

PETITIONER:
DILAWAR SINGH (DEAD) THR. LRS.

Vs.

RESPONDENT:
ADDL. DISTRICT JUDGE, GHAZIABAD

DATE OF JUDGMENT 13/09/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
JEEVAN REDDY, B.P. (J)
HANSARIA B.L. (J)

CITATION:
1995 SCC (6) 86 JT 1995 (7) 85
1995 SCALE (5) 467

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Pursuant to the notice under s.10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 [for short, 'the Act'], the appellant had submitted his return. Therein he had stated that on May 6, 1965, he had gifted under Khasra No.266 eighteen biswas 'Pukhta', under No.613 two bighas, seven biswas and ten biswansis; under No.616 three bighas, sixteen biswas and six biswansis etc. etc. All the authorities concurrently found that the gift is a sham transaction to avoid the ceiling imposed under s.5 of the Act. The High Court in its order dated 10.11.1978 made in C.M.W.P. No.522/78 dismissed the petition agreeing with the finding thus:

"In my view, the Prescribed Authority and the Court below which affirmed the decision of the Prescribed Authority on the controversy have recorded findings which cannot be said to be vitiated by any jurisdictional error. They were entitled to reach their own conclusion and this court in its writ jurisdiction cannot substitute its own judgment for the decision of the Prescribed Authority on the ground that the said decision or the judgment of the lower appellate court should not have been so pronounced on the basis of material and evidence on the record. The next point urged was that plot no.992 is Abadi land. Again, I find that the necessary discussion is there in the order of the Prescribed Authority and in the judgment of the lower appellate court and a finding of fact has been recorded which cannot be

disturbed in the writ jurisdiction."

Mr. Ravindra Bana, learned counsel for the appellant, contended that in view of the decision of this Court in Ramadhar Singh vs. Prescribed Authority and Ors., [(1994) Supp.3 SCC 702], the land covered by the gift deed needs to be excluded by operation of s.5(6) of the Act. Mr. R.C. Verma, learned counsel appearing for the State urged that initially the notified date which the statute had prescribed was August 20, 1959. Since the appellant had not submitted his return for computation of the surplus ceiling area, notice under s.10 (2) came to be issued. Therein, he had come with the plea that he had gifted the land to his grand-nephew. Since the court below and the High Court had found, as a fact, that the transaction of gift was a sham one, it must be construed as if there was no alienation or that it was intended to defeat the provisions of the Act. Therefore, the Amendment Act cannot be applied in the circumstances. In that view, the ratio of Ramdhar Singh's case (supra) does not apply to the facts in this case.

The question for consideration is whether the appellant is entitled to have the lands covered under the gift deed excluded from his holdings. If the gift deed is accepted to be valid one, his holding would be within the ceiling limit prescribed by Section 5 of the Act. But Section 5 of the Act postulates that on and from the date of its enforcement, no tenure-holder shall, except as otherwise provided by this Act, be entitled to hold an area in excess of the ceiling area applicable to him, notwithstanding anything contained in any other law, custom or usage for the time being in force, or agreement, to the contrary. In determining the ceiling area applicable to a tenure-holder at the commencement of this Act any transfer or partition of land made after the twentieth day of August, 1959, which, but for the transfer or partition would have been declared surplus land under the provisions of this Act, shall be ignored and not taken into account. It would thus be clear that when the Act had come into force and declared that any transfer or partition effected on or after the twentieth day of August, 1959 shall be ignored and shall not be taken into account, the statutory provision required that the excess land shall be computed as if the land held by the declarant on or before the twentieth day of August, 1959 was not affected by virtue of any transfer or partition effected thereafter, and surplus shall be computed, despite such transfer. In view of the finding recorded by the courts below that the gift deed was a sham document in law, it does not have any existence which binds the Government in determining the surplus area.

In view of the finding that it is a sham document, the validation of any transfer or partition effected on or after January 24, 1971 is of no avail to the appellant. The ratio in the above case has no application to the facts of the case. The appeal is accordingly dismissed. No costs.