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[A.F.R.]

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT - C No. - 3000033 of 1999

Kulwant Singh and others

…..Petitioner(s)

Versus

State of U.P. Through Secretaryr Revenue Lucknow and others

…..Respondent(s)

Counsel for Petitioner(s)	:	J.p.maurya, Aftab Ahmad, Devi Prasad Maurya, Nazim Ali Siddique, Sandeep Kumar
Counsel for Respondent(s)	:	Chief Standing Counsel, Richa Sharma

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Shri Aftab Ahmad, learned counsel for the petitioners, Ms. Richa Sharma, learned counsel for the respondent no.4 and Shri Rajeev Srivastava, learned Additional Chief Standing Counsel for the respondents-State.

2. By means of the present writ petition, the petitioners have prayed for issuance of a writ in the nature of Certiorari, quashing order dated 28.12.1998 passed by opposite party no.2 in Appeal No. 335/93-94 and order dated 21.4.1994 passed by opposite party no.3, as contained in Annexure nos.1 and 2 respectively to this writ petition, with further prayer to issue a writ in the nature of Mandamus, commanding upon the opposite party nos.2 and 3 not to club the land of the petitioners with other tenure holder whereby they may also be directed to exclude the same in accordance with law.

3. Factual matrix of the case is that the petitioners are recorded tenure holders of the land in question. The petitioner no.1 is the tenure holder of land comprising plots bearing Khata No.164 (Annexure No.3 to the writ petition), the petitioner no.2 is tenure holder of 02 plots (Annexure no.4 to the writ petition), petitioner no.3 is tenure holder of 01 plot (Annexure No.5 to the writ petition), petitioner no.4 is tenure

holder of 06 plots (Annexure no.6 to the writ petition) and petitioner no.5 is tenure holder of 01 plot (Annexure no.7 to the writ petition).

The opposite party no.4 was issued notice u/s 10(2) U.P. Imposition of Ceiling on Land Holdings Act, 1961 and subsequently the land of the petitioners was clubbed with him and they were issued notice under Rule 8 of the Rules. The opposite party no.4 filed his objection dated 25.01.1993 stating that he had no concerned with the petitioners' land and their chaks were created separately during consolidation proceedings.

The petitioners also filed their objection before Prescribed Authority (Ceiling), Kheri stating that they are having cultivatory possession over the lands in their ownership and they have no other agricultural land in all over State of U.P. It was also stated that their lands are situated in different villagers and cannot be in any manner treated and clubbed with the land of opposite party no.4 and their chaks were created in year 1992 during consolidation proceedings.

The Prescribed Authority (Ceiling), Kheri vide his impugned judgment and order dated 30.03.1994 declared 33.913 hectare irrigated land as surplus of the opposite party no.5 by clubbing the land of the petitioners although it has been admitted in the impugned judgment and order dated 30.03.1994 that the land is recorded in the name of the petitioners in revenue record.

Being aggrieved, the petitioners and the opposite party no.4 filed two separate appeals which have been dismissed by the opposite party no.2 vide judgment and order dated 28.12.198. However, while dismissing the appeals the opposite party no.2 has himself directed the opposite party no.3 to verify the revenue record at his level and if the land four plots which are recorded in Khata No.1615 in Khatauni 1399-1404 Fasli as Navin Parti are found to be Khalihan land of Gaon Sabha then there is no justification to declare the same as surplus land and the opposite party no.3 may modify his impugned judgment and order dated 30.03.1994 at his level.

4. Learned counsel for the petitioner submits that the opposite party no.2 while passing the impugned judgment and order dated 28.12.1998 has failed to exercise the jurisdiction vested in him and instead of setting aside the impugned judgment and order dated 30.03.1994 and remanding back the matter to the opposite party no.3 to verify the record and then pass a fresh order after giving

opportunity of hearing and evidence to the petitioners and had given it in the hand of the opposite party no.3 to correct his mistake.

5. Learned counsel for the petitioner next submitted that the opposite parties had not disputed that the names of the petitioners are recorded over the lands in question as tenure holders and hence the bald statement of the Lekhpal that the opposite party no.4 is in possession over the petitioners land is totally false and misleading.

6. Learned counsel for the petitioner next submitted that in the instant case, the sole evidence relied upon by the courts below to return the finding that it is opposite party no.4 who was ostensible owner of the land in question even on and after 24.01.1971 the statement made by Lekhpal, is false, wrong and misleading.

