
(1976) 07 AHC CK 0019
In the Allahabad High Court
Case No : Writ Petition No. 1704 of 1976

Puran Kaur and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-07-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 31A
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 11, 12, 12(1), 12A, 13
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 153

Citation : (1977) AWC 91

Hon'ble Judges : T.S. Misra, J; Hari Swarup, J

Bench : Division Bench

Advocate : Hargur Charan, for the Appellant;

Final Decision : Dismissed

Judgement

T.S. Misra, J.—Harnam Singh was the original tenure holder of plots Nos. 33-M and 73-M situated in village Ram Nagar, Pargana Palia, Tahsil Nighason, district Lakhimpur Kheri. On 14-6-71 Harnam Singh executed two sale deeds, one in favour of Milkha Singh Petitioner No. 2 and the other in favour of Labh Singh his own son. Again on 12-9-74 he executed another sale deed in favour of Pooran Kaur, Petitioner No. 1. All these three sale deeds were thus executed after 24-1-71. It appears that certain land of Harnam Singh has been declared surplus under the provisions of U.P. Imposition of Ceiling on Land Holdings Act, 1960. It further appears that substantial part of the land which was transferred by Harnam Singh by virtue of the three sale deeds has been declared surplus by the Prescribed Authority.

2. The Petitioners feeling aggrieved by this order have impugned the same by this writ petition under Article 226 of the Constitution, seeking a writ in the nature of certiorari for quashing the order dated 31-1-76 (Annexure 6) and the appellate order dated 30-5-75 (Annexure 7) on grounds inter alia that there is

violation of the second proviso of Article 31A of the Constitution inasmuch as the land in personal cultivation of the Petitioners is being taken away by the opposite party without payment of any compensation and that the order of the Prescribed Authority adversely affected their rights.

3. We heard the learned Government Advocate before any notice was issued to the opposite parties 1 to 4.

4. The learned Advocate General submitted that neither the tenure-holder, nor any person claiming under him shall be entitled to file a suit in the revenue court, or maintain a petition under Article 226 of the Constitution impugning the order declaring certain land surplus. The contention was that the entire Act including the Amending Act has been placed under the IX Schedule of the Constitution of India and, therefore, it is no more open to the Petitioner to contend that their land is being acquired under an invalid law; hence it was urged that the ground taken by the Petitioners that their land was being acquired in violation of the provisions of Article 31A of the Constitution had no substance or validity.

5. We have heard the learned Counsel for the Petitioners at great length. He submitted that as the Petitioners were bonafide transferees for value they had acquired a right in the land and they had also obtained possession thereof, hence their land could neither be taken into account for determining the ceiling area of Harnam Singh, nor could it be acquired without payment of any compensation. Further, it was submitted on behalf of the Petitioners that in view of the provisions of Section 7 and Section 39 of the U.P. Imposition of Ceiling on Land Holdings Act, no suit could be maintained on behalf of the Petitioners in the civil or revenue court as the rights of the Petitioners had been greatly affected, they were entitled to maintain the petition under Article 226 of the Constitution.

6. In order to appreciate the rival contentions it would be appropriate to refer here to certain provisions of the Act. Section 5 of the Act provides 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 the aggregate throughout Uttar Pradesh, any land in excess of the ceiling area applicable to him. Sub-section (6) of Section 5 stipulates that in determining the ceiling area applicable to a tenure holder, any transfer of land made after the twentyfourth 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 the sub-section shall apply to 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. Explanation II to Sub-section (6) provides that the burden of proving that a case falls within Clause (b) of the proviso shall rest with the party claiming its benefit. Section 12-A provides that in determining the surplus land u/s 11 or Section 12, the Prescribed Authority shall as far as

possible, accept the choice indicated by the tenure-holder to the plot or plots which he and other members of his family, if any, would like to retain as part of the ceiling area applicable to him or them under the provisions of the Act, whether indicated by him in his statement u/s 9 or in any subsequent proceedings. Clause (d) of the proviso to Section 12-A stipulates:

(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 compensation 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.

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Sub-section (8) of Section 5 of the Act as inserted by the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act (XX of 1976) provides that:

(8) Notwithstanding anything contained in Sub-section (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.

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 12 or as the case may be, u/s 13.

Thus, for the purpose of determining the ceiling area of a tenure-holder any transfer of land made by him after the 24th January, 1971 which but for the transfer could have been declared surplus land is to be ignored and not to be taken into account. However, if a transfer is proved to the satisfaction of the Prescribed Authority to be in good faith and for adequate consideration, that transfer may not be ignored and the surplus land determined shall, as far as possible be land other than the land which is the subject matter of such transfer. However, if the surplus land includes any land which is the subject matter of such transfer, the transfer 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. Similarly, if during the pendency of proceedings for determination of surplus land any transfer of land is made by a tenure-holder in contravention of Sub-section (7) of Section 5 of the Act it shall be void. The remedy provided to the transferee of such land transferred after 24-1-1971 is to claim refund of the proportionate amount of consideration advanced by him to the transferor. A transferee claiming title to the land included in the surplus land under a void transfer will, therefore, have no right to the said land, hence it would not be open to him to contend that the land which he claimed to have acquired under a void transfer should not have been taken into account while determining the ceiling area of the transferor and should not, therefore, have been included in the surplus land. The declaration of the surplus land having been made under a valid law cannot be challenged by such a transferee who has no title to such land inasmuch as the transfer in his favour so far as that land is concerned is and has always been void in view of Clause (d) to the proviso to Section 12-A of the Act. By declaring the surplus land of the original tenure-holder the Prescribed Authority did not interfere with any right of the Petitioner which could be secured by filing a petition under Article 226 of the Constitution inasmuch as the transfer of the land in question was void. Such a transferee is, however, not left without a remedy. He may claim refund of the proportionate amount of consideration, if any, advanced by him to the transferor and such amount shall be a charge on the amount payable to the transferor u/s 17 of the Act and also on any land retained by the transferor within the ceiling area.

7. Further the land included in the surplus land of the transferor being not validly held by the transferee will not fall within the mischief of the second proviso to Article 31A of the Constitution inasmuch as the transfer on the basis of which the transferee claims title to the land is void under Clause (d) of the proviso to Section 12-A of the Act. Such a transferee cannot complain that his land had been taken away without payment of any compensation.

8. In the case on hand the three transfers were admittedly made by Harnam Singh, the original tenure-holder in favour of the Petitioner after 24-1-71. The ceiling area of Harnam Singh has been determined by the Prescribed Authority. The surplus land has also been declared. This surplus land included the land which is the subject of the said transfers made by Harnam Singh in favour of the Petitioners. Hence, the transfers, in so far as they relate to the land included in the surplus land are void. The Petitioners have, therefore, no right in the surplus land declared by the Prescribed Authority. The declaration of surplus land by the Prescribed Authority cannot therefore, be got quashed by the Petitioners who claim title to the land under a void transactions by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution. Their petition under Article 226 of the Constitution is, therefore, not sustainable.

9. There is no merit in this petition. It is accordingly rejected.