

PETITIONER:
STATE OF UTTAR PRADESH

Vs.

RESPONDENT:
THE DISTRICT JUDGE & ORS.

DATE OF JUDGMENT: 11/10/1996

BENCH:
N.P. SINGH, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.B. Majmudar.J.

In this appeal by special leave under Article 136 of the Constitution of India the appellant State of Uttar Pradesh has brought in challenge the judgment and order 23rd July 1980 of the High Court of Judicature at Allahabad dismissing the writ petition filed by the appellant-State against the order of the Additional District Judge, Agra in proceeding under the Uttar Pradesh Imposition of Ceiling of Land Holdings Act, 1960 (hereinafter referred to as 'the Act'). The question posed for our consideration is a short one, namely, whether a tenure-holder who has entered into agreement to sell some of his lands prior to the appointed day and had parted with possession thereof is liable to include in his holding the said lands when actual sale of these lands had not taken place. The High Court had answered this question against the appellant-State.

It is the submission of the learned counsel for the appellant-State that the said decision of the High Court of erroneous in law. We may mention that at the time of issuance of notice in these proceedings it was clearly indicated to the respondent tenure-holder that the notice was being issued in view of paragraph (9) of the judgment of this Court in the case of State of Andhra Pradesh v. Mohd. Ashrafuddin (AIR 1982 SC 913). WE will refer to the said judgment a little later.

In the first instance we may glance through the introductory facts leading to these proceedings. Respondent No.3 was issued a notice under Section 10 sub-section (2) of the Act by the competent authority functioning under the Act for submitting his objections against the statements prepared under the said Section by the authority indicating various lands held by Respondent no.3 on the appointed day, which were liable to be taken into consideration for deciding whether the said respondent was holding any excess land above the permissible ceiling area which would naturally vest in the State. Respondent No.3 while filing his objections submitted that he had transferred 33 Bighaa 17 Biswas land to one Shri Ram Het and Shri Kali Charan on 30th March 1970. He also transferred 30 Bighaa land to Shri

Brij Kishore on 8th March 1970. According to him the said lands were, therefore, not liable to be included in his holding as a tenure-holder for the purpose of deciding whether his holding exceeded the ceiling limit as per Section 5(1) of the Act. The Prescribed Authority held that the aforesaid lands covered by the Agreements to Sell which were not followed up by Sale Deeds remained in the ownership and holding of the respondent tenure-holder and were liable to be included for the purpose of calculating the permissible land within the ceiling area as per Section 5(1) of the Act.

Respondent No.3 carried the matter in appeal. The Additional District Judge, Agra who heard the appeal came to the conclusion that the aforesaid lands which were covered by Agreements to Sell could not be included within the permissible ceiling limit of lands held by the tenure-holder as the transferees were protected by Section 53-A of the Transfer of Property Act. These lands, therefore, could not be said to be possessed and held by Respondent no.3 on the appointed day and were liable to be excluded from the calculation of ceiling area of the land holding available to Respondent No.3. The appeal was accordingly allowed. The order of the learned Prescribed Authority determining 31 Bighaa 10 Biswas 15 Biswansis land was modified to the extent that there were only 2 Bighaa 4 Biswas 7 Biswansis lands in terms of irrigated area available with the tenure-holder as surplus. The appellant-State carried the matter in writ petition before the High Court being aggrieved by the aforesaid decision of the Appellate Authority. In the said writ petition a learned Single Judge of the High Court took the view that the aforesaid lands covered by the Agreements to Sell could not be said to be comprised of the holding of Respondent No.3 on the appointed day as the transferees were protected by Section 53-A of the Transfer of Property Act. Accordingly the learned Single Judge of the High Court agreed with the reasoning of the Appellate Authority and dismissed the writ petition. It is this order of the High Court that is on the anvil of scrutiny before us in the present proceedings.

