

(2011) 03 AHC CK 0276

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 832 of 1984 connected with 3713 of 1986, 823 of 1984

Mohammed Shamshul Hasan Khan and another

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 08-03-2011

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 6

Citation : (2011) 8 RCR(Civil) 3005

Hon'ble Judges : Arun Tandon, J

Final Decision : Dismissed

Judgement

Arun Tandon, J.—These three writ petitions are directed against the same order of the Appellate Authority. They have been clubbed and heard together. Writ Petition No. 832 of 1984 has been made the leading case.

2. Heard Sri Ravi Kiran Jain, learned Senior Advocate, assisted by Sri Kshitij Shailendra, learned counsel for the petitioner and learned Standing Counsel for the Staterespondents.

3. Proceedings under Section 10 (2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the "Act, 1960") were initiated against the petitioners of the leading case being case No. 436 of 1974 culminated in an order dated 31 st March, 1982 wherein 421.47 acres of irrigated land was declared as surplus. Not being satisfied with the order so passed by the Prescribed Authority, petitioners filed appeal No. 33 of 1982, which was connected with appeal No. 34 of 1982. Both the appeals have been dismissed under common order of the Special Judge/Additional District Judge, Pilibhit dated 29th September, 1983. It is against these two orders that the present writ petitions have been filed.

4. On behalf of the petitioners, it is contended as follows:

In the notice issued to the petitioner land belonging to Kishwar Jahan Begum was

included as the holding of the petitioner. Kishwar Jahan Begum was the mother of the petitioner against whom independent proceedings under Section 10(2) of Act, 1960 were initiated being case No. 430 of 1974. The Prescribed Authority vide order dated 15th March, 1975 allowed the objections raised by Kishwar Jahan in part and ultimately declared that she had 24.44 acres of land as surplus. Against the said order of the Prescribed Authority, Kishwar Jahan Begum filed an appeal. During the pendency of the appeal, Kishwar Jahan Begum expired i.e. in October, 1975. Therefore, the appeal filed by her abated and the order of the Prescribed Authority dated 15th March, 1975 qua the land held by Kishwar Jahan Begum became final.

5. In order to keep the record straight, it may be noticed that against the notice under Section 10 (2) of Act, 1960 petitioner filed Civil Misc. Writ petition No. 1064 of 1975 before the High Court, wherein an interim stay order was granted. The writ petition was finally decided on 7th December, 1977 in between Kishwar Jahan Begum expired, therefore, a fresh notice was issued to the petitioners including the holding of Kishwar Jahan, which had been inherited by the petitioners.

6. According to the petitioner in proceedings initiated against Kishwar Jahan, plot No. 277 was held to be an Idgah, plot Nos. 235,451,433, 253, 88, 89, 91, 367 and 374 were held to be Grove and plot Nos. 278,378 and 393 were held to be Abadi and plot No. 290 was held as not the holding of Kishwar Jahan Begum. Similarly reference has also been made to various plots qua which findings were recorded in the proceedings initiated against Kishwar Jahan Begum for the purposes of granting benefit in the matter of determination of her ceiling limits.

7. Under the order impugned passed by the Prescribed Authority as well as the Additional District Judge, aforesaid findings which had become final against Kishwar Jahan have been reopened and brushed aside. This according to the learned counsel for the petitioner is a patent error of law committed by the authorities. The impugned orders are based on misreading of Section 38B of Act, 1960. According to the petitioner all such issues, which have been finally determined on the basis of evidence led by the parties in earlier proceedings initiated against Kishwar Jahan Begum cannot be reopened, inasmuch as there has been no change in law in the matter of determination of the nature of the aforesaid plots and therefore, Section 38B of Act, 1960 will not apply. Findings recorded in that regard would operate, as binding upon the authorities, even after the holding of Kishwar Jahan is treated to have fallen in the share of the petitioner after her death.

8. Learned counsel for the petitioner for the proposition has placed reliance upon the judgments of this Court in the case of Ghana Ram and others v. State of U.P. and others, 1977 AWC 415; Ram Lal v. State of U. P. and others, 1978 AWC 713; Bija v. The State of U.P. and others, 1979 ALJ 43; Jnandoo v. State of U.P. and others, 1977 AWC 318 and Budhpal Singh v. Additional District & Sessions Judge, Budaun and others, 1979 AWC 203.

