
(2011) 09 UK CK 0028

In the Uttarakhand High Court

Case No : Writ Petition No. 3 of 2011 (M/B)

Shri Sarvesh Sharma and Another

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 14, 31A, 370, 371, 48
Uttar Pradesh Co-operative Societies Act, 1965 — Section 77
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 129, 154, 154(3), 154(4)(1)(a), 154(4)(2)(e)

Citation : (2012) 2 UC 1157

Hon'ble Judges : Barin Ghosh, C.J; Umesh Chandra Dhyani, J

Bench : Division Bench

Advocate : V.K. Kohli and Mr. H.M. Bhatia, for the Appellant; S.N. Babulkar, Advocate General and Mr. K.P. Upadhyay, Addl. Chief Standing Counsel, for the Respondent

Judgement

Barin Ghosh, C.J.—In the year 1950, Legislature of the State of Uttar Pradesh enacted the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950. This Act is one of those Acts, which has been included in the Ninth Schedule of the Constitution of India. On 9th November, 2000, bifurcating a part of the State of Uttar Pradesh, State of Uttarakhand was created by and under the Uttar Pradesh Reorganisation Act, 2000. In terms of Section 86 of the 2000 Act, provisions of Part II thereof shall not be deemed to have affected any change in the territories to which Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (U.P. Act 1 of 1961) and any other law enforced immediately before the appointed day, extends or applies, and territorial references in any such law to the State of Uttar Pradesh shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within the existing State of Uttar Pradesh before the appointed day. Thus, the 1950 Act continued and still continues to apply to the territory of the State of Uttar Pradesh which became the territory of the State of Uttarakhand. In terms of Section 87 of the

2000 Act, for the purpose of facilitating the application in relation to the State of Uttar Pradesh or Uttarakhand of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon, every such law shall have effect subject to the adaptations and modifications so made, until altered, repealed or amended by a competent Legislature or other competent authority. Thus, Section 87 of the 2000 Act authorized the Legislature of the State of Uttarakhand to adopt and to modify any law made before 9th November, 2000 by the State of Uttar Pradesh applicable to the State of Uttarakhand within two years therefrom and while doing so, to repeal and to amend such law. In 2001, the State of Uttarakhand adopted the 1950 Act without any modification. Section 154 of the adopted Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, reads as follows:

154. Restriction on transfer by a bhumidhar:--

(1) Save as provided in sub-section (2), no bhumidhar shall have the right to transfer by sale or gift, any land other than tea garden to any person where the transferee shall, as a result of such sale or gift, become entitled to land which together with land, if any, held by his family will in the aggregate, exceed 5.0586 hectares (12.50 acres) in (Uttar Pradesh) Uttarakhand.

[Explanation - For the removal of doubt it is hereby declared that in this sub-section the expression "person" shall include and be deemed to have included on June 15, 1976 a "Co-operative Society":

Provided that where the transferee is a Co-operative Society, the land held by it having been pooled by its members under Clause (a) of sub-section (1) of Section 77 of the Uttar Pradesh Co-operative Societies Act, 1965 shall not be taken into account in computing the 5.0586 hectares (12.50 acres) land held by it.

(2) Subject to the provisions of any other law relating to the land tenures for the time being in force, the State Government may, by general or special order, authorize transfer in excess of the limit prescribed in sub-section (1) if it is of the opinion that such transfer is in favour of a registered co-operative society or an institution established for a charitable purpose, which does not have land sufficient for its need or that the transfer is in the interest of general public.

Explanation - For the purposes of this section, the expression "family" shall mean the transferee, his or her wife or husband (as the case may be) and minor children and where the transferee is a minor also his or her parents.

On 12th September, 2003, the Uttaranchal (The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950) (Adaptation and Modification Order, 2001) (Amendment) Ordinance, 2003 (Uttaranchal Ordinance No. - 06 of 2003) was promulgated. By the said ordinance, sub-Sections (3), (4) and (5) were added to

Section 154 of the Act and at the same time, amongst others, Section 129-B was added to the said Act. The objects and reasons for promulgation of the said ordinance was as follows:

Whereas, after the formation of the State of Uttaranchal, it was observed that a large number of transactions had been taking place whereas the limited agricultural land of the State was being purchased and sold indiscriminately for the purpose of profiteering, by individuals and vested interest groups, ostensibly for non-agricultural use, and whereas this created a situation where the agricultural community was being alienated from their land without being adequately compensated and whereas, the State having extensive international boundaries has the risk of providing settlements to external agencies or individuals with criminal, terrorist and anti-national links, it is felt that a legislation may be brought about to prevent the incidence of such activities, so that there is economic stability and a congenial environment for development.

