
(1978) 11 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1662 of 1977

Satnam Singh and others

APPELLANT

Vs

State of Uttar Pradesh and other

RESPONDENT

Date of Decision : 24-11-1978

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (1978) 11 AHC CK 0029

Hon'ble Judges : M.P.Mehrotra, J

Final Decision : Allowed

Judgement

M.P. Mehrotra, J.

This petition arises out of the proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960.

The petitioners claim to be transferees. It seems that the tenureholder was Shri Jitendra Singh Agrawal and the notice was issued to him under section 10 (2) and he filed objections. The objections were decided by the Prescribed Authority. Thereafter, an appeal was filed in the appellate court by Shri Jitendra Prasad Agrawal and by three others. Learned counsel for the petitioner States that the petitioners nos. 1, 2 and 3 were the three others who had joined Shri Jitendra Pd. Agrawal in filing the said appeal. The appeal was partly Allowed and now the petitioners have come up in the instant petition. Counsel has stated before me that the petitioners nos. 4, 5, 6, 8 and 9 were the respondents in the aforesaid appeal which was decided by the appellate court. It seems that Shri Jitendra Prasad executed certain saledeeds on 25th March, 1971, in favour of certain person. Subsequently, on 20th March, 1974, the petitioners nos. 1, 2, 3 purchased plot no. 320, 325/3. The petitioners nos. 4 to 9 purchased plots nos. 110 and 111. The date of the sale deed is not given but the learned counsel states that it was also on the same date, namely 20th March, 1974. The petitioners nos. 10 to 12 purchased certain plots but again the date of the

saled deed is not given. Learned counsel's contention is that the Prescribed Authority and the appellate court below were not justified in ignoring the saled deed which Shri Jitendra Prasad executed on 25th March, 1971. His further contention is that the petitioners having acquired their plots some time in 1974 entered into possession and their names were recorded in the revenue records. In such circumstances counsel contends that the sale deeds should not have been ignored. He has placed reliance on three reported decisions of this Court. In Lal Krishna Kumar Pal v. Civil Judge 1978 R.D. 285. B. N. Sapru, J. laid down that it is not obligatory that in the saled deed the circumstances which necessitate the transaction must be mentioned. The appellate authority in the said case had held that the petitioner had not disclosed the circumstances in which the saled deed had to be executed. It seems to me that the judgment of the learned Judge was given in the particular facts of the case. In Atibal Singh v. State of U. P. 1978 R.D. 228, the same learned Judge had to examine Explanation II to section 5. It seems to me that this case has no relevance because we have to construe and interpret section 5 (6) in deciding about the saled deeds executed after 24th January, 1971. In Hari Om v. Addl. Civil Judge 1978 R.D. 184. H.N. Seth, J. laid down as follows :

"Accordingly, the only burden placed by the section on a tenureholder is to prove to the satisfaction of the Prescribed Authority that the transfer made by him after January 24, 1971 was a transfer made under an irrecoverable instrument, in good faith and for adequate consideration. It casts no additional burden on him to disprove that the transfer in question was either benami or was for the benefit of the tenureholder or any other members of his family. Of course, if there is material before the Prescribed Authority either in the form of direct or circumstantial evidence to show that transfer, even though it qualifies an exemption from the general rule, was in fact a benami transaction or that it had been made for the immediate or deferred benefit of the tenureholder or other members of his family, it certainly can deny the benefit of clause (b) to the tenure holder."

So far as this case is concerned, it clearly lays down that normally the transactions taking place after 24th January, 1971, shall be ignored in view of the preemptory language used in section 5 (6). It is for the party concerned to satisfy the Prescribed Authority that the transaction taking place after 24th January, 1971, is a bona fide one and for adequate consideration. A heavy burden has been cast on the parties to the transaction to satisfy the Prescribed Authority about good faith and adequacy of consideration. Now, in the instant case admittedly the transfers were made by the tenureholder after 24th January, 1971. The Prescribed Authority dealt with the matter exhaustively and it has been shown that the transactions which were put through on one day were made without any genuine reason but with a design to evade the provisions of the ceiling law. Learned counsel stated before me that in income tax and wealth tax returns and assessment orders the recorded tenureholder disclosed the sale consideration received by him and he urged that it will be a circumstance which

will prevent the Prescribed Authority from coming to the conclusion that the real motivation of the transaction was to escape the ceiling law. In my view, even if consideration passed between the parties, possession is parted with by the transferor in favour of the transferee and subsequent mutation etc. is effected, still, the presence of the word "bona fide" in section 5 (6) enables a Prescribed Authority to treat a transaction as not bona fide on the ground that it was meant to escape the ceiling law. In many pronouncements of mine I have placed the said interpretation on section 5(6) and in the instant case it seems to me that it cannot be said that the Prescribed Authority or the appellate court below decided the controversy on any irrelevant consideration. But the vital point is that it is the satisfaction of the Prescribed Authority which has been made incumbent for the acceptance of a document by the provisions contained in section 5 (6). Such satisfaction it is true, cannot be merely subjective, but, still, the legislature has purposely emphasised that the Prescribed Authority must be satisfied before accepting the document in view of the fact that the general policy of the legislature is that transactions taking place after 24th January, 1971, shall be disregarded.

Learned counsel contended that no notice was given to the petitioners even though their names had been recorded. It should be seen that the names were recorded long after 8th June, 1973, which is the material date under section 5. Therefore, it was not necessary that notices should have been sent to such petitioners, further, this objection is nowhere in the judgment of the appellate court. Accordingly, it is overruled.

Counsel next drew my attention to section 12A. It seems to me that section 12A dealing with choice does not come into the picture at the stage of deciding about a document under section 5 (6). When it comes to the exercise of choice, undoubtedly the Prescribed Authority has to proceed in the light of the provisions contained in section 12A. Accordingly, when I am deciding about the validity of the sale deed it is not necessary to refer to section 12A.

In this view of the matter, the petition fails and is dismissed but there will be no order as to costs.