9. Learned counsel for the petitioner then contended that petitioner had executed as many as 37 saledeeds between 1971 to April, 1972. All these saledeeds were executed for valuable consideration and for bona fide need. He submits that the saledeeds were registered and prior to the execution of the saledeeds, agreements to sell were entered into between the seller and purchaser, which were of the year 1969/1970. The possession of the land in fact was transferred and there was no material before the authorities which could lead to a presumption that the transfer was Benami. He therefore, submits that in view of the judgment of the Hon'ble Supreme Court of India in the case of Devendra Nath Sinha v. C.J., AIR 1999 SC 2264; Jagmal Singh v. State, AIR 1991 SC 1928; Prithvi Pal Singh v. State, 1982 ALJ 437; Brijendra Singh v. State, 1980 ALJ 1105 (SC); Brijendra Singh v. State of U.P. and others, AIR 1981 SC 636 and Bhupendra Singh v. State of U.P. and others, MR 1981 SC 1157, such land covered by sale transaction had to be excluded from the total holding of the petitioner for determining his ceiling limits.

10. Learned counsel for the petitioner clarifies that such sale transactions were affected because of pressing need. The petitioner was suffering from serious ailments and he was in need of the money. In support thereof, documents were filed, such as medical reports and medical prescriptions. He submits that in view of Section 55 (4) of the Transfer of the Property Act, it is not necessary that the entire sale consideration should be received at the time of execution of sale deeds nor any adverse inference can be drawn, if the sale deed contains a recital that the balance amount of the sale consideration shall be paid at a latter point of time. An attempt was made to take the Court through various evidence on record for establishing the bona fide of the transactions affected.

11. It is then contended on behalf of the petitioner that plot Nos. 2,20,54,56, 57,73,381 and 1245 were infact used for rubber plantations and in view of Section 6 (3) of Act, 1960, the land covered by such rubber plantation was liable to be exempted while determining the ceiling limits. The authorities below were legally not justified in recording a finding that for grant of exemption under Section 6 (d), it had to be established that such rubber plantation must have existed on the relevant date with reference to which the ceiling limits are to be determined. He clarified that in respect of subClauses (a), (e), (f) and (g) of Section 6 of Act, 1960, no date is mentioned for the purposes of considering the exclusion of the land. Dates have been mentioned with reference to other clauses for the benefit being claimed, with respect to a particular purpose. He submits that reason for such a date being not mentioned in subClauses (b), (c) and (d) of Section 6 of Act, 1960 is but obvious, i.e. the use of land for public purpose. Therefore, in respect of such category of land, it is the date on which the ceiling limit is to be determined that it has to be examined as to whether the land is within the exemption clause covered by subClauses (b), (c) and (d) of Section 6 of Act or not.

12. Sri Ravi Kiran Jain explains that Section 9 and Section 6 of Act, 1960 deal

with two different aspects. Section 9 of Act, 1960 deals with the determination of the ceiling limits on a particular date while Section 6 of Act, 1960 provides for the exemption being claimed under the various clauses by the recorded tenure holder. He therefore, submits that first aspect i.e. covered by Section 9 is independent of Section 6 of Act, 1960 i.e. the second aspect qua which no date has been mentioned for determination of the nature of the land to be covered by the exemption clause. What follows is that such exemption can be claimed with reference to the use to which the land has been put upto to date the ceiling limits are finally determined.

13. It is then submitted that independent ceiling proceedings were initiated against Mansoor Ali Khan, in respect of plot No. 201, Akram Wali Khan, Asmat Jahan Begum in respect of plot Nos. 73 and 295. The aforesaid plots were held to be the holding of the aforesaid persons, despite the issue in that regard have been settled in the proceedings taken against aforesaid three persons, their holding has still been clubbed with the holding of the petitioner, which is legally not permissible.

14. Learned Standing Counsel in reply submits that Section 38B of Act, 1960 specifically lays down that any finding recorded or orders passed in earlier proceedings will not operate as resjudicata. He has placed reliance upon the judgment of this Court in the case of Ram Bhau Singh v. Additional Commissioner, Jhansi Division, Jhansi and others, 2007 (102) RD 772, and the judgments of the Hon"ble Supreme Court of India in the case of D.N. Singh v. Civil Judge, AIR 1999 SC 2264 and Escorts Farms Ltd. v. Commissioner, Kumaun Division, Nainital and others, 2005 (98) RD 158 (SC).

15. He submits that unless it was demonstrated that in the earlier proceedings initiated against Kishwar Jahan, an conscientious decision was taken qua nature of the land or the transaction involved, the same could always be reopened in proceedings initiated against the present petitioners in light of Section 38B of Act, 1960. He explains that if any point was wrongly assumed by the ceiling authorities at the earlier stage, then the same could be corrected in subsequent proceedings.

