

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
AMAR SINGH ETC.

DATE OF JUDGMENT: 01/10/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

WITH
C. A. Nos.1558, 1777 OF 1980 & 322-27 OF 1985
O R D E R

All these appeals are disposed of by a common Judgment since all the respondents are either sons or daughters-in-law of the tenure-holder by name Kiahun Singh.

Kishun Singh, admittedly, held 110 acres of agricultural lands. The U.P. Imposition of Ceiling on Land Holdings Act, 1960 was amended. Act 1 of 1972 came into force w.e.f. January 24, 1971. The admitted position is that prior to the Amendment Act came into force on September 10, 1970 Kishun Singh had alienated by registered sale deeds his holdings in favour of his sons and daughters-in-law. When the computation was sought to be made of the surplus land under Section 5 of the Act, the respondents claimed lands as of their own. Accordingly, they sought to be holders of the lands purchased by them under the sale deeds. The Tribunals disallowed it but in the Writ Petition Nos.384/78 and batch by impugned order dated October 29, 1979, the High Court allowed the matters and set aside the orders of the authorities. Thus, these appeals by special leave.

Shri Pankaj Kalra, learned counsel appearing for the respondents, raised two-fold contention. It is contended that by operation of sub-section (6) of section 5, any alienations made on or after January 1971 are declared to be null and void unless they are bona fide transactions for valuable consideration and are not intended to be a sham transaction or benami alienation. The alienation came to be made by Kishun Singh in favour of his sons and daughters-in-law on September 10, 1970, i.e., prior to amendment Act came into force, mutation also was effected thereafter. As on the date of coming into force of the Amendment Act, the respondents were registered holders of agricultural holdings. Kishun Singh was neither holding the land nor was he a tenure-holder of the alienations. The alienations being genuine transactions effected prior to the coming into force of the Act, the same have to be taken into consideration and the lands covered by the sale deeds are required to be excluded from the holding of Kishun Singh. Therefore, the view taken by the Tribunal below was not correct in law. It

is also contended that the burden of proof on the respondents would arise only in case the alienations were made on or after January 24, 1971; rather the burden is on the State to prove that they are not genuine transactions and are intended to defeat the provisions of the Act. No proof in that behalf was adduced by the State. On the other hand, the respondents have produced oral and documentary evidence through their examination and by way of the sale deeds. Lekh Pal, examined on behalf of the appellant, has not given any categorical statement that the respondents were not in possession of the lands purchased by them in their own right as owners. The District Judge has not given any categorical finding in that behalf. Therefore, the view taken by the High Court is correct in law.

Having considered the contentions, we find that the learned counsel is not right in his submissions. The object of the Amendment Act is to see that the transactions effected on or after January 21, 1971 were null and void and were intended to defeat the provisions of the Act unless it is established that valid consideration has been passed and the alienation was for compelling legal necessity; that it was supported by adequate consideration and it was not a benami transaction. In this case, the question arises: whether Explanation I to Section 5(1) would apply to the facts? In our view, Explanation I of Section 5(1) would apply to the facts. Section 5 reads as under:

"5. Imposition of Ceiling : (1) One and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no tenure-holder shall be entitled to hold in the aggregate throughout Uttar Pradesh, any land in excess of the ceiling area application to him.

Explanation 1. In determining the ceiling area applicable to a tenure-holder, all land 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.

Explanation II. If on or before January 24, 1971, any land was held by a person who continues to be in its actual cultivatory possession and the name of any other person is entered in the annual register after the said date either in addition to or to the exclusion of the former and whether on the basis of a deed of transfer or licence or on the basis of a decree, it shall be presumed, unless the contrary is proved to the satisfaction of the prescribed authority, that the first mentioned person continues to hold the land and that it is so held by him catensibly in the name of the second mentioned persors..."

Thus, on and from the date the Amendment Act came into force, namely, January 21, 1971, the tenure-holder shall not hold throughout the State of Uttar Pradesh, any land in the aggregate in excess of ceiling area applicable to him. Explanation I adumbrates that in determining ceiling area

applicable to a tenure-holder, 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. In other words, as on the date the Amendment Act came into force, the land must held by tenure-holder in his own right and the lands ostensibly in the name of any other person shall be taken into account. In this case, admittedly, the alienations came to be made by Kishun Singh in favour of his sons and daughters-in-law. Normally, one would expect that if there is any compelling legal necessity to alienate the land, one would sell the land to third parties and that too, as prudent vender for valuable consideration not to the sons and daughters-in-law. The object appears to be, as rightly pointed out by the District Judge, that the alienations were made by registered instruments in favour of his sons and daughters-in-law only to see that the provisions of the Act are defeated and the lands do not pass into the hands of strangers. It is true that the evidence was adduced by the respondents as regards proof of mutation. Mutation was effected on the basis that sale deeds came to be executed in favour of sons and daughters-in-law. Therefore the mutation officer was not concerned at that stage to find out whether the sales were benami or ostensibly intended to defeat the provisions of the Act. It is settled law that mutation entries are only for the purpose of enabling the State to collect the land revenue from the person in possession but it does not confer any title to the land. The title would be derived from an instrument executed by the owner in favour of an alienee as per Stamp Act and registered under Registration Act. The alienees being sons and daughters-in-law the tenure-holder remained to be the owner and holder of the land. The sons and daughters-in-law are only ostensible owners under Explanation I to Section 5(1) of the Act. It is true that Lekh Pal has not categorically stated whether the respondents remained in possession in their own right after the alienation. It is not in dispute that the father and sons remained to be members of the joint family and were cultivating the land. Under these circumstances, one would normally expect that Lekh Pal may not be in a position to categorical assert whether respondents remained in possession in their own right as owners or were cultivating land on their own or on behalf of the coparceners. Under these circumstances, the findings of the High Court are illegal. The case falls under Explanation I of Section 5(1) and the burden is always only on the respondents to establish that they were not ostensibly owing the land but remained in their own right as owners. Accordingly, we hold that Kishun Singh was the holder of the land. He was a tenure-holder as on the date and, therefore, ceiling area has to be computed treating him to be the owner of the land; besides himself, he had eight sons who are entitled to the respective additional ceiling area given to them under the Act. The authorities are, therefore, directed to compute the ceiling area accordingly and take possession of the surplus land.

The appeals are accordingly allowed. The order of the High Court is set aside. The authorities are directed to determine the excess surplus area within a period of three months from the date of receipt of this order of this Court and should take possession thereof. No costs.