

(2008) 09 AHC CK 0246
In the Allahabad High Court

Narendra Pal Singh Gahlot

APPELLANT

Vs

The Upper Commissioner (Judicial) Moradabad Division, The
Prescribed Authority (Under U.P. Imposition of Ceiling on land
Holdings Act, 1960 as amended upto date) Cum-Additional
District Magistrate (Ceiling) and State of U.P.

RESPONDENT

Date of Decision : 24-09-2008

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2)

Citation : (2009) 1 AWC 46 : (2008) 105 RD 669

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shishir Kumar, J.—This writ petition has been filed for quashing the impugned orders dated 24.4.1981 and 29.11.1997 (Annexures 2 and 5 to the writ petition) passed by prescribed authority and Appellate Authority (respondent Nos. -2 and 1).

2. The facts arising out of present writ petition are that petitioner was served with a notice u/s 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1961 as amended by U.P. Act No. 18 of 1973 (hereinafter referred to as Act) for declaring 5.77 acres of land as surplus. Petitioner filed an objection on the ground that family of petitioner consists seven members, as such, petitioner is entitled in his ceiling area 22.97 acres of land. Further objection was taken that land detailed whereof has given is grove and same Hid has wrongly been treated as irrigated in notice u/s 10(2) of the Act. Further objection was also taken by petitioner that in good faith petitioner has transferred certain land, therefore, that land cannot be taken into consideration for the purposes of determination of ceiling area. Further detail has been given in the objection regarding un-irrigated plot No. 867 having an area of 1 bigha, 6 biswa situated in Haldaur was transferred to Ram Charan lal by father of petitioner during his life time and the

said plot was never devolved upon the objector, as such, said area cannot be taken into consideration for the purposes of ceiling limit.

3. The prescribed authority vide its order dated 24.4.1981 held that plot mentioned in the judgement are grove and petitioner is entitled for relief of the aforesaid area and he granted relief to the petitioner regarding the grove. Rest of the pleas taken in objection by petitioner has not been taken into consideration and regarding the sale deed it has been held that as it was executed after appointed date but prescribed authority has not recorded any, finding regarding execution of sale deed executed by father of petitioner in favour of Sri Ram Charan Lal in the year 1959.

4. Feeling aggrieved by aforesaid order of prescribed authority, petitioner filed an appeal. Appellate Authority partly allowed the appeal and held that Plot Nos. 168 and 170 of village Faridpur is grove. Appellate Authority rejected relief regarding family and has not taken into consideration sale deed executed by father of petitioner. A writ petition against the aforesaid order was filed being Writ Petition No. 367 of 1982. This Hon"ble Court vide its judgement and order dated 19.7.1984 was pleased to allow writ petition and remanded the matter to Appellate Authority for consideration. Respondent No. 1 on remand, appeal filed by petitioner was dismissed in default on 21.10.1987. An application for restoration filed by petitioner was also dismissed. Again petitioner approached this Court by filing Writ Petition No. 19483 of 1986 and said writ petition was allowed on 20.3.1996 directing the Appellate Authority to decide the appeal on merits.

5. Appellate Authority illegally without considering the evidence on record held that sale deed executed by Sri Balwant Singh is non-effective on the ground that sale deed has not been given effect to by purchaser Ram Charan Lal. Appellate Authority has wrongly held that as the name of father of petitioner remained in revenue record, as such,, no relief can be granted to petitioner. Petitioner has filed copy of registered sale deed of Plot Nos. 972, 102 and 703 situated in Village Haldaur and Chhajupura of town Bijnor on 1.5.1959. An application was filed by Ram Charan Lal for mutation and his name was duly mutated in respect of aforesaid plots because petitioner filed copy of khatauni, which was on record as 1381 F to 1383 F. From perusal of the aforesaid documents it was clear that sale deed was executed in favour of Ram Charan Lal was duly given effect to in the revenue record. Presented Authority also has not taken into consideration the effect that father of petitioner executed a sale deed in the year 1959 and has failed to examine the ingredients of Section 5(6) of the Act, as such, orders passed by respondents are vitiated in law.