7. In support of his submissions, learned counsel for the petitioner placed reliance upon the following judgment:

(i) Pritam Singh Vs. State of U.P. & Ors., reported in 1998(1) JCLR 329(All)

(ii) Som Nath Khanna and 3 Ors. vs State of UP through Collector Kheri and 2 Ors. (Writ C No. 3000025 of 2005),

(iii) Shishu Pal Singh and Ors. vs Prescribed Authority and Ors. (Civil Misc. Writ Petition No. 4283 of 1992)

8. On the other hand, learned counsel for the respondents submitted that the writ petition is devoid of merit and the impugned orders dated 30.03.1994 and 28.12.1998 do not suffer from any illegality or error of law and have been passed after due consideration of material on record.

9. Learned counsel for the respondents next submitted that both the Prescribed Authority and the Appellate Authority have concurrently recorded findings that Sri Sobaran Singh (Opp. Party No. 4) was the real tenure holder, and the lands recorded in the names of the petitioners were merely held ostensibly for his benefit.

10. Learned counsel for the respondents next submitted that though the lands were recorded in the names of the petitioners, in reality possession remained with Sri Sobaran Singh and benefits of the land were enjoyed by him, and the petitioners were only name-lenders.

11. Learned counsel for the respondents placed reliance upon the fact that the notices issued under Section 10(2) were received by Sri Sobaran Singh, sale receipts of agricultural produce (wheat) in the names of petitioners were in possession of Sri Sobaran

Singh and produced by him, statement/report of the Lekhpal confirming possession of Sri Sobaran Singh over the land. Therefore, submission of learned counsel for the respondent is that on this basis, the authorities rightly concluded that the land was held ostensibly in the names of the petitioners.

12. Learned counsel for the respondents next submitted that Section 5 of the Ceiling Act uses the expression "land held ostensibly in the name of another person", which is distinct from "benami transaction". Therefore, clubbing under the Ceiling Act does not depend upon proving a benami transaction as defined under the 1988 Act.

13. Learned counsel for the respondents next submitted that the findings recorded are pure findings of fact, the High Court, in exercise of writ jurisdiction under Article 226, should not interfere with concurrent findings unless shown to be perverse or illegal, and no such ground has been made out by the petitioners.

14. Having heard the rival submissions of learned counsel for the parties, I have perused the material on record as well as law-report cited by learned counsel for the petitioner.

15. To resolve the controversy involved in the present writ petition, operative portion of the judgments relied upon by learned counsel for the petitioner is extracted here-in-below:

(i) Pritam Singh (supra):-

> *"21. Having given my anxious consideration I am clearly of the opinion that in the circumstances indicated hereinabove, in the present case, the presumption contemplated under II Explanation of Section 5 of the Ceiling Act could not be deemed to be available. As a consequence, in the absence of the presumption the onus to prove that the transfer effected on 11-8-1970 was a sham transaction or a transfer ostensible in nature where transferor had not divested himself of all interest and rights in praesentii in the transferred land and had reserved some benefits in future for himself or other person of his family had to be established by cogent evidence led by the State."*

(ii) Som Nath Khanna (supra):

> *"19. It is further submitted that the findings are based on mere assumption, surmises and conjunctures. It is pointed out that from the perusal of the impugned order it would reveal; that the sole reason upon which the impugned order is based is that while the notices were issued, the same could not be served on any of the petitioners rather it was served on the care taker/agent of Ms. Asha Nanda and all*

the petitioners were living in Delhi, hence since Ms. Asha Nanda was in possession of all the land, hence they were clubbed in the hands of Ms. Asha Nanda.

32. Now relating to the submissions, relating to Writ-C No.3000025 (Ceiling) of 2005 is concerned, in light of the above noted facts and from the perusal of the impugned order, it would reveal that both the Prescribed Authority as well as Appellate Authority has proceeded on the premise that since notice was issued and received by and on behalf of Ms. Asha Nanda, hence it was found that the land relating to all the original petitioners namely, Som Nath Khanna, Madan Lal, Ms. Sangita Khanna and Sai Kiran were ostensible owner whereas possession was of Ms. Asha Nanda, Hence the same was clubbed together. 33. It would be relevant to notice that the nature of U.P Imposition of Ceiling Act, 1980 is aproprietary legislation by which land beyond the prescribed limit can be ex-proprieted by the State under the Act of 1960. In the aforesaid circumstances where the nature of the Act 1960 is such then the same has to be strictly construed. In case if the land of any record tenure holder is to be taken by the State in exercise of powers under the Act 1960, then it would be State who has to establish that the condition prescribed in the Act are clearly met, failing which it cannot be assumed that the entries or the facts as appearing on record are incorrect."

