PETITIONER:
SANT SINGH

Vs.

RESPONDENT:
THE ADDITIONAL DISTRICT JUDGE,JHANSI & ORS.

DATE OF JUDGMENT: 14/02/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
AHMAD SAGHIR S. (J)

CITATION:
1996 SCC (3) 400 JT 1996 (3) 74
1996 SCALE (2)583

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This appeal by special leave arises from the order of the High Court of Judicature at Allahabad made in Civil Misc. Writ No.1127/77 on April 8, 1977 summarily dismissing the writ petition. The appellant challenged the notice issued under Section 5 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 [for short, the 'Act']. Since the appellant had not voluntarily filed the declaration, notice came to be issued. The Additional District Judge by his order dated February 23, 1977 had negatived three contentions raised by the appellant which are reiterated before us. The first contention is that the appellant had sold 10 acres 33 cents of land by registered sale deed dated October 26, 1970 to his minor daughter represented by mother. The appointed day is January 24, 1971.Therefore, the sale is valid and it is not in violation of the provisions of the Act. The District Judge, therefore, was not right in clubbing in the appellant's holding of the said land on the ground that the daughter was unmarried. Therefore, she is not a member of the family. It is seen that sub-section (6) of Section 5 postulates that 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 the Act, shall be ignored and not taken into account. The proviso provides that nothing in this sub-section shall apply to "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 members of the family". The question is: whether the sale deed is executed in good faith and for adequate consideration and is not a 'Benami' transaction for the immediate or deferred benefit of the tenure-holder or other members of the family. 'Family' has

been defined under the Act to include wife and minor children in relation to himself or herself and his wife or her husband, as the case may be [other than a judicially separated wife or husband], minor sons and minor daughters [other than married daughters]. It is seen that the District Judge had recorded the finding, as a fact, that she was a minor and the sale deed was executed by the father making the wife as the guardian of the minor daughter. Under personal law, father during his life-time remains to be the legal guardian of the minor and mother cannot be a legal guardian. He cannot sell the land to himself. She being a minor and the appellant being a tenure holder in respect of the said land, even though sale was made, the land under sale would be includable in his holding. In either event, the said land admeasuring 10 acres 33 cents cannot be taken out from the holding of the appellant.

It is next contended that the appellant had transferred 12 plots of land covering an area 13.47 acres to his private temple and therefore, the said land cannot be included in his holding. Admittedly, it was done on January 28, 1972 after the appointed day. Under those circumstances, though the transfer was made in favour of the temple which is found to be a private temple, it being after the appointed day, it is invalid in law. Therefore, the land is required to be included in his holding.

It is next contended that plots Nos.5 and 13 are part of unirrigated land and therefore, they have to be treated as an unirrigable land. The District Judge was, therefore, wrong in treating them as irrigated land. It is seen that Khasra record has been produced by the Lokpal who was examined before the District Judge. No question has been put to him as regards the nature of the irrigation done therein. The record contains that it was being irrigated by tube-well. Under Section 4A firstly, clause (a)(iii) states that in determining any land as irrigated land, land cultivated by any State tube-well or a private irrigation work would be considered as irrigable land. In view of the fact that the lands are being irrigated by tube-well which is called Nalcoop, treating this land as irrigated land, as held by the District Judge on the evidence on record, cannot be said to be unwarranted. The learned counsel also relied upon Ramadhar Singh v. Prescribed Authority & Ors. [(1994) Supp. 3 SCC 702], wherein the question was whether genuineness of the sale deed was not gone into. This Court held that validity of the sale deed executed prior to January 24, 1971 could not be determined. But in view of the specific language referred to hereinbefore which was not brought to the notice of this Courts it is difficult to hold that the Tribunal committed any error ino going into that question. Thus construed, we find it difficult to give relief to the appellant.

The appeal accordingly is dismmised. No costs.