

(1978) 05 AHC CK 0005

In the Allahabad High Court

Case No : Civil Misc. Writ No's. 915 and 5704 of 1975

Fateh Mohammad

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 08-05-1978

Acts Referred:

Contract Act, 1872 — Section 2
Income Tax Act, 1961 — Section 16(1), 16(3)
Transfer of Property Act, 1882 — Section 122, 4, 5, 9
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 5, 5(1), 5(6)

Citation : (1979) AWC 41

Hon'ble Judges : R.B. Misra, J;K.N. Seth, J

Bench : Division Bench

Advocate : S.A. Shah and S.B. Jauhari, for the Appellant;

Judgement

R.B. Misra, J.—These two petitions under Article 226 of the Constitution of India arising out of proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960, as amended upto date, raise common questions of law. One of the questions in the two petitions is whether Proviso (b) to Sub-section (6) of Section 5 of the U.P. Imposition of Ceiling on Land Holdings Act (hereinafter referred to as the Act) is applicable to transfer by gift.

2. There is a conflict in the two decisions of this Court on the question. In Raghubar Datt Joshi v. State of U.P. 1977 AWC 531, brother K.C. Agrawal answered the question in the negative while in Fateh Singh v. State of U.P. 1977 AWC 534, brother A. Banerji answered the question in the affirmative. The question, therefore, has been referred to us to resolve the conflict.

3. In order to appreciate the point involved in the cases, it will be appropriate at this stage to refer to the scheme of the Act. In order to ensure increased agricultural production and to provide land for landless labourers and to have a more equitable distribution of land, the Legislature thought it expedient to

provide for the imposition of ceiling on land holdings in U.P. It is with that purpose that the Act was enacted.

4. Section 5 of the Act (deals) with the imposition of ceiling. In so far as it is material for the purposes of this case, it reads:

5(1). On and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no tenure-holder shall be entitled to hold in the aggregate, throughout Uttar Pradesh, any land in excess of the ceiling area applicable to him.

(2)

(3)

(4)

(5)

(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 this Act, shall be ignored and not taken into account:

Provided that nothing in this subsection shall apply to

(a)

(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 the immediate or deferred benefit of the tenure holders or other members of his family.

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

5. A bare perusal of the relevant portions of Section 5 of the Act makes it evidently clear that, normally, transfer of land after twenty-fourth day of January, 1971, is to be ignored and not taken into account for determining the surplus land. There is, however, one exception, which is provided in the Proviso to Sub-

section (6) of Section 5 of the Act, which provides that a transfer of land even after the twenty-fourth day of January, 1971, will be protected if it is 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.

6. In both the petitions, transfer by gift has been made after the 24th day of January, 1971, by the tenure holders and the Petitioners in both the cases sought the benefit of the Proviso (b) to Sub-section (6) of Section 5 of the Act. Now, the question is whether the Proviso (b) to Sub-section (6) of Section 5 of the Act applies to a transfer by gift. Sub-section (6) of sections of the Act, as pointed out earlier, hits all transfers, which, obviously, include transfer by gift deed if it is after twenty-fourth day of January, 1971.

7. Whether Proviso (b) of Sub-section (6) of Section 5 of the Act is applicable to a transfer by gift? Transfer of land has been dealt with by the Transfer of Property Act. Section 5 of the Transfer of Property Act deals with the transfer of property. It reads:

5. In the following sections "transfer of property" means an act by which a living person conveys property, in presenti or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons; and "to transfer property" is to perform such act.

8. This definition is wide enough to include transfer by sale, by mortgage or by gift or by lease. Sub-section (6) of Section 5 of the Act, refers to any transfer. Obviously, therefore, transfer in Sub-section (6) of Section 5 of the Act will include the transfer by gift as well. The difficulty is about the word "transfer" used in Proviso (b) to Sub-section (6) of Section 5 of the Act. All transfers of land within the meaning of Sub-section (6) of Section 5 of the Act are to be ignored except such transfers, which are proved to the satisfaction of the Prescribed Authority to be in good faith and for adequate consideration.

