

(2006) 01 AHC CK 0012

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23854 of 1989

Dhyan Singh

APPELLANT

Vs

State of U.P., Prescribed Authority Ceiling and Additional
Commissioner, Jhansi Divn.

RESPONDENT

Date of Decision : 10-01-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Gift Tax Act, 1958 — Section 2, 4

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 13, 5(2),
5(6)

Citation : (2006) 3 AWC 2470

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Advocate : R.C. Gupta, for the Appellant; M.M. Chaturvedi and S.C., for the
Respondent

Final Decision : Allowed

Judgement

Bharati Sapru, J.—This petition has been filed against an order dated passed by the appellate authority u/s 13 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, by which the appellate authority has rejected the claim of Dhyan Singh that the gift deed made in his favour on 16.2.1972 could not get the benefit of proviso (b) of Section 5(6) of the Act aforesaid.

2. The facts of the case are that one Ramdhar was tenure holder in Village Nagnedhi, Pargana Naraini, District Banda. Ramdhar made two transactions on 16.2.1972 i.e. to say after coming into force of U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Act) on 24.1.1971. By a registered sale deed he passed on some plots to one of his grand son i.e. daughter's son and on the same date, he executed gift deed on 16.2.1972, which was registered in favour of the petitioner who was on that date a minor. By the gift deed-the petitioner also a grandson was given plots No. 946 to 950, 856 to 864, 866, 867, 945, 227 etc. During the course of consolidation operations,

the plots were converted into plots No. 449 and 481. The plots were then included in the petitioner's chak.

3. According to the petitioner during the consolidation proceedings, the aforesaid chaks were recorded in his name and he was also held to be in possession of the same. The fact that consolidation authorities passed order in favour of the petitioner, has not been denied in the counter affidavit in reply to para 3 of the writ petition.

4. It is the petitioner's case that in the month of August, 1982 when the petitioner attained majority, he came to know about the judgment and order passed by the consolidation authorities in respect of plots which have been gifted to him. He also came to know that the said plots have been declared surplus. Thereafter the ceiling proceedings were initiated in which the petitioner participated and an order was passed against the petitioner on 22.5.1986, by which it was held that because the gift deed was without consideration, it would be benami transaction and the land would have to be declared as surplus. Aggrieved the order dated 22.5.1986, the petitioner moved an appeal u/s 13 of the Act, which was rejected by the appellate authority vide order dated 3.8.1989. It is this order which is impugned in the present writ petition.

5. Learned counsel for the petitioner has argued that the impugned order is bad because the authorities below had committed manifest error of law in holding that the registered gift deed was a "benami" transaction. He has further argued that the appellate authority has committed manifest error in holding that earlier orders had become final against the petitioner and that the land has been wrongly declared as surplus. He has further argued that the appellate authority has taken a view which is erroneous by saying that the gift deed was not executed for consideration and therefore it could not be called a transfer and the appellate authority has wrongly come to the conclusion that gift deed was not a proper document of transfer which can be taken into consideration under the proviso (b) to Section 5(6) of the Act.

6. Learned counsel for the petitioner has also brought into the notice of this Court that on 16.2.1972 a sale deed was registered in favour of the brother of the petitioner who was also a daughters son and the plots which were transferred to him by way of the gift deed dated 16.2.1972 were excluded from ceiling. Learned counsel for the petitioner has informed that against the order releasing the said land from ceiling, the State had filed a writ petition No. 35 of 1989 and the said writ petition was dismissed by this Court on 7.1.1998. The State has not filed appeal against the order dated 7.1.1998 and therefore that order has become final.

7. Learned counsel for the petitioner has also argued on the basis of parity that the plots which were gifted to petitioner, should have been excluded from ceiling.

8. It is the contention of the learned counsel for the petitioner that the gift deed dated 16.2.1972 was a registered document and the conclusion drawn by the "

appellate authority that it was without consideration is patently erroneous because a gift is always made without consideration. Nevertheless a gift is a good transaction if it is registered document. The word "gift" is defined under Sub-section (xii) of Section 2 of the Gift Tax Act, 1958, which is reproduced below:

(xii) "gift" means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer or conversion of any property referred to in Section 4, deemed to be a gift under that section.

9. The gift made on 16.2.1972 was a registered document. This is not denied by the State. I have perused the provision of Section 5(6) of the Act, which reads as under:

5. Imposition of ceiling--

(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 the 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 members of his family.

Explanation I - For the purpose 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 acknowledgement, relinquishment or declaration in favour of a person to the like effect, made in any other deed of 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.

The proviso (b) aforesaid as it stands Bays that private transaction is not a benami transaction if it is not made (sic) the immediate or deferred benefit of the tenure-holder or other members of his family. The gift deed in the present case is irrevocable instrument and because it was registered, it was not benami

transaction nor it had been made to the members of the family of the donee, Because it cannot be said that the daughtenison is the member of the family of the donee, the daughters son was not included as member of the family of donee at the relevant time. Such being the case, the submission made by the learned counsel for the petitioner have force in it.

10. In support of his argument, learned counsel for the petitioner has relied upon a decision of this Court in the case of Dayal Singh v. State of U.P. reported in 1981 ALJ 808 in which this Court has held that where the transfer is made by irrevocable instruments such as sale deeds, the benefit of proviso (b) to Sub-section (6) of Section 5 of the Act can be given.

11. Learned counsel for the petitioner has argued that the impugned order is discriminatory against the petitioner and is violative of Article 14 of the Constitution of India, on account of the fact that benefit of exclusion of land from the purview of land ceiling by virtue of sale deed dated 16.2.1972 will be given to one grand son of the daughter while the another grand son from the daughter i.e. the petitioner was deprived of the benefit of proviso (b) to Sub-section (6) of Section 5 of the Act.

12. Taking into consideration the entire facts and circumstances, I am of the opinion that the submissions made by the learned counsel for the petitioner have substance and are liable to be accepted and the impugned order of the appellate authority suffers from manifest error law which is liable to be set aside.

13. The writ petition is allowed. The impugned order dated 30.8.1989 passed by the appellate authority i.e. Additional Commissioner (Nyayik), Jhansi is quashed: There will be no order as to costs.