
(1982) 11 RAJ CK 0014
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1193/79

Banwarilal Nagpal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-11-1982

Acts Referred:

Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 — Section 16(4)

Citation : (1982) RLW 663 : (1982) WLN 565

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.C. Jain, J.—This writ petition raises a controversy as to whether a person can be compelled to surrender the surplus land out of the land retained by him instead of surrendering the land transferred by him, which is not recognizable in law.

2. I may recount a few material facts of the present case giving rise to the controversy that has arisen.

3. The petitioner purchased 5 Bighas of land, 4 Bighas being Killas Nos. 22 to 25 in Chak 8 GGR and 1 Bigha being Killas No. 21 in Chak No. 6 GGR from respondent No. 3 Balbirsingh by a registered sale-deed dated April 18, 1972 for a sum of Rs. 10,000/Ceiling proceedings were instituted against the respondent No. 3 Balbirsingh in case No. 783 of 1975. Shri Balbirsingh, respondent No. 3 filed his objection to the draft statement, served on him and in his objection on, inter alia, he stated that he had sold the aforesaid land to the petitioner bonafide and with full consideration. The respondent No. 3 mentioned that he had built a pucca house and also got constructed a tube well and in order to meet that expenditure he sold the land to the petitioner. The Authorised Officer, Hanumangarh by his order dated May 27, 1976, decided the ceiling case of respondent No 3, whereby, 75 Bighas 6 Biswas land of the respondent No. 3, was

declared to be surplus land and liable to be acquired under the provisions of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (for short "the Act",). No notice of ceiling proceedings was served on the petitioner and the petitioner had no knowledge of these proceedings. The respondent No. 3 gave his option for surrender of the surplus land on July 10, 1976 and in that option, the respondent No. 3 Shri Balbirsingh included the petitioner's land sold to him. Regarding this option as well, the petitioner had no knowledge. On the option, given by the respondent No. 4 Tehsildar, Tibi reported that 5 Bighas of land is encumbered with the petitioner vide Ex.4. The Tehsildar, Tibi reported that possession over 69 Bighas 5 Biswas of land has been taken over and 5 Bighas of land, which is with the petitioner is not free from encumbrance. He sought an order from the Authorised Officer by his letter No. 2562. Prior to this, he informed that the land in dispute i.e. 5 Bighas of land was sold by the respondent No. 3 to the petitioner Banwarilal in the year 1972 and the same had been n utated in his name in the Revenue Records and a tube-well exists therein. That land has been mortgaged by Shri Banwarilal with the State Bank of Bikaner and Jaipur and that mortgage was also shown in the Revenue Records. The Tehsildar by his report (Ex 5) dated July 16, 1976 sought a direction whether possession over 5 Bighas of land is to be taken out of the land in possession of respondent No. 3 or not. When the petitioner came to know that the respondent No. 3 has given option for surrender of the land of the petitioner, the petitioner submitted an application to the Authorised Officer, Hanumangarh u/s 6/18 of the Act, on November 20, 1978 (Ex. 6). Notice of the application was given to the respondent Shri Balbirsingh and he filed a reply to the notice Ex.7). The Authorised Officer, by his order dated August 21, 1979 rejected the petitioner's application. The petitioner has now sought the reliefs that the order Ex. 8 may be quashed and the respondent may be restrained from taking possession of the land in dispute from the petitioner. The challenge is, inter alia, on the ground that the respondent No. 3 had been given an option to select the land, which he wants to surrender, but he can not surrender encumbered land if he has other land in his possession, which is available for being surrendered. Such an obligation of the transferor arises under sec 18 and Sub-section(4) of Section 16 of the Act. It is only when the un-encumbered land is, not available, then the encumbered land can be surrendered and the transferee in that situation is only entitled to the amount of compensation of acquisition payable to the transferor.

4. One of the grounds of challenge is also this that the petitioner was not served with a notice of the ceiling proceedings and without giving him an opportunity of hearing the ceiling case of respondent No. 3 was decided, so the order passed at the back of the petitioner is a honest and a nullity in the eye of law. According to the petitioner, notice ought to have been served on him u/s 12 of the Act as he was a person interested in the land.

