

PETITIONER:
RAJENDRA SINGH & ORS.

Vs.

RESPONDENT:
DTATE OF U.P. & ORS.

DATE OF JUDGMENT: 08/10/1998

BENCH:
S.SAGHIR AHMAD, S. RAJENDRA BABU.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T
S.SAGHIR AHNAD, J
Respondent No. 4, Mahant Narendra Das, was the tenure-holder of considerable agricultural land. A notice, under Section 10(2) of U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as 'the Act') was issued to him proposing certain area to be declared as surplus. The notice was served upon the tenure-holder on 6th of February, 1974 but the tenure-holder, namely, respondent No. 4, did not file any objection. Consequently, the statement made in the notice was confirmed and about 13 bighas 7 biswas 2 biswansis of land was declared as surplus by judgment and order dated 02.03.1974 passed by the Prescribed Authority. While the appeal against this judgment was pending before the District judge, the Act was amended by U.P. Ordinance No. 31 of 1975, which was subsequently replaced by U.P. Act No. 20 of 1976, as a consequence of which the appeal was abated and a fresh notice, under Section 10(2) of the amend Act, was issued to the tenure-holder who filed objections and the Prescribed Authority, after hearing the parties, disposed of the case by his judgment dated 30th Aril, 1976. This order was challenged in appeal by the tenure-holder which was allowed on 25.3.1997 and the surplus area reduce. In the meantime, respondent No.4, by means of registered Sale Deed date 26th August, 1974, transferred certain land in favour of appellant No.1 (Rajendra Singh) and by another Sale Deed of the same date, certain other plots were transferred in favour of Jogendra Singh, son of Shital Das. This Jogendra Singh, in his turn, transferred that land to appellants No.2 and 3, namely, Pritam Singh and Jogendra Singh, sons of Sardar Mansa Singh, by a registered Sale Deed dated 04.12.1975.

The appellants who were not the parties before the Prescribed Authority or the Addl. District Judge, filed a review application before the Addl. District Judge, Saharanpur praying that the surplus area may not be taken out of the land transferred in their favour but the application was rejected on 13.01.1978. The appellants then filed a Writ Petition in the High Court which was dismissed

on 14.3.1980. It is in these circumstances that the present appeal has come to this Court.

Learned counsel for the appellants has contended that under Section 12-A of the Act, it is open to the State Government not to take surplus land from out of the land which was the subject matter of transfer and, therefore, the respondents may be directed to take the surplus land from out of the other land of the tenure-holder, namely, respondent No. 4, as the latter still has, in his possession, considerable land which can satisfy the requirements of the State so far as surplus area determined by the area determined by the Prescribed Authority is concerned. This contention was also raised before the High Court but it was accepted.

Section 12-A of Act, inter alia, provides as under :-

"12-A. In determining the surplus land under Section 11 or Section 12, the Prescribed Authority shall as far as possible accept the choice indicated by the tenure-holder to the plot or plots, which he and other members of his family, if any, would like to retain as part of the ceiling area applicable to him or indicated by him in his statement under Section 9 or in any subsequent proceedings :

Provided that-

- (a).....
- (b).....
- (c).....
- (d) Where any person holds land in excess of the ceiling area including land which is the subject of any transfer or partition referred to in sub-section (6) or sub-section (7) of Section 5, the surplus land determined shall, as far as possible, be land other than land which is the subject of such transfer or partition, and if the surplus land includes any land or partition, the transfer or partition shall, in so far as it relates to the land included in the always to have been void, and-
- (i) it shall be open to the transferee to claim refund of the proportionate amount of consideration, if any, advance by him to the transferor, and such amount shall be charged on the amount payable to the transferor under Section 17 and also on any within the ceiling area, which shall be liable to be sold in satisfaction of the charge, notwithstanding anything contained in Section 153 of the Uttar Pradesh Zamindari Abolition and Land Reform Act, 1950;
- (ii)

The words "as far as possible" have been used in the main Section as also in Clause (d) of the Proviso. These words are not prohibitory in nature. They rather connote a discretion vested in the Prescribed Authority who can exercise that discretion at the time of carving the surplus

area from of the total holding of a person.

Section 5(1) provides that a tenure-holder shall not be entitled to hold in the aggregate throughout Uttar Pradesh, any land in excess of ceiling area applicable to him.