(iii) Shishu Pal Singh (supra):-

"3.*The learned Counsel for the petitioners submitted that the petitioners are not included within the term "family" defined under Section 3(7) of the Act and in order to include their holding by placing reliance on Explanation-1 of Section 5 of the Act, heavy onus lies upon the State to prove that the holding was benami, i.e., "ostensibly in the name of any other person, though it is a land held by him in his own rights". In the case in hand, the respondents have proceeded otherwise by observing that the petitioners did not produce any evidence to show that the land was not held by petitioner's father in his own rights and, therefore, the basic approach of the respondents is clearly erroneous, illegal and contrary to law. He has also placed reliance on a single judgment of this Court in Writ Petition No. 2315 of 1977 Banshi Singh v. District Judge, Moradabad decided on 3-1-1979. The learned Standing Counsel opposed the submission and supported the reasons assigned by the respondents.*

8.*From the order of the appellate authority, it appears that he proceeded on the assumption that once notice under*

Section 10(2) of the Act has been issued based on the inquiry of the Lekhpal and Tahasildar etc. alleging that the noticee held certain holding in his own rights though ostensibly in the name of other, it is the liability of the noticee to prove otherwise. This approach is absolutely misconceived and contrary to law. Explanation-1 of Section 5 is in the nature of exception inasmuch normally every tenure holder is entitled to hold a land to the extent provided in the Act, but in a case where the land actually belongs to one but has been purchased in the name of some other person, that is a kind of benami transaction, in that case only to prevent such cases so as not to frustrate the very purpose of the Act, the explanation-1 has provided that such land shall be included in the holding area of a tenure holder, but to prove the existence of such fact, the onus lies on the State heavily and not otherwise. Explanation-1 read with Section 5 is very clear that neither it purports to add nor to limit the normal meaning of the expression 'tenure-holder' as defined in Section-3, sub-section (17) of the Act and, thus, clearly shows that the land must be held by the tenure holder in his own rights. In case, the State claims that any land is held ostensibly by the tenure holder, the onus lies upon the State to establish the same. A somewhat similar issue came up for consideration before a Division Bench of this Court in Mohammad Abbas v. State of U.P., 1979 AWC 23 : (1979 All LJ 326). There two major sons of the tenure holder executed sale deeds on 12-5-1971, 7-9-1971 and 8-3-1972 transferring the entire land recorded in their names. Thereafter, the tenure holder claimed two additional hectares of land on the ground that his two major sons did not hold any land on the appointed date, i.e., 8-6-1973, but the said claim was rejected by the ceiling authorities holding that the transfer of land by major sons after 24-1-1971 was liable to be ignored as they could not establish that the sale deeds were executed in good faith and for adequate consideration. Referring to Section 5, sub-section (3) of the Act, the Court held that the ceiling area to which a tenure holder is entitled is fixed with reference to the number of members in the tenure-holder's family and land held by other members of the tenure-holder's family is to be aggregated with the land held by the tenure holder. The word "family" as defined in the Act in relation to a tenure holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband) minor sons and minor daughters (other than married daughters).

9.*It shows that the said definition does not include the major sons of the tenure holder. By virtue of Section 5(3), if the tenure holder is a male, land recorded in the name of his wife, provided she is not a judicially separated wife, and*

minor sons and minor daughters can be clubbed in determining the ceiling area which the tenure holder is entitled to retain. This shows that the land held by the major sons is not to be included in the holding of the tenure holder. The only possibility for including the said land, therefore, would have been if Explanation-1 of Section 5(1) would have been applicable, namely, if the land is ostensibly held by the tenure holder in the name of any other person, but for the said purpose, heavy burden lies upon the State to prove this fact. Considering this aspect of the matter with reference to Explanation-1 to Section 5(1) of the Act, another Division Bench of this Court in Banshi Singh (supra) wherein this Court held as under:

"*Explanation 1 of Section 5(1) clearly shows that when the State alleges that the land is ostensibly being held by a tenure-holder in the name of any other person which should be treated as the land belonging to the tenure-holder then the burden lies upon the State to prove this fact. Merely because in the notice the State has clubbed the land belonging to others under the pretext that it is being held ostensibly in the name of sons or any other person, the burden cannot be said to have been discharged. Once a notice under Section 10(2) is served upon the tenure-holder he has to show cause and while showing cause if the tenure-holder establishes by prima facie evidence by filing documents or by giving evidence that the land was being held by other persons in their own capacity, the burden shifts upon the State to establish the fact that the land is being held by the tenure-holder ostensibly in the name of others. In order to discharge this burden the State has to establish by some cogent and satisfactory evidence that the land is being held by the tenure-holder. Merely because the land has been clubbed in the land of petitioner No. 1 in the notice issued under Section 10(2) of U.P. Imposition of Ceiling on Land Holdings Act or merely because the Lekhpal gives a statement that the petitioner is in possession, is not sufficient to discharge that burden and to establish that the land was ostensibly being held by the tenure-holder in the name of others. In the present case petitioner No. 1 led evidence by showing that the names of the sons were entered in revenue records right from 1264-F and after the partition their names were entered separately on the basis of the partition decree. When the State was alleging that the land was being ostensibly held by petitioner No. 1, the State had to discharge that burden by giving cogent and satisfactory evidence. In the present case no such evidence was adduced and the mere statement of the Lekhpal was not sufficient to rebut the evidence and to hold that the land was being held ostensibly by petitioner No. 1 in the names of the sons."*

16. I have examined the material on record in the light of the judgment relied upon by learned counsel for the petitioners.

17. Upon careful examination of the entire material on record, submissions advanced by learned counsel for the parties, and the settled legal position, this Court arrives at the conclusion that it is an admitted position that the lands in question are recorded in the names of the petitioners as tenure holders in the revenue records. *Such entries carry a presumption of correctness under law unless rebutted by cogent, reliable and admissible evidence* reference may be made to the case of **Shishupal (supra).**

18. Moreover, the case set up by the State authorities for clubbing the land of the petitioners with that of opposite party no.4 is founded solely on the allegation that the holdings are ostensible or benami in nature. No documentary evidence, independent witness, or surrounding circumstances of a definite character have been brought on record to substantiate such allegation.

19. The entire findings recorded by the Prescribed Authority as well as the Appellate Authority rests upon the statement/report of the Lekhpal. It is trite law that such a report, in absence of corroborative evidence, cannot by itself discharge the heavy burden cast upon the State to establish that a transaction or holding is benami or ostensible.

20. The issue is no longer *res integra*. In **Som Nath Khanna (supra)**, this Court has categorically held that findings based merely on assumptions, such as service of notice or alleged possession of one person, without substantive evidence, are vitiated being based on surmises and conjectures. It has further been held that the Ceiling Act, being expropriatory in nature, must be strictly construed and the burden lies heavily upon the State to establish that the statutory conditions for clubbing are fully satisfied.

21. Similarly, in case of **Shishu Pal Singh (supra)**,it was held that where the State seeks to invoke Explanation to Section 5(1) of the Act by alleging that land is held ostensibly in the name of another, the burden squarely lies upon the State to prove such fact by cogent evidence. It has been further clarified that mere issuance of notice under Section 10(2) or reliance upon the report of revenue officials like the Lekhpal is not sufficient to discharge such burden.

22. The ratio of the aforesaid judgments applies fully to the present case. Here also, the authorities have proceeded on an erroneous premise that once an allegation is made in the notice, the burden shifts upon the petitioners to disprove the same. Such an approach is clearly contrary to the settled legal position.

In fact, the petitioners have discharged their initial burden by placing reliance upon revenue records showing their independent tenure holding and possession. Once such prima facie evidence was brought on record, the burden shifted upon the State to establish, by cogent and convincing evidence, that the holdings were in fact benami or ostensible. The State has failed to discharge this burden.

23. The reliance placed solely upon the statement of the Lekhpal, without any supporting evidence such as source of consideration, nature of possession, conduct of parties, or any indicia of benami transaction, renders the findings wholly perverse and legally untenable.

24. This Court also finds that the Appellate Authority has failed to exercise jurisdiction vested in it in accordance with law. Despite noticing discrepancies, it did not set aside the order of the Prescribed Authority nor remand the matter for fresh adjudication. Instead, it issued directions to the Prescribed Authority to verify and modify its own order, which is an impermissible course and amounts to abdication of appellate jurisdiction.

25. The findings recorded by the authorities below are thus vitiated on the ground of absence of cogent evidence, misapplication of burden of proof, reliance on inadmissible/insufficient material, and failure to exercise jurisdiction in accordance with law. Consequently, the impugned orders cannot be said to be legally sustainable and are liable to be set aside.

26. Considering in totalities of facts and circumstances of the case, this writ petition is allowed. Order dated 28.12.1998 passed by opposite party no.2 in Appeal No. 335/93-94 and order dated 21.4.1994 passed by opposite party no.3, as contained in Annexure nos.1 and 2 respectively to this writ petition are hereby set aside.

27. Accordingly, this writ petition succeeds and is **allowed**.

28. No order as to costs.

(Irshad Ali,J.)

March 03, 2026
GK Sinha