
(2012) 04 AHC CK 0102

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15334 of 1998

Jagdish Narain Tripathi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 12A, 13, 13A, 13A(2)

Citation : (2012) 5 ADJ 393 : (2012) 5 AWC 4646

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : Vishnu Behari Tiwari, for the Appellant; Sushil Kumar and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Hon'ble A.P. Sahi, J.—Heard Sri Vishnu Behari Tiwari, learned counsel for the petitioner and Sri Sushil Kumar, learned Standing Counsel for the State. Affidavits have been exchanged between the parties and, as such, the matter is being disposed of finally.

The dispute lies in a very short compass relating to the choice exercised by the petitioner u/s 12A of the U.P. Imposition of Ceiling on Land Holdings Act.

The facts, which are undisputed, are that an order came to be passed by the Prescribed Authority on 19.4.1977 declaring certain land as surplus. An appeal was filed against the same which was decided on 29.9.1977. The appellate authority upheld the declaration of surplus land but redirected the Prescribed Authority to allow the petitioner to indicate his choice with regard to the plots that would be taken as surplus land to the extent of 1 Bigha 12 Biswas and 14 Dhurs in the irrigated sense. This choice, according to the respondent - State, was to be exercised in terms of the decision of the appellate authority dated 29.9.1977. The petitioner appears to have moved an application on 20.12.1977 exercising his choice with a prayer that the land that has been indicated should

be given in his choice in view of the judgment of the appellate authority. Thus, the petitioner was exercising his right of choice in terms of Section 12A and in view of the order passed by the appellate authority dated 29.9.1977.

2. The petitioner further indicated the said choice in view of 16 Bighas 5 Biswas and 8 Biswansi of land included in the holding of Smt. Shushma Devi. This request of the petitioner was, however, rejected but while accepting his choice, as prayed for in the application dated 20.12.1977, plot Nos. 284,285, 290 and 291 were declared as surplus vide order dated 20.12.1977; copy whereof is Annexure-3 to the writ petition.

3. This was sought to be rectified on behalf of the State by moving an Application u/s 13A on the ground that the choice given by the Petitioner was wrong as the said land was of the holding of Smt. Shushma Devi and the same, therefore, could not have been included in the choice given by the petitioner. As a result of this, it was prayed on behalf of the State that the said choice should be converted by declaring some other land as surplus.

4. The aforesaid application was entertained in terms of Section 13A of the Ceiling Act, 1960 and without putting the petitioner to notice, the choice was converted to Plot No. 97 instead of the plots that were declared surplus after accepting the choice of the petitioner as per the order dated 20.12.1977. In effect, the order dated 20.12.1977 was reviewed in exercise of the powers u/s 13A without putting the petitioner to notice.

5. The petitioner filed an appeal against the same and the appellate authority has recorded a finding to the effect that in view of the proviso to sub-section (1) of Section 13A, it was a case of mere rectification without increase in the surplus area of the petitioner and, therefore, it was not necessary to give any notice to the petitioner. The petitioner, accordingly, aggrieved by these two orders has preferred this writ petition and the same was entertained in which an interim order was passed staying the operation of the impugned orders after noticing the aforesaid contention on 4.5.1998.

6. A counter-affidavit has been filed on behalf of the State wherein it has been urged that the petitioner had given an incorrect choice and, therefore, the same was rectified without increasing the area and, as such, no notice was required to be given to the petitioner u/s 13A of the Act.

7. Sri Vishnu Behari Tiwari has urged that the appellate authority as well as the Prescribed Authority proceeded erroneously by altering the choice of the petitioner without putting him to notice completely overlooking the provisions of Section 12A and the directions issued by the appellate authority in the order dated 29.9.1977. He contends that in these circumstances, if the choice given by the petitioner was incorrect, then as a matter of fact this amounted to a review of the order dated 20.12.1977 and any such power could not have been exercised without putting the petitioner to notice.

8. Sri Tiwari further contends that even on merits, the appellate order dated 29.9.1977 is final u/s 13 of the 1960 Act and once the said order has become final without any challenge to the same, then the direction giving an option to the petitioner to exercise his choice is also final. Accordingly, the choice given by the petitioner on 20.12.1977 in terms thereof, which has been accepted by the Prescribed Authority by an order of the same date, is well within the powers of the Prescribed Authority and the option exercised by the petitioner was bound to be accepted which has been granted by the Prescribed Authority. He submits that there was neither any mistake nor any error and it was a mere compliance of the direction of the appellate authority, as such, the alteration of number of the plots by the subsequent order which is impugned herein is without jurisdiction and not within the purview of Section 13A of the Act.

9. Learned Standing Counsel, on the other hand, submits that it was a rectification of an error as the petitioner had given the choice of the land of Smt. Shushma Devi and, as such, the error was bound to be corrected in the circumstances as explained in the counter-affidavit and indicated in the impugned order.

10. Having considered the aforesaid submissions, it would be appropriate to reproduce the recital contained in sub-section (2) of Section 13 of the Act:

13 (2). The Commissioner shall dispose of the appeal as expeditiously as possible and his decision thereon shall be final and conclusive and be not questioned in any Court of law.

A perusal thereof clearly indicates that the appellate authority shall dispose of the appeal and his decision in appeal shall be final and conclusive and shall not be questioned in any Court of law. The appellate order dated 29.9.1977, therefore, attained finality in the aforesaid terms. It is undisputed that the said order categorically directed the Prescribed Authority to accept the choice to be given by the petitioner afresh. In the circumstances, the petitioner was fully justified in offering his choice and the Prescribed Authority was well within his jurisdiction to accept the same vide order dated 20.12.1977.

11. The contention of the State is that this choice was a wrong choice given by the petitioner. It is for this reason that the said order was sought to be reviewed. In my opinion, this was not a case of rectification but it was a case of contest between the petitioner and the State about the correct choice being given by the petitioner. The Prescribed Authority, therefore, could not have, under the garb of Section 13A, issued an order of rectification without putting the petitioner to notice. This is because of the fact that the provisions of Section 12A mutatis mutandis apply to any such proceeding initiated as per Section 13-A (2) of the Act. In the aforesaid circumstances when the alleged wrong choice of the petitioner was sought to be allegedly rectified, then such a review ought to have been undertaken only after putting the petitioner to notice and also the said Smt. Shushma Devi, whose land was sought to be taken in choice by the petitioner.

The Prescribed Authority was, therefore, not justified in proceeding to entertain the application behind the back of the petitioner at the instance of the State and thereby proceeding to review the earlier order dated 20.12.1977.

12. Needless to say that there is no power of review with the Prescribed Authority and in the instant case as pointed out herein above, it was not a mistake but a deliberate alteration of the choice u/s 12A given by the petitioner. In the circumstances the impugned order is unsustainable and the appellate authority also committed an error by concluding that it was necessary for the purpose. In my opinion even on merits the direction given by the appellate authority in the order dated 29.9.1977 had to be complied with on account of the finality attached u/s 13. In such a situation, the Prescribed Authority had rightly accepted the choice of the petitioner vide order dated 20.12.1977.

Needless to say that Smt. Shushma Devi has not raised any objection with regard to the said choice indicated by the petitioner. In the circumstances without prejudice to the rights of Smt. Shushma Devi in this regard, the writ petition deserves to be allowed as against the State as this was not a case of rectification u/s 13A. Accordingly, the impugned orders passed by the Appellate Authority and the Prescribed Authority on 25.9.1978, 17.4.1997 and 17.11.1997 are hereby set aside.

The writ petition is allowed. There shall be no order as to costs.