9. Whether the transfer of property by gift can be said to be transfer for adequate consideration? Gift has been defined by Section 122 of the Transfer of Property Act. It reads:

122. "Gift" is the transfer of certain existing moveable or Immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Such acceptance must be made during the life time of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

10. According to this definition, a gift is a transfer of moveable or Immovable property without consideration.

11. The word "consideration" has neither been defined in the Act nor in the Transfer of Property Act. It is defined only in the Indian Contract Act. Section 4 of the Transfer of Property Act, however, contemplates that the Chapters and sections of this Act, which relate to contracts, shall be taken as part of the Indian Contract Act, 1872. If the provisions of the Transfer of Property Act relating to the contracts are taken as part of the Indian Contract Act, 1872, the definition of "consideration" given in the Indian Contract Act, shall hold good for the purpose of the transfer under the Transfer of Property Act.

12. Section 2(d) of the Indian Contract Act defines "consideration" as follows:

2(d). When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or to abstain from doing, something such act or abstinence or promise is called a consideration for the promise.

13. The expression "consideration" in Section 122 of the Transfer of Property Act is used in the same sense as in the Indian Contract Act and includes "natural love and affection" vide *Debi Saran v. Nand Lal* (1929) 125 Ind.Cas.127.

14. *Sri Sankatha Rai*, who appeared as amicus curie, cited *Debi Saran Koiri and Another Vs. Nandalal Chaubey and Others*, , in which it was held that:

Consideration contemplated by Section 122 is valuable consideration, that is consideration either of money or of money's worth. Consideration of an expectation of spiritual or moral benefit, or consideration of love and affection are not contemplated by Section 122.

Elucidating the point, *Sahai, J.*, speaking for the Bench, observed:

If valuable consideration be not the consideration referred to in Section 122, I fail to understand how any gift can be made without consideration at all. There must be some sort of consideration in every gift, for instance, a consideration of an expectation of spiritual or moral benefit or consideration of love and affection.

15. Again, in *Hiralal Chimanlal Vs. Gavrishankar Ambashankar*, , the donor, for services rendered to him during his illness by the donee, transferred possession of certain property to the donee as a gift. Subsequently, he executed a deed of gift which however remained unregistered as the donor died in the meantime. In these circumstances, it was held by the Bombay High Court that the services during the illness were not the consideration of the deed, but merely the motive. The deed, therefore, fell not u/s 9, but u/s 122 of the Transfer of Property Act.

16. In *Chidambaraier and Others Vs. P.S. Renga Iyer and Others*, , the expression "valuable consideration" used in Section 9-A(10)(ii) of the Madras Agriculturists Relief Act came up for consideration and the Supreme Court held:

the expression "valuable" is implied u/s 2(d) of the Contract Act, for consideration shall be "something which not only parties regard but the law can regard as having some value".

17. If the definition of the term "consideration", as given in the Contract Act, is applicable to the expression "consideration" used in Section 122 of the Transfer of Property Act, Proviso (b) to Sub-section (6) of Section 5 of the Act can have no application to a gift deed. Gift being a gratuitous transfer, there is no consideration, which means a valuable consideration. It is on this basis that brother K.C. Agrawal held that Proviso (b) to Sub-section (6) of Section 5 of the Act has no application to a transfer by gift, as it is not a transfer for consideration, much less a transfer for adequate consideration.

18. Sri Yatindra Singh, who also appeared as amicus curie, strenuously contended that the case has to be decided on the basis of the language used in Proviso (b) to Sub-section (6) of Section 5 of the Act and we have not to travel to other Acts for interpreting the word used in the U.P. Imposition of Ceiling on Land Holdings Act. He referred to Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, . In that case, the Supreme Court laid down the following proposition:

Now, it is well settled that where the definition of a word has not been given, it must be construed in its popular sense if it is a word of every day use. Popular sense means "that sense which people conversant with the subject matter with which the statute is dealing, would attribute to it.

19. Reliance was placed on Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, . The same principle was reiterated in that case also in the following terms:

It is now well settled that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense....

A sales tax statute being one levying a tax on goods must in the absence of a technical term or a term of science or art be presumed to have used an ordinary term as coal according to the meaning attributed to it in the common parlance.

20. The next case relied upon by District Board of Farrukhabad Vs. Prag Dutt and Others, . In that case, a Full Bench of this Court held:

It is no sound principle of construction to interpret the expression used in one Act with reference to their use in another Act. The meanings of words and expressions used in an Act take their colour from the context in which they appear. While in the Municipalities Act, taxes on circumstances and property may be different from the taxes on trades, callings and vocations including employment, as the two appear under different heads in it, in the U.P. District Boards Act, 1922.... the interpretation of an expression occurring in one Act is not applicable when it occurs in another Act. The meanings of words and phrases take colour from the context in which they occur.