2. On 15th January, 2004, after the Uttaranchal (The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950) (Adaptation & Modification Order, 2001) (Amendment) Act, 2003 was legislated by the Legislature of the State of Uttarakhand, the same was published in the official gazette. By the said Act, the aforementioned ordinance was repealed. However, no object or reason was furnished in the said Act. By and under the said Act, Section 129-B and sub-sections (3), (4) and (5) to Section 154, as were inserted by the ordinance in the said Act, were re-inserted. Those are as follows:

129-B. There shall be for the purposes of Section 154(4)(1)(a), 154(4)(2)(e), 154(4)(2)(f) and 154(4)(3) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the Principal Act) following class of Bhumidhar, i.e., to say - (1) Bhumidhar of special category.

Section 154:-

(3) A bhumidhar with transferable rights may sell his land to any of the categories of tenure holders in the State of Uttaranchal as mentioned in section 129 or such owner of any immovable property in Uttaranchal who has acquired it on or before 12-09-2003 or to any member of the "family", which means husband, his wife and their children, including step or adopted children, and includes parents, grand parents, brothers and unmarried, widowed, separated and divorced sisters of such tenure holder of the owner, as the case may be.

(4)(1)(a) Subject to other restrictions and save as otherwise provided in this Act, any person for his own or on behalf of his family (which means husband, his wife and minor children, unmarried sons, unmarried daughters and dependent parents) even though he is not a tenure holder u/s 129 or the owner of any immovable property in Uttarakhand, may purchase land not exceeding 250 sq. mts. for residential purpose in his lifetime without the permission;

(b) A registered agreement to sell the land executed on or before 12-09-2003

shall be valid if the sale deed on the basis of such agreement is executed on or before 31-03-2004, irrespective of any time limit provided in the agreement, unless extended by the collector of the district for reasons to be recorded in writing.

(2) Nothing in sub-section 154(3) shall be deemed to prohibit the transfer of land by any person in favour of:-

(a) The State Government or Central Government or a Government company, as defined in section 617 of the Companies Act, 1956 or a Statutory Body or Corporation or Board established by or under a Statute and owned and controlled by the State or Central Government;

(b) A person who has become a non-tenure on account of:-

(i) Acquisition of his land for any public purpose under the Land Acquisition Act, 1894; or

(ii) Vestment of his land in the tenants under this Act;

(c) A non-tenure holder who purchases or intends to purchase land for the construction of a house or shop or purchases a built-up house or shop from the State Housing Board or from a Development Authority or from any other Statutory Corporation set up under any State or Central enactment;

(d) [***]

(e) A person or company according to Industrial Policy of Uttaranchal in (i) Integrated Industrial Development Centre (ii) Industrial Area (iii) Industrial Estates;

(f) A person, society or trust for religious purposes;

(g) A landless labourer of the Uttaranchal; or

(h) A landless person belonging to a Scheduled Caste or Scheduled Tribe of the Uttaranchal; or

(i) A village artisan of the Uttaranchal; or

(j) A landless person carrying on an allied pursuit of the Uttaranchal.

(3)(a) Subject to restrictions contained in section 154, a person, society or corporate body may purchase land for the following purposes, other than those of Agriculture and Horticulture purposes, with the prior sanction of the Government in the State of Uttaranchal as may be prescribed:-

(i) Medical or health purposes, if it conforms to the Health and Population Policy of Uttaranchal;

(ii) Hotel, Lodge, Guest House, Restaurant, Bar, Spa, way side amenities or resort, if it conforms to the Tourism Policy of the State;

(iii) Educational purposes, on the recommendations of the Department of Education;

(iv) Cultural purposes; and

(v) For industrial purposes in areas other than those mentioned in section 154(4)(2)(e) or for other purposes.

(b) A person, society or company may purchase land with prior sanction of the Collector of the district for Agricultural or Horticultural purposes, as may be prescribed, on furnishing an affidavit to the effect that such land will be used for Agricultural or Horticultural purposes and for uses incidental to and connected with Agriculture or Horticulture only. If the land use of such land as mentioned in the Affidavit is changed, the said transfer shall be void and consequences of section 167 shall follow:

Provided that a person who is a non-tenure holder but purchases land either u/s 154(4)(1)(a), 154(4)(2)(e) and 154(4)(2)(f) or under the sanction granted u/s 154(4)(3) shall, irrespective of such purchase of land, continue to be a bhumidhar of special category as provided u/s 129-B and such bhumidhar shall be eligible to purchase land in future only with the permission, of the State Government or collector of the district as the case may be.