16. In respect of saledeeds executed by the petitioners, learned Standing Counsel states that the Prescribed Authority as well as the appellate authority amongst others have recorded a finding that except for one sale transaction, all other sale were not bona fide. The authorities have examined the 37 saledeeds individually. A categorical finding has been recorded that only a meager amount of money in fact was received as against total sale price agreed upon. The petitioner failed to establish through evidence that remaining part of the consideration has even been received subsequently. Reference has also been made to the various evidence on record for establishing that such transactions were made only to defeat the very purpose of the Act, 1960. Learned Standing Counsel took the Court through the various evidence noticed in the order of the Prescribed Authority for arriving at the said conclusion qua the transaction being

not bona fide. These findings have since been affirmed by the appellate authority. Learned Standing Counsel further pointed out that entire 37 sale transactions have been executed practically on two days, i.e. 24th April, 1972 and 25th April, 1972. The agreements to sell referred to by the learned counsel for the petitioner of the year 196970 were all unregistered documents and the authorities have not accepted such agreement to sell as valid.

17. Learned Standing Counsel explains that ceiling limits are to be determined, with reference to the date on which the Act was enforced and therefore, exemption, if any, has also to be determined with reference to the said date only. He therefore, contended that the authorities were legally justified in recording that petitioners have failed to establish that on the relevant date i.e. 8th June, 1973, the relevant plots were infact being used for the Rubber Plantations as provided under Section 6 (d) of Act, 1960 for claiming exemption. The authorities have rightly held that exemption cannot be granted. He has placed reliance upon the judgment of the Hon"ble Supreme Court in the case of State of U.P. v. Civil Judge, Nainital and others, (1986) 4 SCC 558, wherein it has been held that where tenure holder died after coming into force of Amendment Act of 1972 on June 8, 1973 and publication of a general notice under Section 9 but before service of notice under Section 10 (2) for submitting statement, the relevant date for determining the surplus land liable to be surrendered should be June 8, 1973 when ceiling on holdings was imposed under Section 5.

18. I have considered the submissions made by the learned counsel for the parties and have examined the records of the present writ petitions.

19. From the records of the present writ petition, following facts emerge:

Petitioners, Mohammad Shamsul Hasan Khan and Smt. Rajia Bano Begum are husband and wife. They were served with a notice under Section 10 (2) of Act, 1960 wherein it was proposed that they had 54540 acres of irrigated land as surplus. Notice itself was subjected to challenge by means of Writ Petition No. 1064 of 1975, wherein ceiling proceedings were stayed. The writ petition was dismissed on 7th December, 1977. Afresh notice was therefore, issued. In the meantime, Smt. Kishwaran Jahan, mother of Mohd. Shamsul Hasan Khan, petitioner died in October, 1975, hence another notice under Section 10 (2) of Act, 1960 was issued to the petitioners on 18th April, 1978 including the land earlier recorded in the name of Kishwar Jahan. Large number of objections were raised in response thereto including the plea that the land which was not recorded in their name has wrongly been included in the notice. Large number of plots had been sold, which had to be excluded from the notice. Persons, in whose favour, land was transferred and were recorded, had not been served with any notice under Rule 8 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Rules, 1961 (hereinafter referred to as the "Rules, 1961"). Therefore, the proceedings were bad.

20. The Prescribed Authority, after considering the objection qua issuance of

notice under Rule 8 of Rules, 1961 vide order dated 31st March, 1982 directed that notices be issued to the persons, in whose name, land was recorded.

21. Recordedowners responded to the said notice, it is not necessary to repeat their names, as it has specifically been noticed in the order of the Prescribed Authority.

22. The Prescribed Authority framed as many as 44 issues and after determining the issues individually held that the recorded tenure holders had 42147 acres of irrigated land as surplus. Not being satisfied with the order so passed by the Prescribed Authority, petitioners before this Court filed Ceiling Appeal Nos. 33 of 1982 and 34 of 1984, which were clubbed with the appal filed by Mohd. Shamsul Hasan Khan & 25 others (transferees). Both the appeals have been decided under a common judgment dated 29th September, 1983 giving rise to these three writ petitions.

23. Writ Petition No. 832 of 1984 has been made the leading case, inasmuch as learned counsel for the parties agree that fate of the connected writ petitions filed by the transferees being Writ Petition No. 823 of 1984 and writ petition No. 3713 of 1986 is squarely dependent upon the outcome of writ petition No. 832 of 1984.