The same principle was reiterated in Pandit Ram Narain Vs. The State of Uttar

Pradesh and Others, .

21. But in *Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another*, , the Supreme Court observed:

It is neither an illogical nor a startling proposition that one of the components of understanding and interpretation in law as in art is the content within and without the Act or work in which the particular words in question appear. British Judicial thinking is reflected in many rulings one of which may be referred to here. Viscount Simonds in *Attorney-General v. Prince Ernest Augustus of Hanover* 1957 AC 436 stated at page 461:

For words, and particularly general words, cannot be read in isolation: their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use "context" in its widest sense, which I have already indicated as including not only other enacting provisions of the same statute but its preamble, the existing state of the law, other statutes in part materia, and the mischief which I can, by those and other legitimate means, discern the statute was intended to remedy.

22. Again, in *D.N. Banerji Vs. P.R. Mukherjee and Others*, the Supreme Court observed:

It is no doubt true that the meaning should be ascertained only from the words employed in the definitions, but the set-up and context are also relevant for ascertaining what exactly, was meant to be conveyed by the terminology employed. As observed by Lord Atkinson in *Keats v. Lewis Merthyr Consolidated Collieries Ltd.* (1911) AC 641: "In the construction of a statute it is, of course, at all times and under all circumstances permissible to have regard to the state of things existing at the time the statute was passed, and to the evils, which as appears from its provisions, it was designed to remedy." If the words are capable of one meaning alone; then it must be adopted, but if they are susceptible of wider import, we have to pay regard to what the statute or the particular piece of legislation had in view. Though the definition may be more or less the same in two different statutes still the objects to be achieved not only as set out in the preamble but also as gatherable from the antecedent history of the legislation may be widely different. The same words may mean one thing in one context and another in a different context. This is the reason why decisions on the meaning of particular words or collection of words found in other statutes are scarcely of much value when we have to deal with a specific statute of our own; they may be helpful, but cannot be taken as guides or precedents.

23. In *Kanai Lal Sur Vs. Paramnidhi Sadhukhan*, , Hon''ble Gajendragadkar, J. speaking for the Court, observed:

The first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself.

24. But words used by the Legislature do not always bear a plain meaning. In

case of doubt, therefore, it is always safe to have an eye on the object and purpose of the statute or reason and spirit behind it. The key to the opening of every law is the reason and spirit of law. This aspect of the purpose is the very foundation of the rule in Heydon's case reported by law courts as far back as 1584. The rule in Heydon's case is that statutes "should be construed not as theorems of Euclid, but with imagination of purpose behind it."

25. The Legislature while enacting the U.P. Imposition of Ceiling on Land Holdings Act, was alive to the provisions of the Transfer of Property Act dealing with the transfer of immovable property. The terms "transfer", "sale", "gift", "mortgage" and "lease" have not been defined in the Act. Therefore, these terms must have been used only in the sense in which they have been used in the Transfer of Property Act. If the Legislature intended to use those terms in a different sense and with a different connotation, it would have defined those terms in the Act. But that has not been done.

26. The question of interpretation arises only when the words used in a particular statute are susceptible of more than one meaning and in such cases, resort has to be taken to the various canons of interpretation, which provide internal and external aid to the interpretation. Interpreting a particular provision of a particular statute, in case of doubt, due regard shall have to be kept to the context and the word "context" as indicated above, is wide enough to include even other Acts in *pari materia*. We shall have, therefore, to start with the assumption that the Legislature used the words "transfer", "gift", and "consideration" in the same sense in which they were used in the Transfer of Property Act, a general Act dealing with the transfer of immovable property.

27. Considered in the light of the aforesaid decisions and the principles of interpretation, the purpose of the U.P. Imposition of Ceiling on Land Holdings Act would be advanced by interpreting the Proviso (b) to Sub-section (6) of Section 5 of the Act in the manner as interpreted by brother K.C. Agrawal in *Raghubar Datt Joshi v. State of U.P.* (*supra*). The Act intended to put a ceiling on the land holding of a tenure holder to provide land to landless labourers by taking the surplus land and to ensure increased agricultural produce and to have a more equitable distribution of land.