Section 9 provides that the Prescribed Authority shall, by general notice, published in the official Gazette, call upon every tenure-holder holding land in excess of the ceiling area applicable to him, to submit a statement in respect of all his holdings wherein he shall also indicate the plots which he would like to retain as part of his Section 12-A and it is provided that the Prescribed Authority shall, as far as possible, accept the choice indicated by the tenure-holder as to the plots which he would like to retain as part of his ceiling area. It is at this stage, that the description can be exercised by the Prescribed Authority and he may not take over those plots as part of the surplus area. It is thus "discretion", and not "compulsion", which constitutes the core of this statutory provision. It is obvious that before taking over any area as surplus area or leaving any area as ceiling area of the tenure-holder, the Prescribed Authority shall first take into consideration the choice indicated by the tenure-holder and if it is not possible, to act wholly upon the choice, for which there may be variety of reasons, the Prescribed Authority will proceed in his own way to leave the area determined by him as the ceiling area with the tenure-holder and take over the other area as surplus area.

This provision has to be read in the light of the provisions contained in Sub-sections (6), (7) and (8) of Section 5 which provide as under :-

"5(6). In determining the ceiling area applicable to a tenure-holder, any transfer of land made after the twenty-fourth day of January, 1971, which but for the transfer would have been declared surplus land under this Act, shall be ignored and not taken into account :

Provided that nothing in this sub-section shall apply to-

- (a) a transfer in favour of any person (including Government) referred to in sub-section (2);
- (b) a transfer proved to the satisfaction of the Prescribed Authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a 'Benami' transaction or for immediate or deferred benefit of the tenure-holder or other member of his family.

Explanation I, -For the purposes of this sub-section the expression transfer of land made after the twenty-fourth day of January, 1971, includes-

- (a) a declaration of a person as a co-tenure-holder made after the twenty-fourth day of January, 1971 in a suit or proceeding irrespective of whether such suit or proceeding was pending on or was instituted after the twenty-fourth day of January, 1971;

(b) any admission, acknowledgment, relinquishment or declaration in favour of a person to the like effect, made in any other deed or instrument or in any other manner.

Explanation II, - The burden of proving that a case falls within clause (b) of the proviso shall rest with the party claiming its benefit.

(7) In determining the ceiling area applicable to a tenure-holder, any partition of land made after the twenty-fourth day of January, 1971, which but for the partition would have been declared surplus land under this Act, shall be ignored and not taken into account :

Provided that nothing in this sub-section shall apply to-

(a) * * * * *

(b) a partition of a holding made in a suit or a proceeding pending on the said date:

Provided further that notwithstanding anything contained in the preceding proviso the Prescribed Authority, if it is of opinion that by collusion between the tenure-holder and any other party to the partition, such other party has been given a share which he was not entitled to, or a large share than he was entitled to, may ignore such partition.

Explanation I, - If a suit is instituted after the said date for declaration that a partition of land has taken place on or before the said date, then such declaration shall be ignored and not be taken into account, and it shall be deemed that no partition has taken place on or before the said date.

Explanation II, -The burden of proving that a case falls within the first proviso shall rest with the party claiming its benefit.

(8) Notwithstanding anything contained in sub-sections (6) and (7), no tenure-holder shall transfer any land held by him during the continuance of proceedings for determination of surplus land in relation to such tenure-holder and every transfer made in contravention of this sub-section shall be void.

Explanation-For the purposes of this sub-section, proceedings for determination of surplus land shall be deemed to have commenced on the date of publication of notice under sub-section (2) of Section 9 and shall be deemed to have concluded on the date when an order in relation to such tenure-holder is passed under sub-section (1) of Section 11 or under sub-section (1) of Section 12, or as the case may be, under Section 13.

The relevant date under the Act which constitutes the basis for determining the ceiling or surplus area of tenure-holder is 24th of January, 1971. Whatever land was held by a tenure-holder on that date will have to be indicated by him in the statement required to be submitted under Section 9 of the Act.

