
(1978) 02 AHC CK 0087
In the Allahabad High Court
Case No : Civil Misc. Writ No. 10033 of 1975

Data Ram	Vs	APPELLANT
Addl. Civil Judge and Another		RESPONDENT

Date of Decision : 14-02-1978

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 5(6)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 154, 163, 164, 165

Citation : (1978) AWC 614 : (1979) RD 23

Hon'ble Judges : Deoki Nandan, J

Bench : Single Bench

Advocate : R.H. Zaidi, for the Appellant;

Final Decision : Dismissed

Judgement

Deoki Nandan, J.—This writ petition is directed against an order dated 18th August 1975 of the Additional Civil Judge, Bulandshahr on appeal by the State of U.P., from an order dated October 15, 1974 of the Prescribed Authority, Tehsil Sikandrabad, District Bulandshahr, under the U.P. Imposition of Ceiling on Land Holdings Act, 1960. The Prescribed Authority had in this case discharged the notice u/s 10(2) of the Act on the ground that a transaction covered by an agreement dated May 20, 1969 amounted to a sale before the crucial date, 24th January 1971, inasmuch as possession had already been transferred under that agreement to sell on 20th May, 1969. The learned Additional Civil Judge held that an agreement of sale does not create any interest in the property proposed to be sold and the mere fact that the tenure holder had parted with possession of the land under that agreement was not sufficient to extinguish his title in the land and that, therefore, the date of the execution of the sale deed, which was executed on April 30, 1974 in the present case, was the date on which the transfer was effected, and that being so the transfer was governed by Section 5(6) of the Ceiling Act, and the land covered by the transfer could not be excluded in determination of the ceiling area of the Petitioner.

2. Sri R.H. Zaidi, learned Counsel for the Petitioner has contended before me that the learned Civil Judge ignored Section 165 of the U.P. Zamindari Abolition and Land Reforms Act which runs as follows:

Any transfer of any holding or part thereof made by a bhumidhar by which possession is transferred to the transferee for the purpose of securing any payment of money advanced or to be advanced by way of loan, and existing or future debt or the performance of an engagement which may give rise to a pecuniary liability, shall, notwithstanding anything contained in the document of transfer or any law for the time being in force, be deemed at all times and for all purposes to be a sale to the transferee and to every such sale the provisions of Sections 154 and 163 shall apply.

3. He contends that it is not necessary that the transfer contemplated by Section 165 must amount to a transfer of the holding. He says that a mere transfer of possession of land for the purpose of securing any payment of money advanced or to be advanced by way of loan etc., is sufficient to attract the applicability of Section 164 of the said Act, and consequently in view of the finding of the Prescribed Authority which has been accepted by the learned Civil Judge, that possession over the land had been transferred on May 20, 1969 in lieu of payment of Rs. 5,000/- under the agreement between the parties, the effect was that the Petitioner must be deemed to have transferred the land on 20th May, 1969 and the subsequent act of transfer of the land by execution of the sale deed dated 30th April 1974 was futile and did not make any difference to the real position.

4. Having given the matter my anxious consideration, I am unable to agree with the contention of the learned counsel. Although Section 164 speaks of "any transfer of any holding or part thereof made by a bhumidhar", it does not mean that the transfer of holding spoken of thereby may be merely a transfer of possession over land included in the holding. There must be a transfer of the holding in law, such as to transfer some right, title or Interest of the tenure holder in the holding. A transfer of interest in holding cannot be effected in case of property valued at more than Rs, 100/- without a registered instrument. Even if there is transfer of possession under an unregistered agreement, there is no transfer of any right, title or interest of the tenure-holder in the holding. In my opinion a bare transfer of possession Of land by a tenure-holder, may be for securing any payment of money advanced to him, is not covered by Section 164 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. The object of Section 164 is to convert such transactions as a Zarpeshgi lease or a usufructuary mortgage into sale, and not to convert mere transfers of possession of land by a tenure-holder without any transfer of Interest in the holding into sales. In this view of the matter the order of the Additional Civil Judge cannot be said to suffer from any error of law.

5. In the result the writ petition fails and is dismissed with costs. The stay order dated 12th September 1975 is vacated; and the Petitioner will be entitled to

refund of the amount of Rs. 4,000/- which may have been deposited by him as security in the first year and any further deposit which may have been made by him in the subsequent years under that order, as no loss, which may require to be compensated therefrom, has been established by the State.