
(2007) 03 AHC CK 0127
In the Allahabad High Court

Krishna Mohan

APPELLANT

Vs

District Judge, State of U.P. and Smt. Harbhajan Kaur

RESPONDENT

Date of Decision : 19-03-2007

Acts Referred:

Citation : (2007) 5 ADJ 277 : (2007) 3 AWC 2152 : (2007) 102 RD 588

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Order dated 7.2.07 passed in this writ (on the order sheet) is quoted below:

In the revised list no one appeared on behalf of respondent hence argument of learned Counsel for the petitioner were heard and judgment was dictated in open court allowing the writ petition. Immediately thereafter learned Counsel for the contesting respondent appeared and requested for hearing. On the direction of the court, learned Counsel for the respondent requested learned Counsel for the petitioner to be present. Now both the learned Counsel are present.

Accordingly, put up tomorrow for further hearing.

2. Such a course was open in view of Surendra Singh and Others Vs. The State of Uttar Pradesh, and Sangam Lal Vs. Rent Control and Eviction Officer and Others,

3. Thereafter matter was taken up on 8.2.2007 and as arguments of learned Counsel for both the parties were not concluded on the said date hence it was directed to be put up for further arguments on the next date. Thereafter on 9.2.2007 arguments of learned Counsel for both the parties were concluded and judgment was reserved.

4. The question involved in this writ petition is as to whether respondent No. 3 - Smt. Harbhajan Kaur purchaser of petitioner's agricultural land is entitled to the

benefit of Section 12-A (d) of U.P. Imposition of Ceiling on Land Holdings Act, 1960 which is quoted below:

[12-A...

Provided that-

(a)...

(b)...

(c)...

(d) where any person holds land in excess of the ceiling area including land which is the subject of any transfer or partition referred to in Sub-section (6) or Sub-section (7) of Section 5, the surplus land determined shall, as far as possible, be land other than land which is the subject of such transfer or partition, and if the surplus land includes any land which is the subject of such transfer or partition, the transfer or partition shall, in so far as it relates to the land included in the surplus land, be deemed to be and always to have been void, and-

(i) it shall be open to the transferee to claim refund of the proportionate amount of consideration, if any, advanced by him to the transferor, and such amount shall be charged on the [amount] payable to the transferor u/s 17 and also on any land retained by the transferor within the ceiling area, which shall be liable to be sold in satisfaction of the charge, notwithstanding anything contained in Section 153 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950;

(ii) any party to the partition (other than the tenure-holder in respect of whom the surplus land has been determined) whose land is included in surplus land of the said tenure-holder shall be entitled to have the partition re-opened.]

5. In ceiling proceedings against the petitioner initiated through notice u/s 10(2) of the Act on 5.4.1974 (para-1 of writ petition) certain land belonging to him was declared as surplus and the said order passed by Prescribed Authority on 27.6.1978 became final after dismissal of appeal on 21.12.1978 and writ petition on 21.3.1979. Petitioner had sold an area of 4.67 acres of plot No. 136 on 12.1.1972 to Sarla Devi. In the ceiling proceedings against the petitioner Prescribed Authority found that the said sale deed was not bona-fide hence it could not be ignored u/s 5(6) of the Ceiling Act which is quoted below:

[Section 5. Imposition of ceiling.- (1)...

(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 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.

6. Thereafter Sarla Devi transferee from the petitioner sold the said land to respondent No. 3 on 3.12.1974.

7. By virtue of Section 5(8) of the Ceiling Act which has been added by U.P. Act No. 20 of 1976 with effect from 10.10.1975 it is provided that no tenure holder shall transfer any land held by him during continuance of proceedings for determining surplus land and every such transfer should be void. Under explanation to the said sub-section it is provided that proceedings shall be deemed to have commenced on the date of publication of notice u/s 9(2). Section 5(8) and 9(2) of the Act are quoted below:

Section 5 (7) ...

