

(1987) 03 AHC CK 0023

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 410 of 1980

Rajendra Kumar

APPELLANT

Vs

Dy. Director of Consolidation A.D.M. (F) and Another

RESPONDENT

Date of Decision : 09-03-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 3(1), 3(2), 4, 5, 5C

Citation : (1987) 1 AWC 766 : (1989) RD 119

Hon'ble Judges : K.J. Shetty, C.J;V.K. Khanna, J

Bench : Division Bench

Advocate : A.D. Prabhakar and N.C. Rajvanshi, for the Appellant; G.N. Verma and S.C., for the Respondent

Judgement

K.J. Shetty, C.J.—The learned Single Judges (Mr. K.N Misra, J.) stating that the decision of this Court in Sita Ram v. Deputy Director of Consolidation 1978 U.P. Revenue judgment 77 requires consideration, has referred the following question of law for decision:

Whether in respect of grove-land, which is part of holding, a tenure-holder is required to obtain prior permission from the Settlement Officer (Consolidation) u/s 5-C (ii) of U.P. Consolidation of Holdings Act before making its transfer by way of sale, gift or exchange? "The matter arises in this way:

In the village Abdullaphur, Pargana, Tahsil and District Meerut there is a grove-land bearing Khasra No. 304 belonging to Mohd. Hasnain Respondent No. 2. Out of that, an extent of 1 bigha 9 biswas was agreed to be sold by him in favour of Surendra Kumar Bansal. A registered agreement for the purpose was entered into between the parties on February 1, 1971. The consideration agreed to be payable was Rs. 7000/- out of which Rs. 3000/- was paid as earnest money and the balance payable at the time of execution of the sale deed. Under the agreement, Surendra Kumar had a right to nominate a person of his choice in whose favour the sale could be executed. The sale deed was required to be

executed within a period of one year. But on one pretext or the other Mohd. Hasnain avoided to execute the sale deed. On March 11, 1972 Surendra Kumar sent a notice calling upon Mohd. Hasnain to execute the sale deed failing which he threatened to take legal action. Then there followed some correspondence between the parties. Finally, Mohd. Hasnain agreed to execute the sale deed. It was executed on May 5, 1972 in favour of Rajendra Kumar who is the Petitioner before us.

At that time the consolidation proceedings were going on in the village. Rajendra Kumar wanted to have the mutation of the grove in his favour. For that purpose, he moved the Assistant Consolidation Officer but Mohd. Hasnain objected on the ground that the sale deed executed by him was illegal. Since the matter became contested, it was transmitted to the Consolidation Officer who upon considering the objections of Mohd. Hasnain found no substance in it. He held that the sale deed was valid and ordered that the name of Rajendra Kumar be entered in place of Mohd. Hasnain. Against the said order there was an appeal before the Settlement Officer (Consolidation) Meerut. The appeal was dismissed. There was a further revision by Mohd. Hasnain before the Deputy Director of Consolidation. The revision was allowed by order dated March 15, 1980. The Deputy Director of Consolidation held that since the grove is included in the definition of the term "holding", prior permission for alienation was necessary as required u/s 5-C(ii) of the U.P. Consolidation of Holdings Act, 1963 ("Act").

2. Challenging that order, Petitioner has moved this Court Under Article 226 of the Constitution.

3. Let us first examine the ratio of the decision in *Sita Ram v. Deputy Director of Consolidation* 1978 UP Revenue judgment 77. There R.M. Sahai, J. observed as follows:

3. Section 5(c) requires a tenure-holder affecting a transfer of holding to obtain permission of the Settlement Officer Consolidation. The question, therefore, is whether this section contemplates obtaining of permission even where there is a transfer of a grove land. Sub-clause (ii) of Section 5(c) provides that no transfer by way of sale deed, gift or exchange can be made of a holding. "Holding" has been defined in Section 4(c) of the Act. According to the definition a land held by a tenure-holder is a holding. The definition of "land" as contained in Sub-section (3) of Act is very wide and the land used for horticulture is also covered in it. A grove is, therefore, covered in the definition of "holding". But by virtue of explanation to Sub-section (2) of Section 3 grove is excluded for purpose of re-arrangement of holding. The restriction, therefore, imposed by Section 5 shall not apply to a grove.

