
(1977) 03 AHC CK 0004
In the Allahabad High Court
Case No : Civil Miscellaneous Writ No. 23 of 1976

Mangali Singh

APPELLANT

Vs

Prescribed Authority and Others

RESPONDENT

Date of Decision : 28-03-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 5(1)

Citation : (1977) AWC 335

Hon'ble Judges : K.N. Singh, J

Bench : Single Bench

Advocate : R.A. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

K.N. Singh, J.—This petition is directed against the order of the Prescribed Authority and the Additional District Judge dismissing the Petitioner's objection under the U.P. Imposition of Ceiling on Land Holdings Act, 1961.

2. Banshi Singh was the original tenure-holder. His son Mangali Singh is the Petitioner. Girwar Singh is the son of Mangali Singh. Girwar Singh has three sons, namely, Anil Kumar, Ajaipal and Sanjiv Kumar. Banshi Singh executed a registered sale deed in favour of his great grandsons, namely, Anil Kumar, Ajaipal and Sanjiv Kumar (all minors) on 1-1-1970, transferring an area of 11.52 acres, of which he was tenure-holder for an alleged consideration of Rs. 13,000/-. At the time of registration of the sale deed a sum of only Rs. 5000/- was paid. After the sale deed, the names of the transferees, Anil Kumar, Ajaipal and Sanjiv Kumar, were entered in the revenue papers. Banshi Singh died somewhere in 1972, thereupon his son Mangali Singh succeeded him and became tenure-holder of the land held by Banshi Singh. A notice u/s 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act was issued to the Petitioner Mangali Singh and in the proforma annexed to the notice the land alleged to have been transferred by Banshi Singh in favour of his grand-sons was shown to be his own land. Mangali

Singh filed objection and asserted that the area of 11.52 acres which was transferred by his father Banshi Singh in favour of his grand-sons had nothing to do with him and he was not the tenure-holder of that land, instead the transferees, namely, Anil Kumar, Ajaipal and Sanjiv Kumar were the tenure-holders. He asserted that for this reason the land transferred by Banshi Singh in favour of his grand-sons should be excluded from his holding. The Prescribed Authority as well as the Appellate Authority both rejected Mangali Singh's claim on the ground that the transaction of sale in favour of minor grand-sons was a sham transaction, and Banshi Singh continued to be a tenure-holder and after his death Mangali Singh became tenure-holder and the minors were never in possession of the land alleged to have been transferred. Aggrieved, the Petitioner filed this petition under Article 226 of the Constitution challenging validity of the aforesaid two orders.

3. Learned Counsel for the Petitioner urged that the order of the appellate authority suffers from patent errors of law inasmuch as the appellate authority has placed reliance on Explanation II to Section 5(1) of the Act. He further asserted that since the sale deed had been executed and transfer had already taken place before 24th January, 1971, the appellate authority has erred in holding that the transferees were not tenure-holders. Having considered the contention carefully I find no merit in the Petitioner's contention. Section 5(1) of the Act lays down that on and from the commencement of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no tenure-holder shall be entitled to hold in aggregate, throughout Uttar Pradesh, any land in excess of the ceiling area in any holding held by him. Explanation I further lays down that while determining the ceiling area of a tenure-holder, all land held by him in his own right, whether in his own name or ostensibly in the name of any other person, shall be taken into account. This explanation is wide enough to ignore any sham or benami transaction. If the Prescribed Authority finds that even though the land is recorded in the name of some other person, but in fact the land is held by the tenure-holder, it is empowered to take into account that land in determining the ceiling area. Explanation II further lays down that if on or before January 24, 1971, a land was held by a person who continues to be in its actual cultivatory possession and the name of any other person is subsequently entered in the annual registers either in addition to or to the exclusion of the former and whether on the basis of a deed of transfer or licence or on the basis of a decree, it shall be presumed, unless the contrary is proved to the satisfaction of the Prescribed Authority, that the first mentioned person continues to hold the land and that it is so held by him ostensibly in the name of the second mentioned person. Explanation II confers jurisdiction on the Prescribed Authority to ignore transfer of land on the basis of sale deed, licence or decree and to ignore any entry in the revenue records made on or before January 24, 1971, if it records findings that the original tenure-holder continued to be in actual cultivatory possession on or before January 24, 1971. Thus Explanation I and II to Section 5(1) read together confer wide jurisdiction on the Prescribed

Authority to ignore any deed of transfer and to treat the land which may be subject matter of transfer as belonging to the original tenure-holder. The legislative intent is quite clear that it is the substance and not the form which is material in considering the effect of sale deed. In determining the ceiling area, the Prescribed Authority has jurisdiction to ignore the transfer or sale deed provided it comes to the conclusion that notwithstanding the sale deed or mutation of names in the records on or before January 24, 1971, the original tenure-holder continued to be in the actual cultivatory possession of the land.

4. In the instant case, both the authorities, namely, the Prescribed Authority as well as the District Judge have recorded findings of fact on the appraisal of evidence on record, that notwithstanding the execution of the sale deed on 1-1-1970 Banshi Singh continued to be in actual cultivatory possession of the land in question and after his death Mangali Singh, his son, continued to be its tenure-holder. The appellate authority while recording its findings took into account circumstantial evidence that the transferees were minors, they were great grand-sons of Banshi Singh and that Girwar Singh was the only son of Mangali Singh and no evidence was produced by Mangali Singh to establish any separation between the family. The appellate authority has pointed out that the transferees were minors, they had no property and no funds of their own, and there was no explanation as to how they purchased the land from Banshi Singh. The appellate authority further held that Banshi Singh and after his death Mangali Singh continued to be in actual cultivatory possession of the land even after January 1971. On the basis of these findings the sale deed was ignored. The findings recorded by the Prescribed Authority and the Appellate Authority do not suffer from any manifest error of law.

5. In view of the above discussion, I find no merit in the Petitioner's contention. The petition falls and is accordingly dismissed. There will be no order as to costs. The interim order dated 3-1-1977 is discharged.