Provided further that such bhumidhar may mortgage or hypothecate such land for obtaining loan from banks and financial institutions or deriving any other benefit accruing from his bhumidhari rights u/s 129.

Provided further that a non-tenure holder who has purchased land u/s 154(4)(2)(e), 154(4)(2)(f) and who has purchased land u/s 154(4)(3) under the sanction of Government or Collector, as the case may be, shall put land to such use for which the sanction has been granted within a period of two years or further such period as may be allowed by the State Government for reasons to be recorded in writing, to be counted from the date of registration of sale deed and if he fails to do so or diverts the use of the land for which it was sanctioned or transfers the land by way of sale, gift or otherwise except for the purpose for which it was purchased, such transfer shall be void for the purpose of this Act, and consequences of section 167 shall follow -

(5) Where, -

(a) The Registrar or Sub-Registrar appointed under the Indian Registration Act, 1908 before whom any document pertaining to transfer of land is presented for registration comes to know or has reason to believe that the transfer of land is in contravention of section 154(3) or 154(4)(3); or

(b) A Revenue Officer either on an application submitted to him or on receipt of any information from any source comes to know or has reason to believe that the land has been transferred in contravention of the provisions of section 152-A, 154(3), 154(4)(2)(e), 154(4)(2)(f) or 154(4)(3), such Sub-Registrar, Registrar or

Revenue Officer, as the case may be, shall make a reference to the Collector of the district, who shall determine whether the transfer is in contravention of the provision of this Act in the manner prescribed and consequences of section 167 shall follow in respect of every transfer which is void;

(c)(i) The State Government may, either on the report of a Revenue Officer or on an application by any person or of its own motion, call for the records of any proceedings or case for the purpose of satisfying itself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as it may think fit; and

(ii) No order shall be passed under this sub-section which adversely affects any person unless such person has been given a reasonable opportunity of being heard.

3. In the present writ petition, petitioners are challenging the classification thus made by the said insertions. It is their contention that by the said insertions, a new class of Bhumidhars, having transferable right, has been created. They are those who did not own land prior to 12th September, 2003. It was contended that, by reason of the insertions thus incorporated, people, who would be acquiring agricultural land after 12th September, 2003, would be entitled to acquire the same to the extent of 250 Sq. Mtrs. and thereafter, more land only with the permission of the State Government, but those who have already acquired land before 12th September, 2003, even without permission of the State Government, they will be entitled to acquire land up to the ceiling limit mentioned in sub-section (sic) of Section 154 of the Act. It was contended that there was no object to be achieved by creating those two classes of people. It was contended that a person, who is not an ordinary resident of the State of Uttarakhand but has acquired a small piece of agricultural land on or before 12th September, 2003, can acquire land up to the ceiling limit of 12.5 acres, but a person, who is an ordinary resident of the State of Uttarakhand but has not been able to acquire any land on or before 12th September 2003, would be entitled to acquire land only up to 250 Sq. Mtrs. and thereupon, only with the permission of the State of Uttarakhand. It was contended that no object is decipherable from the amendments effected for achieving any object for the purpose of which such a differentiation was required to be made. In the counter affidavit, the State has brought to the notice of the Court the statement of objects and reasons for promulgating the said ordinance. If that was the object and reason for enacting the 2003 Act, the object of inserting the Section and sub-sections, mentioned above, was to prevent indiscriminate purchase and sale of agricultural land in the State for the purpose of profiteering, to prevent use of agricultural land for non-agricultural purposes and to ensure agricultural community is not alienated from their land without being adequately compensated. Those, appears to be, were the primary objective and the secondary objective was to prevent settlement of outsiders. The Constitution of India does not permit any Legislature to legislate any legislation by which right of a citizen of India to settle in any part of the

Union of India can be taken away, except some of those Legislatures who have certain special privileges under Articles 370 to 371(h) of the Constitution of India. However, the insertions, as above, do not take away any such right.