6. Further submission has been made by Sri Anil Sharma, learned Counsel for petitioner that as sale deed was executed in the year 1959 prior to vesting date, therefore, burden was upon the State to establish regarding execution of sale deed in good faith and for adequate consideration. Respondents as well as courts below have not taken into consideration the aforesaid fact. The findings to this

effect recorded by court below that at the time of execution of sale deed, the village in question was under consideration, is patently in-correct and is against facts on record. Appellate Authority has illegally held that sale deed has been executed without permission of settlement officer, Consolidation, though respondent-State at no point of time has filed any document to show that village in question during period of execution of sale deed was under consolidation and permission of settlement officer, consolidation was required. Appellate Authority without considering the khatuni on record held that there is no evidence to show that sale deed has been given effect too. The consolidation proceeding was initiated in village subsequent to execution of sale deed and in place of plot No. 972, new plot No. 867 came into existence and said plot was in possession of purchaser. As petitioner had no concern with land in question, therefore, inclusion of such area in holding of petitioner, was totally illegal and against relevant provision of the Act. The Appellate Authority vide its order dated 29.9.1981 held that plot Nos. 168 and 170 of village Faridpur was held grove but petitioner has been denied the benefit of these plots in the ceiling limit. As family member of petitioner consists seven members, as such, petitioner is entitled more area in ceiling limit, hence, petitioner has approached this Court.

7. Learned Counsel for petitioner has placed reliance upon a judgement of the Apex Court in *Ramadhar Singh v. Prescribed Authority and Ors.* Taking support of aforesaid judgement, learned Counsel for petitioner submits that Sub-section (6) of Section 5 of the Act says that in determining the ceiling area applicable to a tenure holder, any transfer of land made after the 24th day of January 1971, which but for the transfer would have been declared as surplus land under the Act shall be ignored and not taken into account. It does not confer jurisdiction on the authorities to determine the validity of a sale deed executed prior to 24th January, 1971.

8. Reliance has been placed upon para 2 of the said judgement. The same are being reproduced below:

2. It has to be seen under what provision of the Act can be validity of the sale executed prior to January 24, 1971, the appointed day, be gone into ? Sub-section (6) of Section 5 of the said Act says that in determining the ceiling area applicable to a tenureholder, any transfer of land made after the 24th day of January, 1971, which but for the transfer would have been declared as surplus land under the Act shall be ignored and not taken into account. The proviso (b) thereto, inter alia, provides that a transfer proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and an irrevocable instrument, not being of benami transaction or for immediate or deferred benefit for the tenureholder or other members of the family, is outside the scope of the aforesaid sub-section Thereafter Explanation II provides that the burden of proving that a case falls within Clause (b) of the proviso shall rest with the party claiming its benefit. Apparently, it is under this provision of law that the validity of the sale deed dated April 22, 1969 was put to test. The authorities

under the Act took the view that the sale deed was not genuine because no consideration appears to have passed before the Sub-Registrar and that it was a transfer between father and son raising a dust of suspicion. Otherwise it was not disputed on fact that the sale had been effected by means of a registered deed in which the passing of consideration was mentioned as a recital. The existence of the sale deed being not disputed and it having taken place, as said before, on February 24, 1969, prior to the appointed day that is January 24, 1971, the inquiry regarding the validity of the sale deed under Sub-section (6) of Section 5 was totally misplaced. Thereunder, as it appears to us, the appropriate authority had no jurisdiction to be put the validity of the sale deed to test since his jurisdiction arose only when the deed of transfer had been effected on or after the appointed day. Not only the first and the appellate authority under the Act persisted in that view, but the High Court too proceeded on that basis. The effort of the appellant to have it declared that the authorities had no jurisdiction to invalidate the sale under Sub-section (6) of Section 5 when read with Explanation II to Sub-section (1) of Section 5 also was a futile attempt because the High Court followed the path, as did the authorities under the Act, and rejected the writ petition. We are of the view that this was a wholly erroneous approach. Sub-section (6) of Section 5 did not confer jurisdiction on the authorities to determine the validity of the sale and if that is so any finding of theirs as to the contents of the sale is of no assistance. In the result the appeal must succeed. Accordingly, allowing the same we set aside all the orders of the authorities below as also that of the High Court. No costs.

9. Further reliance has been placed upon a judgement in *Indrapal Singh and Ors. v. Prescribed Authority*. Meerut and Anr. reported in 2007 (6) ADJ 205 and reliance has been placed upon paras 5, 8, 9 of the said judgement. The same are being reproduced below:

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.