5. A return to the writ petition has been filed on behalf of the respondents No. 1 and 2, in which, the petitioner's claim has been resisted and it is averred that the transfer is not a bonafide one and was not a recognisable transfer, so the

entire surplus land including the land of the petitioner was found to be the land of respondent No. 3. After the final order in the ceiling case, the respondent No. 3 has exercised his option to surrender the land in dispute and that option, can not be challenged by the petitioner. The petitioner has an alternative remedy by way of suit for damages against the respondent No. 3. It was avrered that the order of the Authorised Officer is neither illegal nor without jurisdiction.

6. I have heard Mr. H.M. Parekh, learned Counsel for the petitioner and Mr. R. Balia, learned Deputy Government Advocate for the State.

7. So far as the first ground of challenge stated above is concerned it is based on the provisions contained in Sections 16 and 18 of the Act. It may be mentioned that u/s 6 of the Act, all transfers of land made on or after 26th September, 1970 shall be deemed to have been made in order to defeat the provisions of the Act and such transfers shall not be recognised or taken into consideration in determining the ceiling area applicable to the transferor and an exception has been made with regard to the bonafide transfers made before 1st January, 1973 and the burden of proving the transfer to be bonafide has been placed on the transferor under Sub-section (2) of Section 6 of the Act. While determining the ceiling case of the respondent No. 3, the transfer in question was not recognised as it was not found a bonafide one. Although, it was decided without any notice to the petitioner and according to the respondents the petitioner was not required to be served with any notice. This is the second ground of challenge, but I am not addressing myself on that ground, as it is not necessary to address on that ground. In my view, the petitioner can succeed on the first ground, The respondent No 3, after service of the final statement on him, gave his option u/s 18 of the Act. In that option, he included the petitioner's land to be surrendered by him. It may be stated that the surplus land would be deemed to have been acquired by the State Government u/s 16 of the Act from the date of service of the final statement on the holder of the land and that surplus land from that date shall vest absolutely in the State Government from all encumbrances as provided in Sub-section (1) of section \\6 of the Act. Sub-section (2) of Section 16 requires that that the holder of the land shall surrender or deliver possession of surplus land to the State Government by placing it at the disposal of the Tehsildar and under Sub-section (3). if the holder of the land refuses or fails to surrender or deliver possession of the land vested in the State Government within three months as provided, he shall be deemed to be a trespasser on such land and shall be liable to ejectment therefrom and to the payment of penalty in accordance with Section 91 of the Rajasthan Land Revenue Act, 1956.

8. For the appreciation and adjudication of the controversy in question, after referring to the provisions of Sub-sections (1), (2) and (3) of Section 16 of the Act, it would be proper to reproduce the provisions contained in Sub-section (4) of Section 16 as well as the provisions contained in Sub-section (1) of Section 18 of the Act.

16 Vesting of surpuls land:

(1) ...

(2)...

(3)...

(4) Notwithstanding anything contained in Section 16 or in any other provisions of this Act, where any transfer of land is not recognised or taken into consideration in determining the ceiling area applicable to the transferor under Sub-section (1) of Section 6. surrender of surplus land vesting in the State Government shall be made by the transferor out of the land remaining with him after the transfer and the balance of surplus land remaining, if any, shall be recovered from the transferee by his ejectment. In case surplus land or portion of it be recovered from the transferee, the price paid by him for such land or portion thereof shall be deducted from the amount of acquisition payable to the transferor and shall be paid to the transferee to an extent not exceeding such amount of acquisition.

18. Selection of land within ceiling area:

(1) A person holding or acquiring land in excess of ceiling area applicable to him shall have the right to select any land within the ceiling limit which he wants to retain in his possession;

Provided that where a person holds or acquires land of which some are encumbered and some are not, the selection under this section so far as practicable, be made in favour of encumbered land in preference to unencumbered land.

(2)

9. Section 19 confers a right on" the holder of the land to select any land within the ceiling limit, which he wants in his possession, but the proviso to Sub-section (1) placed some restriction on the exercise of this right by him. That restriction is that he is required to make his selection as far as practicable, in favour of encumbered land in preference to unencumbered land. It is practicable in the present case to make selection in favour of encumbered land. Besides the proviso has to be read along with the provisions of Section 16 (4) of the Act. Sub-section (4) of Section 16 of the Act over-rides Section 18 or any other provisions of the Act having any bearing on the matter mentioned in Sub-section (4) of Section 16 of the Act. Sub-section (4) of Section 16, begins with the non-obstante clause. Under the provisions of Sub-section (4) notwithstanding the provisions of Section 16, a duty is cast on the transferor to surrender the surplus land out of the land remaining with him after the transfer and despite that, if there remains the balance of surplus land, then such balance of surplus land shall be recovered from the transferee it is only when the surplus land or any portion thereof is recovered from the transferee, then the price paid by the transferee for such land or portion thereof shall be deducted from amount of acquisition payable to the transferor & shall be paid to the transferee to an