Learned counsel for the appellant submitted that on the true construction of the relevant provisions of the Act it must be held that the lands covered by the agreements did not cease to belong to Respondent No.3 on the appointed day and were liable to be included in computation of permissible ceiling area available to Respondent No.3 under the Act. That mere Agreements to Sell created no interest in the proposed transferees and that it was not necessary for the applicability of Section 5(1) of the Act to show that the tenure-holder was actually in physical possession of the lands owned by him. That even lands in his constructive possession through licensees or tenants or even prospective transferees under Agreements to Sell in their favour would all be liable to be included within the holding of the tenure-holder. In this connection strong reliance was placed on the observations of a three member Bench of this Court in the decision of State of Andhra Pradesh v. Mohd.. Ashrafuddin (supra) as found in paragraph (9) of the said Report.

Learned counsel for Respondent NO.3, on the other hand, submitted that the aforesaid decision of this Court was rendered in the light of a different statutory scheme contained in the Andhra Pradesh land Reforms (Ceiling on Agricultural Holdings) Act. 1973 which defined 'holding' in a manner which was entirely at variance with the definition of the word 'holding' as found in the present Act and,

therefore, the said decision had no application to the facts of the case. He submitted that once Respondent No.3 had parted with possession of the lands concerned under the agreements in favour of the transferees he could not be said to have held the said lands on the appointed day which was subsequent to these agreements and these lands, therefore, were rightly excluded from the computation of his holding by the Appellate Authority as well as by the High Court and the appeal was required to be dismissed.

Having given our anxious consideration to the rival contentions we find that the High Court with respect had patently erred in taking the view that because of Section 53-A of the Transfer of Property Act the proposed transferees of the land had acquired an interest in the lands which would result in exclusion of these lands from the computation of the holding of the tenure-holder transferor on the appointed day. It is obvious that an Agreement to Sell creates no interest in land. As per Section 54 of the Transfer of Property Act, the property in the land gets conveyed only by registered Sale Deed. It is not in dispute that the lands sought to be covered were having value of more than Rs.100/-. Therefore, unless there was a registered document of sale in favour of the proposed transferee agreement holders, the title of the lands would not get divested from the vendor and would remain in his ownership. There is no dispute on this aspect. However, strong reliance was placed by learned counsel for Respondent No.3 on Section 53-A of the Transfer of Property Act. We fail to appreciate how that Section can at all be relevant against the third party like the appellant-State. That Section provides for a shield of protection to the proposed transferee to remain in possession against the original owner who has agreed to sell these lands to the transferee if the proposed transferee satisfies other conditions of Section 53-A. That protection is available as a shield only against the transferor, the proposed vendor, and would disentitle him from disturbing the possession of the proposed transferees who are put in possession pursuant to such an agreement. But that has nothing to do with the ownership of the proposed transferor who remains full owner of the said lands till they are legally conveyed by Sale Deed to the proposed transferees. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party like the appellant-State when it seeks to enforce the provisions of the Act against the tenure-holder, proposed transferor of these lands. Section 5 sub-section (1) of the Act provides that on 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 applicable to him. The definition of the term 'tenure-holder' as found in Section 3 sub-section (17) lays down that a 'tenure-holder' means a person who is the holder of a holding. 'Holding' is defined by Section 3 sub-section (9) to mean the land or lands held by a person as a bhumidhar, sirdar, asami of Gaon Sabha or an asami mentioned in Section 11 of the Uttar Pradesh zamindari Abolition and Land Reforms Act, 1950. A conjoint reading of Section 5(1), 3(17) and 3(9) clearly indicates that if a person holds the land as bhumidar, sirdar or asami, amongst others, as laid down by the said provision then such land will be liable to be included for computing ceiling of his holding under Section 5(1). It is difficult to appreciate how the term 'holding held by a tenure-holder' should be confined only to such