It is with reference to this date that it has been provided that in determining the ceiling or surplus area of a tenure-holder, the Sale Deed, if any, executed by the tenure-holder, after 24th of January, 1971, shall be ignored. Proviso to Sub-section (2) of Section 5, however,

carves out an exception in favour of transfers which are proved to the satisfaction of the Prescribed Authority, to have been in good faith and for adequate consideration and not for any immediate or deferred benefit of the tenure-holder or other members of his family. It is on the basis of this provision that it is contended by the learned counsel for the appellants that since the Sale Deeds, in question, were executed in their favour for valuable consideration and they had not obtained the land "benami" nor were they holding the land for any immediate or deferred benefit to the tenure-holder, they are entitled to hold the land covered by the said Sale Deeds in their own independent rights and, therefore, the said land could not have been treated as the land of tenure-holder, namely, respondent No.4, for purposes of determining his ceiling or surplus area. This contention is wholly without substance. The proviso cannot be read in isolation. It has to be read along with Sub-section (8) of Section 5 which provides as under :-

"(8) Notwithstanding anything contained in sub-sections (6) and (7), no tenure-holder shall transfer any land held by him during the continuance of proceedings for determination of surplus land in relation to such tenure-holder and every transfer made in contravention of this sub-section shall be void.

Explanation - For the purpose of this sub-section, proceedings for determination of surplus land shall be deemed to have commenced on the date of publication of notice under sub-section (2) of Section 9 and shall be deemed to have concluded on the date when an order in relation to such tenure-holder is passed under sub-section (1) Section 11 or under sub-section (1) of Section 12, or as the case may be, under Section 13."

The prohibition contained in this sub-section that during the pendency of proceedings under the Act, there cannot be any transfer, is absolute. This prohibition is contained in the first part of sub-section (8) while in the second part, the consequence thereof is indicated providing that every transfer, made in contravention of this provision shall be void. The Explanation appended to this Sub-section creates a legal fiction by saying that the proceedings for determination of surplus land shall be deemed to have commenced on the date of publication of notice under Sub-section (2) of Section 9 and they shall be deemed to have concluded when an order is made under Sub-section (1) of Section 11 by the Prescribed Authority in a case where either the statement submitted by the tenure-holder, under Section 9, is accepted by the Prescribed Authority or the statement prepared by the Prescribed Authority, under Section 10, is not disputed by the tenure-holder. But in a case where these statements are contested, the proceedings shall be deemed to have concluded when an order is made by the Prescribed Authority under Section 12(1) of the Act. If, however, an appeal has been filed against the order of the Prescribed Authority, the proceedings shall be deemed to have concluded on the disposal of the appeal under Section 13 of the Act.

Thus, the Sale Deeds executed by tenure-holders after 24th January, 1971, have been classified into two distinct categories : (1) Sale Deeds executed by the

tenure-holder after 24th January, 1971, without the proceedings under the Act for determination of the ceiling and surplus area having been commenced or being pending. Proviso (b) to Sub-section (6) of Section 5 would be applicable to such a Sale Deed and it would be open to the Prescribed Authority to look into the genuineness of such a sale Deed in the light of the factors indicated therein; and (ii) Sale Deeds executed by the tenure-holder after 24th January, 1971, but during the pendency of the proceedings for determination of the ceiling and surplus area. Such a Sale Deed would be void in view of Sub-section (8) of Section 5. It will not be open to the Prescribed Authority to hold any enquiry in respect of such a Sale Deed which has to be treated as void from its inception.

The prohibition on transfer of land during the pendency of the proceedings was introduced in the principal Act by U.P. Act No. 20 of 1976 with retrospective effect from 10.10.1975, that is, with effect from the date on which U.P. Ordinance No. 31 of 1975 was issued. This prohibition was introduced with the object of facilitating an early disposal of the proceedings for determination of surplus land as also for preventing the tenure-holder from disturbing the status-quo of his holding as existing on the date of Notification under Section 9 of the Act by making transfers of land in favour of other persons which obviously would have the effect of complicating the process of determination of surplus land.

Since, in the instant case, a notice had already been issued under Section 9 of the Act and the proceedings for germination of ceiling and surplus area were pending before the Prescribed Authority, the Sale Deeds, in question, which were executed on 26.8.1974 and 04.12.1975 respectively were obviously void being hit by the provision contained in Sub-section (8) of Section 5.

The contention of the learned counsel for the appellants that the surplus area may not be taken out of the land covered by the Sale Deeds cannot, therefore, be accepted, as it would mean that the Sale Deeds, though void, are still being given effect to indirectly which is positively impermissible. The land covered by the aforesaid Sale Deeds shall, therefore, be treated to be part of the land held by respondent No.4 and it would be within the exclusive jurisdiction of the Prescribed Authority to take or carve out the surplus area from any land of respondent No. 4, notwithstanding that any portion of that land was covered by Sale Deeds allegedly executed in favour of the appellants.

No other point was argued. The appeal has no merits and is dismissed but without any order as to costs.