extent exceeding such amount of acquisition. If the two provisions are read together, the scheme of the law clearly appears to be that although the transfer of the land be not recognized and the transferred land will be considered to be the land of the transferor and thereafter, surplus land would be declared but in connection with the surrender of the surplus land, the transferor is required first to surrender the unencumbered land and it is only when un-encumbered land is not available then the balance of surplus land can be recovered from the transferor and the transferee be shall paid the price out of the amount of acquisition payable to the transferor.

10. Mr. R. Balia. learned Deputy Government Advocate urged that a right of selection of the land to be retained by the person holding the land had to be considered by him, is conferred and there is no provision empowering the Authorized Officer to compel the person first to surrender the untransferred land and if there still remains the balance of surplus land to be delivered to the State, than the transferred land can be surrendered by him. In the absence of such a provision, the transferee has no right to seek any relief by moving the Authorised Officer, whereby, the possession over that land can be taken by the Authorisend Officer, which has been retained by the transferor. He re enforced his arguments by making the submission that there is a reasoning behind it as to why such a provision has not been made The reason is that, when the transfer has not been recognised and the transferred land has been taken to be the transferee, then the Authorised Officer can enforce the obligation of the transferor provided in Sub-section (4) of Section 16 of the Act. He maintained that the only remedy of the transferee in to maintain an action against the transferor for the return of consideration and damages, if any, arising from non-recognition of the transfer.

11. Having given my serious and anxious consideration to the above submission of the learned Deputy Government Advocate; I am unable to agree and accept the same. From the scheme of Section 16(4) and Section 16 of the Act, it is clear that first, that surplus land is to be surrendered, which is with the transferor and it is only the balance of surplus land, which shall be taken possession of from the transferor by his ejectment. The transferee comes into picture, only in connection with taking possession of the balance of surplus land meaning thereby that when the entire land remaining in possession of the transferor has been surrendered and there still remains the balance of surplus land to be taken possession of, then possession of that balance of surplus land can be taken from the transferee. It is true that there is no specific provision empowering the Authorised Officer either to compel the transferor to surrender the surplus land out of the land, which is with the transferor, but this in my opinion, is implicit in the very scheme of things. The reason is that there is an unequivocal positive obligation of the transferor to surrender that land. Such on unequivocal positive obligation, in my opinion, can be enforced by the Authorised Officer. It can not be conceived that the legislature would have provided such an unequivocal, positive and mandatory obligation, which could not be enforced under the law and the transferor would simply be driven to an action for a refund of the consideration

and damages. If such would have been the intention of the legislature, there was no need for the legislature to have made it imperative for the transferor to surrender the surplus land out of the land remaining with him. The Authorised Officer is empowered to recover the balance of surplus land from the transferee. This implies that he will first recover possession of the surplus land out of the land remaining with the transferor and it is in this way, that obligation provided under Sub-section (4) of Section 16 of the Act is enforceable against the transferor. u/s 36 the jurisdiction of civil & revenue courts is barred to decide or deal with any question or matter which is under the Act, required to be decided or dealt with by the Authorised Officer. The Authorised Officer is required to deal with the question of taking possession of the surplus land and he has to recover the balance of surplus land from the transferor and that means, rent of the land is required to be surrendered by the transferor of which the possession has to be taken by the Authorised Officer. If this view is not taken then the obligation of the transferor remains unenforceable and the object of this particular provision that is, of creation of the obligation would be defeated. If possession of the surplus land is taken from the transferor in pursuance of the option and that land is subsequently allotted by the competent authority, the transferor would not be able to enforce the transferor's obligation created u/s 16(4) of the Act in any Court of law.

12. Even if, it is to be taken that the provision regarding the enforceability of the transferor's obligation is missing, still that omission or gap can be supplied. The ceiling law is administered and enforced by the Authorised Officer, so such a power necessarily vests in him, where by, the obligation of the transferor as provided in Sub-section (4) of Section 16 of the Act can be enforced.