28. Sensing the new legislation, the tenure holders started making fake transfers to defeat the object of the U.P. Imposition of Ceiling on Land Holdings Act. The Legislature, therefore, provided by Sub-section (6) of Section 5 of the Act that all transfers after 24th January, 1971, are to be ignored as a rule. The Legislature, however, thought that there may be genuine and bona fide transfers for consideration. To protect such tenure holders and other transfers, proviso (b) to Sub-section (6) of Section 5 of the Act was enacted. It saved transfers for adequate consideration. Gift is a gratuitous transfer and there is no consideration which obviously means valuable consideration. If transfer for love and affection is taken to be a transfer for consideration then the purpose of the Act would be completely defeated as the tenure holders would transfer their land by gift after

24th January, 1971. Such an interpretation is to be avoided.

29. There is one another difficulty, which may arise. It is very difficult to have a barometer to measure the adequacy of the consideration of love and affection. That also suggests that the consideration must be a valuable consideration which can be measured in terms of money.

30. Sri Upadhyaya, appearing for the State, referred to AIR 1929 246 (Nagpur) . In that case, it was laid down: "The Transfer of Property Act enacts the general law of Transfer for British India, whereas the Central Provinces Tenancy Act is nothing more than a subsequent local legislation made for a particular purpose and with reference to a particular locality. A general statute cannot be treated as impliedly repealed by a local or special statute, because ordinarily the general law of the country is not altered by special legislation made without particular reference to it. A statute must ordinarily be repealed by express legislation. No doubt a statute is repealed by implication also, if its provisions are wholly incompatible with a subsequent statute or if the two standing together would lead to a wholly absurd consequences, or if the entire subject-matter of the first is taken away by the second. Repeal by implication, which, whenever it occurs, is the consequence of inconsistent legislation, is never to be favoured, and should not be imputed to Parliament."

31. In *Tulsidas Kilachand Vs. The Commissioner of Income Tax, Bombay City I*, , dealing with the expression "adequate consideration" in Section 16(1)(c) and 16(3)(b) of the Income Tax Act, the Supreme Court observed:

The words "adequate consideration" in Section 16(3)(b) denote consideration other than mere love and affection, which in the case of a wife, may be presumed. When the law insists that there should be "adequate consideration" and not "good consideration", it excludes mere love and affection.

32. The same principle was reiterated in *Debt Saran Kori v. Nand Lal Chaubey* (supra) and *Kulasekaraperumal v. Pathakutty Thalevanar* AIR 1961 Mad 405.

33. The view taken by brother A. Banerji, in *Fateh Singh v. State of U.P.* (supra) took into consideration Explanation (i)(a) and (b). This explanation enlarges the scope of the expression "transfer of land" made after 24th day of January, 1971, by including a declaration of a person as co-tenure holder made after twenty-fourth day of January, 1971, and under (b) a declaration in favour of a person to the like effect made in any other deed or instrument in any other manner. The Explanation thus has only widened the definition of transfer and by the Explanation, it may include even a person as a co-tenure holder by a declaration or may include an admission, acknowledgment, relinquishment etc. This, however, does not solve the problem. The definition of the word "transfer" may have been widened by the Explanation, but the question with which we are concerned is whether the transfer used in proviso (b) to Sub-section (6) of Section 5 of the Act includes transfer by gift. We have already pointed out in the earlier part of the judgment that the term "transfer" used in Sub-section (6) of

Section 5 of the Act is wide enough to include transfer by gift. But the question is whether the same meaning is to be given to the word "transfer" used in Proviso (b) to Sub-section (6) of Section 5 of the U.P. Imposition of Ceiling on Land Holdings Act when it qualifies the word "transfer" for adequate consideration. Even if the word "transfer" includes declaration and admission, acknowledgement etc., as provided in explanation I (a) and (b) of Sub-section (6) of Section 5 of the Act, still the expression "transfer for adequate consideration" cannot include a gift in Proviso (b) to Sub-section (6) of Section 5 of the Act. For the reasons, we feel difficulty in accepting the proposition laid down in *Fateh Singh v. State of U.P.* (supra) to hold that the transfer in the Proviso (b) to Section 5(6) of the Act must be given the same meaning, as the word "transfer" in Sub-section (6) of Section 5 of the Act.

34. It is true that the transfer by gift is not a bad transfer for other purposes, but for the purposes of determining the surplus area, transfer by gift must not be accepted to give the benefit of Proviso (b) to Sub-section (6) of Section 5 of the U.P. Imposition of Ceiling on Land Holdings Act to the tenure-holder.

35. For the foregoing discussions, we answer the question in the negative and hold that Proviso (b) to Sub-section (6) of Section 5 of the U.P. Imposition of Ceiling on Land Holdings Act is not applicable to a gift.

36. The papers of the case be sent back to the Bench concerned for final disposal.