24. The Court may now deals with the pleas raised for challenging the orders impugned:

(a) Proceedings under Act, 1960 were initiated against Kishwar Jahan mother of Mohd. Shamsul Hasan Khan, by service of a notice under Section 10 (2) of Act, 1960 being Case No. 430 of 1974. Kishwar Jahan raised objections to the notice and after the objections were considered and partly granted vide order dated 15th March, 1975. It was declared that she had 24.44 acres of irrigated land as surplus. Against the order allowing the objections, no appeal was filed by the State Government. Therefore, that part of the objections of Kishwar Jahan which were allowed by the Prescribed Authority became final between the parties. It was against part of the order of the Prescribed Authority, which was adverse to Kishwar Jahan, she filed the appeal and during the pendency of the appeal, she expired. Therefore, proceedings in that regard abated.

25. The finding recorded by the Prescribed Authority in respect of various plots, which were to be excluded for determination of ceiling limits under order dated 15th March, 1975 had become final. Since under the last notice issued to the petitioners dated 18th April, 1978, the land recorded in the name of Kishwar Jahan had also been clubbed as the land holding of the petitioners, the finding of the Prescribed Authority under order dated 15th March, 1975 qua nature of plots to be excluded for determination of ceiling limits could not be reopened. The help drawn from Section 38B of Act, 1960 is based on complete misreading of said Section. The appellate authority has also wrongly held that in view of Section 38B of Act, 1960, the findings recorded, in favour of Kishwar Jahan under order dated 15th March, 1975 could be reopened in proceedings against the petitioners

and the Prescribed Authority could record its own independent findings on the said issues.

26. This Court may only refer to the judgments of this Court in the case of *Ram Lal v. State of U.P. and others*, 1978 AWC 713, wherein after considering Section 38B of Act, 1960, in paragraphs 19, 20 and 21 it has been held as follows:

"19. A change in law can thus affect the decision of a Court only to the extent that the decision becomes contrary to law. If the change in law does not touch the question decided by the competent Court, the decision is not affected, and would continue to be binding between the parties. We shall examine the provisions of Section 38B of the Act in the light of the above discussion. Section 38B provides as follows:

"No finding or decision given before the commencement of this section in any proceeding or any issue (including any order, decree or judgment) by any Court, tribunal or authority in respect of any matter governed by this Act, shall bar the retrial of such proceedings or issue under this Act, in accordance with the provisions of this Act as amended from time to time."

20. This provision to our mind was introduced to achieve the object of the various amendments introduced in the Principal Act and to give effect to them. Section 38B, in our view, contemplates that if by the amendments made in the Principal Act certain findings or decisions had become contrary to law, those findings or decisions could be reopened and the principle of *res judicata* would not bar a retrial of those issues in accordance with the provisions of the Principal Act as amended. This provision, in our opinion, did not authorize the Ceiling authorities to ignore the decisions rendered or decrees passed by competent Courts, tribunals or authorities in respect of matters which were not affected by the changes made in the Principal Act. Such decisions, in our opinion, would continue to be binding on the parties and would operate as *res judicata* between them, see *State of Uttar Pradesh v. Nawab Hussain*, AIR 1977 SC1680. No change was made in the law relating to ancestral Sir and Khudkasht land of a tenureholder.

21. Learned Standing Counsel was unable to point out any amendment in the Principal Act which had brought about any change in the law relating to tenures which were ancestral Sir and Khudkasht. In the earlier proceedings, it was found by the appellate authority that part of the petitioner's holding was ancestral Sir and Khudkasht land, and his son had a half share in it. The appellate authority, after excluding the share of the son, found that no land was surplus with the petitioner. Since the amendments made in the Principal Act did not affect this decision, the findings recorded and decision reached in the earlier proceedings could not be reopened and set aside by recourse of the provisions of Section 38B of the Act. The authorities below, accordingly, erred in going behind the earlier decision which had become final between the parties, and reopening the question of ancestral Sir and Khudkasht nature of the petitioner's holding, and reaching a

conclusion against him."

27. This Court finds that the law, as explained, in respect of scope of Section 38B of Act, 1960 has completely been ignored by the first appellate Court. The decision given earlier, in respect of nature of the land, (held by Kishwar Jahan), which had to be excluded for the purposes of determination of ceiling limits, as per order of the Prescribed Authority dated 15th March, 1975, could not be reopened without recording a corresponding finding that the same was necessitated because of change affected in law in the Principal Act, for determination of the nature of the land. This Court, therefore, holds that the general finding recorded in the impugned order of the appellate authority to the extent that the land, which was earlier excluded, while determining the ceiling limits of Kishwar Jahan by the Prescribed Authority could still be included for determining the ceiling limits of the petitioners after the death of Kishwar Jahan has to be reexamined in light of the judgment of this Court in the case of Ram Lal (Supra. Therefore, that part of the order of the first appellate Court has to be set aside.

