

(1981) 02 AHC CK 0052

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1528 of 1979

Raj Kumari Gopika

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 28-02-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 5(6)

Citation : (1981) 02 AHC CK 0052

Hon'ble Judges : R.M.Sahai, J

Final Decision : Allowed

Judgement

R. M. Sahai, J.

This petition raises an important question of jurisdiction of prescribed authority to consider transfer made by a person to whom provisions of U. P. Imposition of Ceiling on Land Holdings Act (here referred to as Act) do not apply while determining surplus area of another. Facts in brief giving rise to it are that notice under Section 10 (2) of the Act was issued to petitioner No. 2 which was contested and one of the objections was that his father had executed registered gift on 2261972 in favour of his sister, petitioner No. 1, thsrefore, tho land covered by it could not be clubbed in his holding. On 2111977 the objection was rejected. In appeal the order was set aside and of its order dated 2631977 the appellate authority directed the prescribed authority to decide the objection afresh. While the matter was pending on remand petitioner No. 1 also appeared and filed an objection claiming to be tenureholder of the land gifted to her. She was supported by petitioner No. 2. The objection was not decided as prescribed authority felt that he was bound by directions of appellate authority and could not go beyond it. In appeal it was held that transfer made after 2411971 is liable to be ignored under subsection (g) of Section 5 of the Act whether it was made by tenureholder or any other person. The appellate authority further found that the gift was not for adequate consideration, therefore, neither petitioner No. 2 nor petitioner No. 1 were entitled to any benefit.

In *Fateh Mohd. v. State*(1), it has been held that in a gift no monetary consideration is involved therefore it cannot be subject matter of consideration under proviso to Section 5 (6) of the Act.

The primary question, however, is whether transfer by a third person could also be ignored under this subsection. On facts found it is established that Raghuraj Singh, father of petitioner, was a tenureholder of 3 Bighas and odd only. To him provisions of Ceiling Act, therefore, did not apply. He was a "bhumidhar" and under provisions of Z. A. Act he was entitled to transfer the land in dispute by gift, will or sale. As gift was made by him it was valid and the appellate authority rightly recorded a finding in favour of the petitioner. The effect of execution of the gift deed was that Raghuraj Singh ceased to be a tenureholder since 1972. This land, therefore, could not be subjectmatter of devolution or succession on his death in 1975. In law it could not be inherited by petitioner No. 2.

The view taken by appellate authority on applicability of subsection to transfers made by third person does not appear to be correct. The subsection reads as under.

"(6) In determining the ceiling area applicable to a tenureholder, 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 taken into account.

Provided that nothing in this subsection shall apply to

(a) a transfer in favour of any person (including Government) referred to in subsection (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 the immediate or deferred benefit of the tenureholders or other members of his family.

Explanation 1. For the purposes of this subsection the expression "transfer of land made after the twenty fourth day of January, 1971 includes

(a) a declaration of a person as a cotenureholder made after the twentyfourth day of January, 1971 in a suit or proceedings irrespective of whether such suit or proceeding was pending on, or was instituted after the twenty fourth day of January 1971,

(b) any admission, acknowledgment, relinquishment or declaration in favour of a person to the like effect, made in anyother deed or instrument or in any other manner.

Explanation No. 2 The burden of proving that a case falls within clause (b) of the proviso shall rest with the party claiming its benefit."

It is true that the expression "any transfer of land made after 24th day of

January, 1971" does not refer the transfer made by the tenureholder yet from the context in which it has been used and a reading of the subsection indicates that it is the transfer made by tenureholder which is liable to be ignored under this provision while determining his ceiling area. In subsection I no tenureholder is entitled to hold land in excess of ceiling area applicable to him. The two explanations appended to Section 5 relate to the tenureholder mentioned in subsection I. From these it is clear that the transfer referred to in subsection (6) has to be read along with the word tenureholder. In other words transfer made by tenureholder only after 24th day of January 1971 could be ignored. The expression which "but for the transfer would have been declared surplus" cannot be read in isolation. It should be read as part of the entire subsection if transfer made by a third person and cannot be a subjectmatter of consideration in subsection (6). The appellate authority, therefore, committed an error in recording a finding that the gift made by father was to be ignored while determining ceiling area of the son.

In the result, this petition succeeds and is allowed. The order passed by appellate authority is quashed. The prescribed authority is directed to exclude plots Nos. 506, 1012, 279/6, 1012, 1059 and 412 area 3 10 15 which were gifted by Raghuraj Singh in favour of petitioner in June, 1972. The petitioner shall be entitled to costs.