4. Learned Judge has held that the grove falls within the term "holding" as defined u/s 4(c) of the Act. However, the permission required u/s 5(c)(ii) is not necessary for its transfer, since under Sub-section (2) of Section 3, grove is excluded for purpose of re-arrangement of holding.

Section 5-C (ii) provides:

5(c)--Notwithstanding anything contained in the UP ZA and LR Act, 1950, no tenure-holder, except with the permission in writing of the Settlement Officer, Consolidation, previously obtained shall--

(i)* * * *

(ii) transfer by way of sale, gift or exchange any part of his holding in the consolidation area.

5. The view taken by learned Judge may not be justified on literal contraction of the Statute. But one must see the purpose behind the statute and the object of imposing a restraint on alienation of holding. The strict constructions stood by the golden rule" laid down in *Grey v. Pearson* (1857) 6 HLC 61. Lord Chancellor said there that Courts should "adhere as rigidly as possible to the express words that are found and to give those words their natural and ordinary meaning". This construction dominated in the 19th century. But today, the art of interpretation has been changed to what is termed as "Schematic" method of interpretation. The Courts now look to the purpose, intent, scheme or design of the legislation and then if necessary fill in the gaps. If the purpose and scheme of the Act is borne in mind, the view taken in *Sita Ram*'s case was perfectly justified.

6. The restriction imposed by Section 5-C(ii) requiring prior permission in writing of Settlement Officer Consolidation for alienation of any part of the holding was intended to facilitate re-arrangement of holdings followed by allotment of chaks. It would certainly complicate the matter and delay the rearrangement of holding if during the process of consolidation, the holder transfers any part of the holding. But grove is not at all to be counted for the purpose of consolidation. That being so, there appears to be no apparent reason justifying any constraint on the alienation of a grove.

7. Apart from that, we see no compelling reason to take a different view at this length of time. The decision in *Sita Ram*'s case was rendered as far back on November 18, 1972. Almost fifteen years have gone by several alienations of grove must have taken place, without prior permission of the Settlement Officer Consolidation. The same grove must have changed hands several times. The parties might have exercised or arranged their rights on the view taken by this Court. A different view if taken at this stage would certainly introduce an element of confusion in the rights of parties. Not only that, it may set at naught all those concluded transactions by unsettling titles. In our opinion the doctrine of stare decisis can aptly be applied in a case like this.

8. In almost similar circumstances, the Supreme Court observed in *Raj Narain Pandey and Others Vs. Sant Prasad Tewari and Others*, as follows (at para 10):

In the matter of the interpretation of a local statute, the view taken by the High Court over a number of years should normally be adhered to and not disturbed. A different view would not only introduce an element of uncertainty and

confusion, it would also have the effect of unsettling transactions which might have been entered into on the faith of those decisions. The doctrine of stare du chess can be aptly invoked in such a situation. As observed by Lord Evershed M.R. in the case of *Brownsea Haven Properties v. Poole Corporation* there is well-established authority for the view that a decision of long-standing on the basis of which many persons will in the course of time have arranged (sic) affair should not lightly be disturbed by a superior court not strictly bound itself by the decision.

9. Mr. G.N. Verma, learned Counsel for the Respondent, however, urged that the principle of stare decisis is not applicable where the Statute is clear and a wrong decision of the Court should not prevail over the clear meaning of the Statute. We are unable to agree with the learned Counsel. In the first place, the decision in *Sita Ram's* case was not wrong. It has taken into consideration the object of the Act and not the literal or strict construction.

10. Apart from that, we are not impressed with the conduct of Mohammad Hasnain in this case. He has entered into an agreement to sell the grove land in question on February 1, 1971 by receiving Rs. 3000/- as earnest money. On May 5, 1972 he executed the sale deed in favour of the Petitioner by accepting the balance of consideration. But then, he started disputing the validity of the sale deed before the Consolidation Officer. Party who has executed the sale deed after receiving full consideration should not be allowed to have an unjust enrichment. He was at any rate bound by the terms of the sale deed to which he was a party.

11. In the circumstances and for the reasons stated above, we answer the question in the negative stating that a tenure-holder is not required to obtain prior permission from the Settlement Officer Consolidation u/s 5-C (ii) of the Act before making transfer of a grove land by way of sale, gift or exchange.

12. The records shall now go back to the appropriate Bench for disposal of the writ petition in accordance with law.