28. Now coming to the second contention advanced on behalf of the petitioner with regard to the service of notice upon Mansoor Ali Khan and Akram Ali Khan, it has specifically been recorded under the appellate order that although extract of Khatauni of 1377 Fasli being paper No. C54/1 was filed to indicate that several plots recorded in the name of Shamshul Hasan Khan have been subsequently recorded in 1377 Fasli in the name of Mansoor Ali Khan, but such documents have not been accepted only because entries were not legible and appeared to be vague. The appellate authority expressed doubts about such entries. In my opinion, if the authority had doubts, about the entries, he should have summoned the original Khatauni to verify as to whether the plots were recorded in the Khatauni of 1377 Fasli in the name of Mansoor AH Khan or not. Such procedure has not been done. The appellate authority committed an error in not doing so. It was within the competence of the Ceiling Authorities to have summoned the original Khatauni, if they had any doubts qua the entries as per the documents filed by the petitioners, which was admittedly a copy of Khatauni issued by the Lekhpal of the area. In the facts of the present case, interest of justice would have been served if the Khatauni of the year 1977 Fasli had been summoned in original by the first appellate authority and it would have satisfied itself, as to whether name of Mansoor Ali Khan was recorded therein and whether he was entitled to any notice or not.

29. So far as Akaram Ali Khan is concerned, this Court finds that specific findings have been recorded that the relevant Khataunis of 1377 to 1380 Fasli had not been brought on record for establishing that his name was recorded as the tenure holder. The order of the Assistant Collector has been held to be collusive as it was in a matter, which was not contested by the present petitioners. This Court finds no good ground to interfere with the aforesaid part of the order.

30. In respect of exclusion of the land covered by the saledeeds, which had been

executed by the present petitioners on two dates i.e. 25th February, 1972 and 24th April, 1972, (which according to the petitioners were 37 in all), suffice is to record that each saledeed has been examined by the Prescribed Authority individually in his order. The saledeeds have not been accepted to be bona fide and therefore, exemption under Section 5 (2) of Act, 1960 has been denied. Specific finding has been arrived at that in each of the saledeeds, it is recorded that payment of only a meager fraction of the sale consideration has been made, while for the larger portion of the consideration, it has been made payable on demand at a latter date, and no qua which no time limit was disclosed. It has specifically been recorded by both the authorities that the petitioners had hopelessly failed to produce any receipt/evidence of the balance consideration being received at any point of time.

31. Section 5 (6) of Act, 1960 provides that transfers of land made subsequent to 24th January, 1971 are liable to be ignored except when it is established to the satisfaction of the authorities that the transfer was in good faith, for adequate consideration and under a irrevocable instrument not being a Benami transaction or for the immediate or deferred benefit of the tenure holder or other members of his family.

32. This Court may record that the issue with regard to exemption of land covered by the saledeeds executed between 24th January, 1971 to 8th June, 1973 has been subject matter of consideration in detail before the Hon'ble Supreme Court of India in the case of Brijendra Singh v. State of Uttar Pradesh, AIR 1981 (SC) 636. It is worthwhile to reproduce paragraphs 14 to 19 of the said judgment which reads as follows:

" 14. In order to bring his case within the purview of Proviso (b), the tenureholder has to show.(i) that the transfer has been made in "good faith";

(ii) that it is a transfer for adequate consideration;

(iii) that it has been made under an irrevocable instrument; and (iv) that it is not a benami transaction or for immediate or deferred benefit of the tenure holder or other members of his family.

15. There is no dispute in regard to the connotation, construction and existence of ingredients (ii), (iii) and (iv) in the instant case. Controversy, however centres round the true meaning and scope of the expression "good faith" within the contemplation of clause (b) of the Proviso. In the instant case, the Appellate Authority appears to have taken the view which has been upheld by the High Court that a transfer cannot be said to have been made in "good faith" merely because it has been honestly or genuinely made and satisfies the aforesaid conditions (ii), (iii) and (iv), unless it is proved further that it was made for a valid pressing necessity.

16. The thrust of the arguments of the learned counsel for the appellant is that the expression "good faith" within the contemplation of Proviso (b) only means

that the transfer is honestly and genuinely made and is not designed to circumvent the Ceiling Act or defeat its object, and that this expression cannot be legitimately stretched so as to import into Proviso (b), as a requirement of law, an additional obligation to prove that the transfer was made for a pressing necessity, or valid personal need of the transferor. The argument is not devoid of merit.

