

(2007) 04 AHC CK 0151
In the Allahabad High Court

Indrapal Singh and Others

APPELLANT

Vs

The Prescribed Authority and The Commissioner, Meerut
Division

RESPONDENT

Date of Decision : 19-04-2007

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2)
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2)
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2)

Citation : (2007) 103 RD 102

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—The proceedings u/s 10(2) of the U.P. Imposition of Ceiling on Land of Holdings Act was initiated against Dilawar Singh asking him to show cause as to why 9 bighas 14 biswas and 9 biswansi of irrigated land should not be declared as surplus. Sri Dilawar Singh filed his objections denying holding of any surplus land and submitted that vide two sale-deeds dated 19.9.1970, he had transferred the land pertaining to Khasara No. 170 consisting of 8 bighas, 11 biswas and 7 biswansi. Similarly, Khasara No. 106 was transferred in favour of Vimla Devi vide sale-deed dated 25.8.1971 whose name was also mutated in the revenue records and that the said person was in cultivator/possession. It was also alleged that he had executed a registered will deed dated 27.5.1974 in favour of his grandson Indrapal and Amar Deep. It was also alleged that plot Nos. 1020, 1022, 1034 and 1036 were grove land and therefore, such land could not be included as surplus irrigated land.

2. The Prescribed Authority, vide an order dated 28.8.1974, partly allowed the objection, holding that the sale-deed dated 9.9.1970 was genuine and that the land was actually transferred. The prescribed authority, also found that only 11 bighas, 10 biswas and 50 biswansi of land was a grove land and that 4 bighas and 15 biswas was cultivatory land and, in this way, the prescribed authority

declared 1 bigha 3 biswas and 8 biswansi as surplus land. Sri Dilawar, being aggrieved by the aforesaid order of the Prescribed Authority, filed an appeal and submitted that the entire area of 15 bighas 10 biswas should be treated as a grove and that 4 bighas and 15 biswas had wrongly been excluded from the grove. The appellate authority rejected the contention of the petitioner holding that even though 4 bighas and 15 biswas of land was recorded as grove in the revenue records, nonetheless, since the land was being cultivated, the same could not be treated as a grove. Sri Dilawar Singh filed a Writ Petition No. 1792 of 1975 which was allowed by a Judgment dated 4.5.1978 and the matter was remitted back to the appellate authority to decide afresh in accordance with the observations made in the judgement. The High Court held that merely because a portion of the land was being cultivated would not exclude the said land from the definition of a grove land as contemplated u/s 3(8) of the Act.

3. It transpires that in view of the amendments made in the Act, fresh notice was issued to the heirs of Dilawar Singh by the Prescribed Authority. The petitioners filed their objections. The Prescribed Authority, vide an order dated 10.7.1978 declared 16 bighas, 12 biswas and 18 biswansi of irrigated land as surplus. The prescribed authority held that the sale-deed of 9.9.1970 was liable to be ignored since no mutation was done in favour of the vendee on or before 8.6.1973 and that the sale-deed in favour of the Vimla Devi, being executed after 24.1.1971 was liable to be ignored. The prescribed authority, further found that no evidence was filed to show that plot Nos. 1020, 1022, 1024, 1034 and 1036 were a grove as defined u/s 3(8) of the Act. Aggrieved, the petitioners preferred an appeal which was dismissed by an order dated 16.1.1987. The petitioners have consequently, filed the present writ petition.

4. Heard Sri R.N. Singh, the learned Senior Counsel assisted by Sri A.K. Rai and Sri G.K. Malviya for the petitioners and Sri J.K. Khanna, the learned Counsel for the respondents.

5. The learned Counsel for the petitioners submitted that the genuineness of the sale-deed dated 9.9.1970 cannot be taken into consideration by the authorities under the Ceiling Act and the land transferred by the sale-deed was liable to be excluded from the total holding of the petitioners. Further, the sale-deed executed in favour of Vimla Devi, even though it was executed after 24.1.1971, nonetheless, the sale-deed was bonafidely executed and that Vimla Devi was in cultivatory possession and her name was also mutated in the revenue records, as such, the Prescribed Authority committed an error in ignoring the sale-deed merely on the basis that it was executed after 24.1.1971. Further, the authorities have committed a manifest error in holding that no evidence was filed to show that some of the plots were grove land. The appellate authority committed an error in holding that since less number of trees per bigha were existing on the plot in question, the land could not be treated as a grove land.