13. In Statutory Construction of Crawford(1940 Edition) in para 169 while dealing with the rule of casus omissus, it is stated as under:

Obviously, the reason back of the rule of casue omissus is found in the principle that if the Court attempts to supply that which the legislature has omitted, there is considerable danger that it may invade the legislative field, ft is not easy to determine whether the omission was intentional or not. And even where it was inadvertent, an attempt to supply the omission, by including the omitted case, generally would operate to add to the statute a meaning not intended by the legislature, for how can it be said that the law-makers intended to include something omitted? It would seem that the only time the omitted case might be included within the statute's operation, would be when the legislature intended to include it but actually failed to use language which would, on its face, cover the omitted case. The inclusion would that be justified if from the various intrinsic and extrinsic aids, the intent of the legislature to incorporate the omitted case, could be certified with a reasonable decree of certainty,

(Emphasis added)

14. Denning, L.D. in Seaford Court Estates Ltd. v. Haber (1949) 2 All E.R, 155 at

page 164 stated as follows:

When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament...and then he must supplement the written words so as to give "force and life" to the intention of the legislature. A Judge would ask himself the question how, if the makers of the Act had the misfortune to come across this task in the texture. He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the crosses.

15. The above observations were cited with approval by Sarkar, J., in *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, and Sarkar, J., observed "I conceive it my duty, therefore, so to read the new Act, unless I am prevented by the intractability of the language used, as to make it carry the obvious intention of the legislature. "The observations of Denning, L.J. came up for severe criticism of the House of Lords and they had disapproved. Lord Salmond observed in *Magor & St. Mellons Rural District Council v. New Port Corporation* (1951) 2 All E.R. 939, HL). It appears to me to be a naked usurpation of the legislative function under the thin disguise of interpretation" and Lord Macdonnell observed "these harpies are out of place" and Lord Tucker pointed out "your Lordships could be acting in a legislative rather than judicial capacity, if the view put forward by Denning L.J. were to prevail. "It may be stated that the observations of Denning, L.J. do not intend to lay down a rule permitting usurpation of legislative function by the Courts: The observations simply emphasise that a reasonable construction, which gives life and force to the statute and avoids absurdities and incongruities carries out the object or policy of the legislature, should be adopted.

16. In *Rebati Ranjan and Another Vs. The State of Bihar and Others*, it was held that:

In a case of religious and charitable endowment the principle to be applied is that, if the statute is enacted for the purpose of enabling some action to be taken but the statute omits to mention expressly some important detail essential for the proper and effectual performance of the work which the statute contemplates the Court is at liberty to supply the "casus omissus" and to infer that the statute by implication empowers some detail to be carried out.

17. In *U.K. Swarnav Narayan and Ors. v. State of Mysore and Anr.* AIR 1963 Mys. 49, it was observed as under:

Our duty in interpreting a statute like the impugned Act extends clearly even to the supply of careless omission made by the Legislature, in order to give the legislation an effective meaning & to prevent it from becoming devoid of effect. In that view of the matter, I cannot but regard the omission on the part of the Legislature to add to Clause (ii) of Section 3(1), a provision similar to that which appears under clause(1) as an omission attributable to forgetfulness.

18. In the light of rule of construction stated above, it would be seasonable to construe that the obligation of the transferor under Sub-section (4) of Section 16 of the Act can be enforced by the Authorised Officer against the transferor and he can call upon the transferor to surrender the surplus land first, out of the land remaining with him and thereafter, surrender the land or part thereof, transferred by him. If this view is taken, then the order of the Authorised Officer dated August 21, 1979 (Ex.5) deserves to be quashed and the respondent No. 3 can be ordered to surrender 5 Bighas of land, which may be in his possession in place of 5 Bighas of land of the petitioner of which, option has been given by respondent No. 3 and the Authorised Officer can be directed to enforce the same. In this view of the matter, the writ petition deserves to be allowed and I need not consider the other grounds of challenge in the present writ petition.

19. In the result, the writ petition is allowed, the order dated August 21, 1979 (Ex.8) is quashed and the respondent No. 3 Balbirsingh is directed to surrender 5 Bighas of land out of the land in his possession in place of 5 Bighas of land transferred to the petitioner & the Authorised Officer is directed to enforce the above obligation against the respondent No. 3 Balbirsingh. If in case, no land of respondent No. 3 is available, possession of the petitioner's land can be taken and in that situation, he will be paid the price out of the amount of acquisition payable to the transferor Shri Balbirsingh.

20. The parties shall bear their own costs.