17. The expression "good faith" has not been defined in the Ceiling Act. The expression has several shades of meaning. In the popular sense, the phrase in good faith" simply means "honestly, without fraud, collusion, or deceit; really, actually, without pretence and without intent to assist or act in furtherance of a fraudulent or otherwise unlawful scheme". (See Words & Phrases, Permanent Edition, Vol. 18A, page 91). Although the meaning of "good faith" may vary in the context of different statutes, subjects and situations, honest intent free from taint of fraud or fraudulent design, is a constant element of its connotation. Even so, the quality and quantity of the honesty requisite for constituting "good faith" is conditioned by the context and object of the statute in which this term is employed. It is a cardinal canon of construction that an expression which has no uniform, precisely fixed meaning, takes its colour, light and content from the context.

18. The meaning and scope of the expression "good faith" is therefore, to be considered in the light of the scheme and purpose of Section 5, in general, and the context of Proviso (b) to subsection (6), in particular. We have already noticed that the primary object of the Ceiling Act, as adumbrated in the pivotal provision in Section 5(1) is to prohibit and disentitle a tenureholder from holding land in the aggregate in the State of Uttar Pradesh, in excess of the ceiling area, in his own right, whether in his own name, or ostensibly in the name of any other person. The ceiling area and surplus land of a tenureholder under the Ceiling Act, as already mentioned, are to be determined as on June 8, 1973 when the U.P. (Amendment) Act No. 18 of 1973 came into force. A transfer, therefore, made after January 24, 1971 which is designed to serve as a cloak for retention of a right or interest of the transferor in the ostensibly transferred land in excess of the ceiling area, even on or after June 8, 1973, will be patently not in "good faith". But the Proviso (b) to subsection (6) of Section 5 extends the negative aspect of the concept "good faith" a little further by indicating, that even if the transfer is not an ostensible transfer and the transferor divests himself of all interest and rights in present! in the transferred land, but reserves some benefit in future for himself or other members of his family, then also the transfer will be not in "good faith". A transfer solely for the purpose of converting surplus land into cash without any kind of need (not to be confused with legal necessity) may also lack good faith.

19. Broadly speaking, the benefit of clause (b) of the Proviso to subsection (6) is available to a transfer made in good faith, that is, to a bona fide transfer whereby the tenureholder genuinely and irrevocably transfers all right, title and

interest in the land in favour of the transferee, in the ordinary course of management, of his affairs and which is not a collusive arrangement, or device or subterfuge to enable the tenureholder to continue to hold the surplus land or any reserved interest in present! or in futuro, therein (or merely to convert it into cash), and thus circumvent the ban under Section 5(1) of the Ceiling Act. In order to be entitled to the benefit of Proviso (b), a transfer made in good faith, must satisfy the further conditions, (ii) to (iv), enumerated in the Proviso (b). The positive conditions laid down in Proviso (b) are : that the transfer should be for adequate consideration; that it should have been made under an irrevocable instrument. The negative conditions set out in clause (b) of the Proviso are: that it must not be a benami transaction; that it must not be for immediate or deferred benefit of the transferring tenureholder or other members of his family. These tests or conditions (ii), (iii) and (iv) provided in Proviso (b) may not by themselves be conclusive to hold that the transfer was in "good faith". For instance, another important test for judging the genuineness or otherwise of a sale would be whether or not cultivatory possession and enjoyment of the land has passed under the sale to the vendee. Even so, once it is established by the transferring tenureholder that the transfer in question effected in the course of ordinary management of his affairs, was made for adequate consideration and he has genuinely, absolutely and irrevocably divested himself of all right, title and interest (including cultivatory possession) in the land in favour of the transferee, the onus under Explanation II, in the absence of any circumstances suggestive of collusion, or an intention or design to defraud or circumvent the Ceiling Act, on the tenureholder to show that the transfer was effected in "good faith", will stand discharged, and it will not be necessary for the tenureholder to prove further that the transfer was made for an impelling need or to raise money for meeting a pressing legal necessity. Although proof of the fact that a transfer was made for a valid pressing necessity, may highlight or strengthen the inference in favour of the genuineness of the transfer, it is not an indispensable constituent of "good faith", nor is the proof of legal necessity requisite, as a matter of law, to enable a tenureholder to avail of the benefit of clause (b) of the Proviso. It may be remembered that at the time when such a transfer was made, there was no legal restriction on his power to alienate the whole or any part of his holding. In other words, at the time when such a transfer was made it was not unlawful, even if it were made without any pressing necessity. It became unlawful by the subsequent enactment of a legal fiction introduced in Section 5 (6) of the Ceiling Act (No. 18 of 1973) with retrospective effect from January 24, 1971. Even so, under this statutory fiction, a transfer of land made after January 24, 1971 does not become wholly void for all purposes; it can be ignored and would not be taken into account in determining the ceiling area of the transferring tenureholder for purposes of the Ceiling Act, and that too, if the following two conditions are satisfied:

(a) that the land but for the transfer would have been declared surplus land under the U.P. Act 18 of 1973; and

(b) that the transfer is not of a kind covered by Proviso (b) to Section 5(6) of the Act.