lands which are possessed by him as owner and would exclude such lands which are owned by him but which are not in his physical possession. Section 5(1) nowhere contemplates that the lands must also be physically possessed by him before he could be said to have held such lands even though he was the full owner thereof. If the construction canvassed by learned counsel for Respondent No.3 is accepted then even though a tenure-holder may be the full owner of the land if he had parted with the possession of the land in favour of a licensee or a tenant he could not be said to have held such land as tenure-holder. On the scheme of the Act, such a construction cannot be said to have been under countenanced. A person can be said to be holding the land as full owner even if the actual possession of such land might have been parted by him in favour of someone else who might enter into such possession by his permission and under his licence or by a lease treated by him. In all such cases he can be said to be in constructive possession or legal possession. Similarly in case of agreements of sale by which no title passes from the transferor of possession to the transferee thereof, it cannot be said that merely because actual physical possession of such land can be protected by the transferee of possession against its transferor, the transferor ceases to legally hold such a land. This question is no longer res integra as it is concluded by a decision of a three member Bench of this Court in the case of State of Andhra Pradesh v. MOhd. Ashrafuddin (supra). It is true that in that case the court was concerned with Section 3 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act. It defined the word 'holding' to mean the entire land held by a person as an owner, amongst others, and there was an explanation that where the same land is held by one person in one capacity and by another person in any other capacity, such land shall be included in the holding of both such persons. Still, however, the first part of the definition in Andhra Pradesh Act, namely, 'holding' to mean the entire land held by a person as an owner is analogous to the definition of the word 'holding' as found in the present Act as per Section 3(9) which also defines the word 'holding' as land or lands held by a person. It is true that in the Andhra Pradesh Act there is an explanation which makes the land covered by agreement to sell liable to be included also in the holding of the transferee. In absence of such an explanation in Uttar Pradesh Act, such land may not be included in the holding of the transferee. However, the liability of the transferor to get such land included in his holding remains untouched in both the Acts. To that extent, schemes of both the Acts run on parallel lines. So far the term 'land held by a person' is concerned, in the aforesaid decision, the following pertinent observations are found in paragraph (9) of the Report:

"It is now well settled that a person in possession pursuant to a contract for sale does not get title to the land unless there is a valid document of title in his favour. In the instant case it has already been pointed out that the transferee came into possession in pursuance of an agreement for sale but no valid deed of title was executed in his favour. Therefore, the ownership remained with the respondent-transferor. But even in

the absence of a valid deed of title the possession pursuant to an agreement of transfer cannot be said to be illegal and the transferee is entitled to remain in possession. If per chance he is dispossessed by the transferor, he can recover possession. The transferor cannot file any suit for getting back possession but all the same he will continue to be the owner of the land agreed to be transferred. The respondent, in our considered opinion, satisfies the conditions contemplated by the definition of the term 'holding' and the land transferred by him under a defective title deed will form part of his holding. The High Court, therefore, erred in holding that the land in possession of the transferee cannot be taken to be a part of the holding of the transferor-respondent".

In the aforesaid decision it is, therefore, clearly held that even when the land is transferred under an Agreement to Sell in favour of the transferee, the transferor can be said to be holding the said land and the land transferred by him under a defective title deed will form part of his holding. It has also been in terms observed that the High Court erred in holding that the land in possession of the transferee cannot be taken to be a part of the holding of the transferor-respondent. A similar situation arises in the present case. As the Agreement to Sell does not create any interest in favour of the transferee and such land can be treated to be a part and parcel of the holding of the transferor. the result is inevitable that the appellant-State is entitled to succeed. It must be held that despite the Agreements to Sell in favour of the transferees concerned, that had taken place in 1970, the said lands which continued to remain in the ownership of Respondent No.3 could be legally included as a part of his holding.

As a result of the aforesaid discussion, therefore, the appeal is allowed. The judgments and orders of the High Court as well as the lower Appellate Court are quashed and set aside and the decision rendered by the Prescribed Authority determining 31 Bighaa 10 Biswas 15 Biswansis land as surplus holding of Respondent No.3, is restored. In the facts and circumstances of the case there will be no order as to costs.