4. In relation to the primary objective, it was contended by the learned Advocate General that, by the insertions thus made, the State was seeking to achieve what has been provided in Article 48 of the Constitution of India. Learned Advocate General, at the same time, submitted that the said Act as well as the amendment thereto are part of Ninth Schedule of the Constitution of India and, accordingly, the same are beyond challenge before a Constitutional Court. The fact remains that the Uttar Pradesh Act has been included in Ninth Schedule of the Constitution of India, but not the Act, by which the same has been amended by the State Legislature. The amending Act has not complied with the requirement of the first proviso to Article 31A of the Constitution. The amendments, therefore, have not been incorporated in the Act which has been incorporated in Schedule 9 to the Constitution. There is thus no impediment on the part of constitutional Courts to ascertain validity of the amendments sought to be incorporated by the amending Act on the touchstone of Part III of the Constitution.

5. There cannot be any dispute that it is the solemn obligation of the State to make endeavour to organize agriculture and accordingly, it can, for the purpose of saving agricultural activities, keep and preserve agricultural land for such activities. This object has not been addressed by the amendments. The amendments in question do not suggest that an agricultural land cannot be sold for a non-agricultural purpose. The same do not provide any scheme for preserving agricultural land of the State. They do not prevent indiscriminate purchase and sale of agricultural land. As aforesaid, a person, who has purchased a piece of agricultural land before 12th September, 2003, is free to indiscriminately purchase and sale land upto the ceiling limit. The amendments specifically authorize, while purchasing land, of course with the permission of the State, to convert agricultural lands into hotels, lodges, guest houses, restaurants, bars, spas, way side amenities or resorts and to use the same for many other non-agricultural purposes. The Governments and Government Companies, a non-tenure holder on account of acquisition of his land or vesting of his land, a person or company according to industrial policy, and if acquisition is for religious purpose, they are outside the purview of restrictions. A landless laborer of Uttarakhand is not covered by the restrictions. A village artisan of Uttarakhand is also outside the purview of restrictions. Any other person, but not a person carrying on allied pursuit, unless he has acquired some land prior to 12th September, 2003, is covered by the restrictions. Control by the State pertaining to non-agricultural use of agricultural land would remain confined to acquisition by persons acquiring land for the purposes mentioned in Clause 3(a) of sub-section (3), inserted by the amending Act. The amendments impugned nowhere address the issue of adequate compensation pertaining to sell by an agriculturist of agricultural land.

6. We have, therefore, not been able to accept the contention of the learned Advocate General that the object of the enactment was to achieve the purposes mentioned in Article 48 of the Constitution of India.

7. The question is whether the legislation under challenge is violative of Article 14 of the Constitution of India. When such a challenge is thrown, it is the bounden duty of the Court to proceed on the basis that presumptions exist to the effect that; (a) the legislation is by a competent authority; (b) the legislation is within the competence of the authority; and (c) the legislation itself is competent.

8. In the instant case, there is no quarrel as regards the first and the second presumptions. As is the law in respect of all other presumptions, the presumption to the effect that the legislation is competent, is rebuttable. He, who seeks to rebut such a presumption, is required to establish the same. In the instant case, therefore, the burden to establish that the legislation is incompetent rests with the petitioners. The question is whether the petitioners have been able to discharge their such burden.

9. It has been contended that there is no reasonable nexus for making two classes, comprising those who have purchased land before 12th September, 2003 and those mentioned in Clauses (2) and (3) of sub-section (4) on the one hand and those others who propose to purchase land after 12th September, 2003 on the other, and in any event, by making such distinct classification, no intelligible object was sought to be achieved. People who have acquired some land prior to 12th September, 2003 do not belong to any such class who may require protection of law.

10. The learned Advocate General contended that the purpose, sought to be achieved, was to discourage acquisition of big holdings. If that was the object, then certainly the same has not been achieved, for there is no restriction on the part of the persons, who have acquired land before 12th September, 2003 or who have been mentioned in Clauses (2) and (3) of sub-section (4), to acquire big holdings within the ceiling limit of 12.5 acres. Learned Advocate General submitted that the object was also to ensure that in future agricultural land is not used for other purposes. This object has also not been achieved, for the State Government has been specifically authorized to permit acquisition of agricultural land for purposes other than agricultural purpose. The conclusion, therefore, would be that there is no intelligible differentia in making two classes of people for the purpose of achieving any of the Constitutional goals. There is no scope of taking two views of the matter. The one and the only conclusion in the instant case would be and the same is that these insertions are incompetent, being violative of Article 14 of the Constitution.

11. We, accordingly, allow the writ petition and strike down Section 129-B and sub-sections (3), (4) and (5) of Section 154 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, as were inserted by the State of Uttarakhand by the 2003 amending Act. There shall be no order as to costs.