This being the position, once a transfer is shown to be bona fide and further satisfies all the other positive and negative conditions laid down in the Proviso (b) to Section 5(6), there is no justification in law to stretch the legal fiction further and to spell out from the expression "good faith" an additional requirement of proving pressing necessity for the transfer before the tenureholder is entitled to the benefit of the aforesaid Proviso (b)."

33. From the aforesaid, it is apparently clear that the Hon'ble Supreme Court of India has specifically held that in order to avail the benefit of proviso (b) of Section 5 (6) of Act, 1960, a transfer made in good faith, must further satisfy conditions, (ii) to (iv), enumerated in the Proviso (b), as reproduced in paragraph14 referred to above. Therefore, the issues as to whether exemption was attracted in the facts of the present case, had to be examined with reference to the satisfaction of condition Nos. (i) and (iv) as noticed in paragraph14 of the judgment.

34. This Court may record that in respect of as many as 37 saledeeds, which have been executed on two dates, it has been specifically held that same are more or less identical in nature and it is specifically reflected therein that only a meager fraction of the consideration had actually been paid. In respect of major part of the consideration, neither any time limit was fixed for such payment nor any cogent evidence was led to establish that such balance consideration was even received. By way of an example, reference be had to the saledeed dated 25th February, 1972 where the total sale consideration was Rs.6,500, while only a sum of Rs. 100/ is stated to have been paid and for the remaining amount, no time limit was fixed for repayment of the same nor the petitioner could establish such payment of balance consideration at any point of time by any cogent evidence. In the totality of the circumstances, on record, the authorities have found that such transfer affected under the saledeeds was not covered by proviso (b) to Section 5(6) of the Act, 1960.

35. This Court holds that the finding recorded by the Ceiling Authorities is strictly in accordance with law and it has rightly been held that the land transferred under the saledeeds executed on two dates i.e. 25th February, 1972 and 24th April, 1972 had to be ignored.

36. This Court may add that the plea raised on behalf of the petitioner with reference to Section 55 (4) of Transfer of Properties Act and the Division Bench Judgment of this Court in the case of Gayatri Prasad v. Board of Revenue and others, 1973ALM413, is completely misplaced. Inasmuch as in paragraph19of the judgment in the case of Brijendra Singh (Supra), it has been explained that sale is not wholly void for all purposes. It is only ignored in the matter of determination of ceiling area of the transferring tenure holder.

37. A sale transaction may be valid under Section 55 (4) of the Transfer of

Property Act, but still the land transferred may be included in the holding of the transferee as per Section 5(6) of Act, 1960, if the authority finds that adequate sale consideration had not passed. The affect of Section 5(6) of Act, 1960 is that the transferred land is not to be excluded for determining the ceiling limits of the tenure holder. It does not invalidate the sale deed for all other purposes.

38. It is worthwhile to mention that the Prescribed Authority had accepted one of the saledeeds executed by the petitioners in respect of 139 Bighas of land dated 18th November, 1971 to be bona fide after recording a categorical finding that the consideration in respect of the sale has been completely paid by the purchasers to the vendor and they were put in possession over the property so purchased.

39. It may also be recorded that the petitioners had contended that the sale was necessitated because of ailment suffered by the vendor i.e. money was required for treatment. The authorities have found that despite such necessity, only a meager amount infact has been received as sale consideration and for the remaining major amount no time limit was disclosed nor actual payment of major amount had been established.

40. The Appellate Authority has rightly recorded that if the money was needed by the petitioner for medical treatment, and it is for this purpose that the land was being sold, then there was no occasion to receive only small fraction of sale consideration and to leave the larger portion of the sale consideration to be realized later on and for which also neither any time limit was fixed nor it was established that larger part of sale consideration had ever been received.