8. The Supreme Court in *Ramadhar Singh v. Prescribed Authority and Ors.* 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 cultivatory 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. Further reliance has been placed by learned Counsel for petitioner upon judgement reported in 2007 (10) ADJ 279, Gyanendra Kumar v. State of U.P. and Ors. Reliance has been placed upon paras 7 of the said judgement. The same is being reproduced below:

7. A further submission has been made by the learned Counsel for the petitioner that the area which has been reduced during the consolidation operation, the same has also not been taken into consideration by the Appellate Authority. The Prescribed Authority has taken into consideration that the area has been reduced after consolidation operation, therefore, the petitioner was entitled to get the said benefit. The petitioner has placed reliance upon a judgement of the Apex Court reported in 1966 (2) SC 70, Thankur Deen v. District Judge, Banda. The Apex Court has held that while determining the ceiling limit, the authorities has to take into consideration the fact that if during the consolidation the area is reduced, the reduced area has to be taken into consideration by the ceiling authorities,. Learned Counsel for the petitioner has also placed reliance upon a judgement in Civil Appeal No. 1706 of 1989, Shiv Ram and Ors. v. State of U.P. and Ors. decided on 20.3.1998. In support of the aforesaid contention learned Counsel for the petitioner submits that the Apex Court has confirmed the view taken in the Thankur Deen's case. In view of the aforesaid fact, learned Counsel for the petitioner submits that the judgement and order passed by the Appellate Authority is liable to be quashed.

In view of aforesaid fact, learned Counsel for petitioner submits that orders passed by respondents are liable to be quashed.

11. On the other hand learned Standing Counsel submits that as Appellate Authority has found that according to Consolidation Act, it has been found that no sale deed has been executed and cannot be executed during the consolidation in that period, as such, benefit has not been given to petitioner. It has further been submitted by learned Standing Counsel that Appellate Authority has accepted that Plot Nos. 168 and 170 are grove land and benefit of that has been given but prescribed authority ultimately found that petitioner is entitled for only part of said land, as such, benefit has not been given to petitioner.

12. I have considered the submissions made on behalf of parties and have perused the record.

13. From the record it is clear that in the objection filed by petitioner, petitioner has filed various documents showing therein that a sale deed has already been executed by father of petitioner in the year 1959 but authorities below has not taken into consideration the aforesaid fact. From the provision of Ceiling Act it is clear that if sale deed has been executed prior to 24.1.1971, ceiling authority has got no jurisdiction to held that tenure holder is not entitled for benefit. Petitioner has filed a registered sale deed as well as revenue record showing therein that sale deed has been executed in 1959 by father of petitioner. Name of purchaser has been mutated and he was possession in the land in dispute. As regards finding recorded by court below that during period of execution of sale deed, there was consolidation in village, as such, without permission of settlement officer (Consolidation), sale deed cannot be executed, as such, petitioner is not entitled for benefit of aforesaid land mentioned in sale deed. The state-respondent has not filed any document therein showing that during that period when sale deed was executed by father of petitioner, village in question was under consolidation, though petitioner has submitted a document showing therein that after, execution of sale deed, village in question was notified u/s 4 of Consolidation of Holding Act and plot number has been changed but authorities below has not taken into consideration the said fact. Further authorities have committed a manifest error in holding that no evidence was filed to show that some of the plots were grove. Prescribed Authority has not recorded a finding to this effect,

14. The Supreme Court in Ram Adhar's case (Supra) has held that no inquiry regarding validity of the sale deed u/s 5(6) of the Act could be made with regard to the genuineness of sale deed executed prior to 24.1.1971. The Supreme Court has further held that court below 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.

15. In such situation, Court holds that authorities below cannot consider the genuineness of sale deed executed in the year 1959, as such, land transferred vide sale deed by father of petitioner is liable to be excluded from holding of petitioner.

16. In Shiv Sahai v. Har Nandan reported in 1963 RD, 119, held that mere fact that a certain portion of 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 purposes of cultivation, the said land would be treated as a grove land.

In Mahendra Singh v. State of U.P. and Ors. reported in 1978 AWC 205, this Court has 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 land before 24.1.1971.

17. In view of the aforesaid fact, this Court is of the opinion that impugned orders dated 24.4.1981 and 29.11.1997 (Annexures 2 and 5 to the writ petition) passed by authorities below cannot be sustained and are hereby quashed. The writ petition is allowed.

18. The matter is remitted back to the prescribed authority to consider the matter as fresh in the light of observations made above. As the matter is very old, it may be decided by prescribed authority, if possible, within a period of six months from the date of production of certified copy of this order.