(8) Notwithstanding anything contained in Sub-sections (6) and (7), no tenure-holder shall transfer any land held by him during the continuance of proceedings for determination of surplus land in relation to such tenure-holder and every transfer made in contravention of this sub-section shall be void.

Explanation: For the purposes of this sub-section, proceedings for, determination of surplus land shall be deemed to have commenced on the date of publication of notice under Sub-section (2) of Section 9 and shall be deemed to have concluded on the date when an order in relation to such tenure-holder is passed under Sub-section (1) of Section 11 or under Sub-section (1) of Section 12, or as the case may be, u/s 13].

Section 9(1)...

(2) As soon as may be, after the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, the Prescribed Authority shall, by like general notice, call upon every tenure-holder holding land in excess of the ceiling area applicable to him on the enforcement of said Act, to submit to him within 30 days of publication of such notice, a statement referred to in Sub-section (1)]: [Provided that at any time after October 10, 1975, the Prescribed

Authority may, by notice, call upon any tenure-holder holding land in excess of the ceiling area applicable to him on the said date, to submit to him within thirty days from the date of service of such notice a statement referred to in Sub-section (1) or any information pertaining thereto.]

8. Interpreting the aforesaid provisions Supreme Court in Escorts Farms Ltd. v. Commissioner, Kumaon Division, Nainital 2004 S.C. 2186 has held that Section 12-A (d) was applicable to the sale deeds in between 24.1.1971 and 8.6.1973 and sale deeds after 8.6.1973 were void (Section-9(2) was added with effect from 8.6.1973). In the instant case sale deed by Krishna Mohan to Sarla Devi was executed on 12.1.1972 i.e. in between 24.1.1971 and 8.6.1973 hence Sarla Devi was entitled to the benefit of Section 12-A (d) of the Act. Even though Sarla Devi sold the land to respondent No. 3 in 1974, however, the sale deed cannot be held to be void for the reason that it was not executed by petitioner. By virtue of the said deed of 1974 respondent No. 3 stepped into the shoes of Sarla Devi. If the land had been sold by the petitioner after 8.6.1973 then of course it would have been void and petitioner could assert that he was entitled to give the said land in choice. However, this is not the position in the instant case.

9. Petitioner gave the sold land in choice. No notice was issued either to Sarla Devi or to respondent No. 3 whose names had already been mutated. On coming to know that the land purchased by her had been given in choice by the petitioner to be taken as surplus land, respondent No. 3 filed objections on the basis of Section 12-A(d) of the Act. The application filed by respondent No. 3 was registered as Ceiling case No. 60 of 1974. Prescribed Authority, Pooranpur/Sub Divisional Officer decided the matter in favour of respondent No. 3 on 2.9.1980. Against the said order petitioner filed Ceiling appeal No. 44 of 1980. District Judge, Pilibhit dismissed the appeal on 6.3.1982 hence this writ petition.

10. Before the controversy in question arose it had conclusively been decided that petitioner held 7.81 acres of surplus land which he was required to surrender. In 1972 petitioner sold the land to Sarla Devi and Sarla Devi on 3.12.1974 sold the same land to respondent No. 3 - Smt. Harbhajan Kaur. Both the courts below held that by virtue of Section 12-A (d) of the Act the land in dispute which was purchased by Sarla Devi and thereafter by respondent No. 3 could not be taken as surplus land.

11. I do not find any error in the impugned orders. Respondent No. 3 was fully entitled to the benefit of Section 12-A(d) of the Ceiling Act.

12. It may be mentioned that on 7.2.2007. I allowed the writ petition ex-parte as I was given to understand that the sale deed dated 3.12.1974 was directly executed by petitioner in favour of respondent No. 3.

13. Writ petition is accordingly dismissed.

14. Prescribed authority is directed to immediately take some other land of the petitioner as surplus land. If petitioner files his choice within two months from

today before Prescribed authority then the same shall be accepted otherwise Prescribed Authority must himself decide that what land of the petitioner should be taken as surplus land.