41. For appreciating the controversy raised on behalf of the petitioners qua plots covered by rubber plantations being excluded, it would be worthwhile to reproduce Sections 6 and 9 of Act, 1960, which read as follows:

"6. Exemption of certain land from the imposition of ceiling.(1) Notwithstanding anything contained in this Act, land falling in any of the categories mentioned below shall not be taken into consideration for the purposes of determining the ceiling area applicable to, and the surplus land of a tenureholder, namely

(a) land used for an industrial purpose (that is to say, for purposes of manufacture, preservation, storage or processing of goods) and in respect of which a declaration under Section 143 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 subsists;

(b) land occupied by a residential house;

(c) land used as cremation ground or as a graveyard, but excluding cultivated land;

(d) land used for tea, coffee or rubber plantations, and to the extent prescribed, land required for purposes ancillary thereto and for development of such plantations;

(e) land held from before January 24, 1971, for purposes of a stud farm, to the extent prescribed;

(f) land held from before the first day of May 1959 by or under a public religious or charitable waqf, trust, endowment, or institution the income from which is wholly utilized for religious or charitable purposes, and not being a waqf, trust or endowment of which the beneficiaries wholly or partly are settlers or members of his family or his descendants;

(g) land held from before June 8, 1973, by a Goshala of a public nature, registered under the Uttar Pradesh Goshala Adhiniyam, 1964, to the extent prescribed.

"9. General notice to tenureholders holding land in excess of ceiling area for submission of statement in respect thereof.(1) As soon as may be, after the date of enforcement of this Act, the Prescribed Authority shall, by general notice, published in the Official Gazette, call upon every tenureholder holding land in excess of the ceiling area applicable to him on the date of enforcement of this Act, to submit to him within 30 days of the date of publication of this notice, a statement in respect of all his holdings in such form and giving such particulars as may be prescribed. The statement shall also indicate the plot or plots for which he claims exemption and also those which he would like to retain as part of the ceiling area applicable to him under the provisions of this Act.

(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 tenureholder 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 subsection (1):

42. On a simple reading of the various clauses of Section 6 of Act, 1960, it would be clear that in respect of clauses (a) (f) and (g), a date prior to or upto 8th June, 1973 has been fixed for claiming the exemption. For benefit under clauses (a) to (d), no date has been fixed. However, in no case, any date beyond 8th June, 1973 has been provided. The date with reference to the date which would be relevant for determining the ceiling limits qua the particular tenure holder.

43. The authorities have specifically recorded that the issue as to whether the area was occupied for rubber plantations in the facts of this case, has to be determined with reference to 8th June, 1973, which is the relevant date in the facts of this case. Since the petitioner has failed to establish that on the relevant date i.e. 8th June, 1973, there was any rubber plantations over the plots in question, such benefit under Section 6 (1) (d) could not be granted. Both the Courts have recorded that total area of the plots was 63.84+8.97 acres. On the date of spot inspection, only 120 plants were found to exist over the said area and only 15 to 20 plants were found above the height of paddy crop. Most of the plants had been recently planted, many of them had not even taken roots. The

plots never gave any appearance that any plantation existed on the relevant date. It is in this background that the Courts have recorded that the petitioners could not be granted benefit under Section 6 (1) (d) of Act, 1960 as it could not be established that on the relevant date i.e. 8th June, 1973 rubber plantations were existing over the plots in question.

44. The Hon"ble Supreme Court of India in the case of State of U.P. v. Civil Judge, Nainital (Supra) has specifically laid down that ceiling limits are to be determined with reference to the enforcement of Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 i.e. 8th June, 1973. Therefore, what logically follows is that the nature of the land, for the purposes of exclusion from the ceiling limits, on the said date only, has to be taken into consideration.

45. Similarly qua other contentions raised on behalf of the petitioners, finding of facts have been recorded by both the authorities, which are not required to be reiterated by this Court. Such findings of facts recorded by the authorities are based on appreciation of evidence and cannot be termed as perverse or based on no evidence, so as to warrant any interference under Article 226 of the Constitution of India.

46. In view of the findings and reasons recorded herein above, Writ Petition No. 832 of 1984 is partly allowed. The order of the appellate authority dated 29th September, 1983 is set aside, insofar as it holds that (a) the notice under Rule 8 of Rules, 1961 was not required to be issued to Mansoor Ali Khan, (b) the order of the Prescribed Authority dated 15th March, 1975 passed in Case No. 430 of 1974 in respect of nature of the land, could be reopened with reference to Section 38B of Act, 1960 without examining as to whether any amendment in the Principal Act, had brought about any change in law relating to the nature of the land, which was earlier excluded from the ceiling limits. The appellate authority is directed to reconsider the plea raised in that regard afresh after summoning the original Khatauni of 1377 Fasli and in light of the judgment of the Writ Court in the case of Ram Lal (Supra) respectively. The aforesaid exercise may be completed within four months from the date a certified copy of this order is filed before the appellate authority.

47. For all other purposes, the findings recorded by the ceiling authorities stand affirmed. The writ petition to that extent stands dismissed.

48. Writ Petition No. 823 of 1984 and writ petition No. 3713 of 1986 filed by subsequent purchasers are dismissed.