed by the appellate court is set aside. Order passed by the Prescribed Authority dated 5.4.1984 is restored.

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