6. In my opinion, the impugned orders cannot be sustained and are liable to be quashed.

7. In so far as the sale-deed dated 9.7.1970 is concerned, the said sale-deed has to be treated as a genuine transaction. It was also held to be a genuine transaction in the earlier proceedings which became final and which cannot be reopened in a subsequent proceeding u/s 10(2) of the Act. Further, Sub-clause (6) of Section 5 provides as under:

Section 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 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 instalment 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 purposes of this sub-section, the expression transfer to 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.

8. The Supreme Court in *Ram Adhar Singh v. the Prescribed Authority and Ors.* 1994 (3) SCC 702 has held that no inquiry regarding the validity of the sale-deed u/s 5(6) of the Act could be made with regard to the genuineness of the sale-deed executed prior to 24.1.1971. The Supreme Court further held that appellate authority had no jurisdiction to put the validity of the sale-deed to test since its jurisdiction arose only when the deed of transfer had been effected on or after the appointed day, i.e., 24.1.1971. Consequently, this Court holds that the Prescribed Authority could not consider the genuineness of the sale-deed dated 9.1.1970 and the land transferred vide sale-deed is liable to be excluded from the holding of the petitioner.

9. With regard to the sale-deed dated 28.8.1971, no doubt the sale-deed was executed after 24.1.1971 and the same could be ignored u/s 5(6) subject to the provision of proviso (b) to Sub-section (6) of Section 5, which contemplates that

the tenure holder can prove to the satisfaction of the Prescribed Authority that the transfer was made in good faith and for adequate consideration and under an irrevocable instrument and that it was not a benami transaction. The Prescribed Authority cannot ignore the Sale-deed on the sole ground that it was executed after 24.1.1977. The Prescribed Authority was liable to consider the effect of the mutation in favour of Vimla Devi pursuant to the sale-deed and consider the genuineness of the transaction as to whether adequate consideration was paid and whether she was put in cultivator possession. This aspect has not been considered. Consequently, the order of the Prescribed Authority ignoring the sale-deed of 25.8.1971 in favour of Vimla Devi cannot be sustained.

10. Section 3(8) of the Act reads as under:

(8) "grove -land" means any specific piece of land in a holding having trees not including [guava, papaya, banana or vine plants] planted thereon before January 24, 1971, in such numbers that they preclude, or when full grown will preclude, the land or any considerable portion thereof from being used primarily for any other purpose, and the trees on such land constitute a grove.;

11. In Hamid Husain Vs. State of U.P., this Court interpreted the words "considerable portion thereof as

The word "considerable portion thereof are significant. If considerable portion due to planting of trees cannot primarily be used for any other purpose the entire land would be grove. In other words even if smaller area is cultivable or denuded of trees the character of the land does not cease. The emphasis of the learned Counsel for the State on words "specific piece of land" does not carry conviction. It cannot be read in isolation. The definition of grove in the U.P. Tenancy Act was more or less similar. It was adopted in Z.A. Act as well.

12. In Shiv Sahai v. Har Nandan 1963 (RD) 119, the Court held that the mere fact that a certain portion of the land was under cultivation would not exclude the said land from the definition of "grove land" under the Act, if a major portion of the land was covered by trees. It would follow that if the trees preclude a "considerable portion" of the land from being used primarily for the purpose of cultivation, the said land would be treated as a grove land.

13. In Mahendra Singh Vs. The State of U.P. and Others, , the Court reiterated that the mere fact that the land was being cultivated would not exclude the land from the category of grove land. It has only to satisfy the test that the trees were planted on the land before 24.1.1971.

14. In view of the aforesaid, this Court is of the opinion that the impugned orders cannot be sustained and are quashed. The writ petition is allowed. The matter is remitted back to the Prescribed Authority to reconsider the matter afresh in the light of the observations made above.