
(1980) 02 AHC CK 0083

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3574 of 1976

Smt. Gurbir Kaur

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-02-1980

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10, 10(2), 3(17), 3(7), 5(3)

Citation : (1980) AWC 372 : (1981) RD 9

Hon'ble Judges : Gopi Nath, J

Bench : Single Bench

Advocate : J.C. Joshi, for the Appellant;

Final Decision : Allowed

Judgement

Gopi Nath, J.—These two connected writ petitions arise out of proceedings under the U.P. Imposition of Ceiling on Land Holdings Act (hereinafter referred to as "the Act"). Civil Misc. Writ Petition No. 3574 of 1976 challenges the orders of the Prescribed Authority and the Appellate Authority dated 5-3-1975 and 27-5-1976 respectively. Civil Misc. Writ Petition No. 4050 of 1976 challenges the orders of those authorities dated 11-2-1975 and 22-12-1975 respectively. In Petition No. 3574 of 1976, Smt. Gurbir Kaur is the Petitioner while in Petition No. 4050 of 1976 the State of Uttar Pradesh is the Petitioner. Facts giving rise to these petitions are as follows.

2. In Petition No. 3574 of 1976, the Petitioner, in response to a notice u/s 10(2) of the Act filed an objection claiming additional hectares of land for each of the two adult sons of a pre-deceased wife of her late husband. According to the Petitioner, the step-sons, for the purposes of the grant of additional hectares of land u/s 5(3) of the Act were included in the expression "sons" as occurring in that section. Both the authorities below rejected her claim holding that the expression "son" as occurring in Section 5(3) of the Act did not include the son of a predeceased wife of the tenure-holder's husband. In Petition No. 4050 of

1976, the State included the land held by one Sunit Kumar, a minor son of a pre-deceased wife of the late husband of Smt. Shakuntala Devi (Respondent No. 1), in her holding for the purposes of determining the ceiling area applicable to her. Smt. Shakuntala Devi contended that the step son was not a member of her family within the meaning of that term as defined in Section 3(7) of the Act for the purposes of clubbing the land held by the minor son with the holding held by her. The Prescribed Authority as well as the appellate Authority accepted that contention and held that Sunit Kumar was not a member of the family of Smt. Shakuntala Devi (Respondent No. 1) for the purposes of clubbing of his land with the holding of the step-mother (Respondent No. 1). The minor was treated as a tenure-holder constituting an independent family and entitled to 7.30 hectares of irrigated land. The Prescribed Authority found that the original tenure-holder of the land in question was one Mahendra Pratap Singh. He had two wives Smt. Dulari, the mother of Sunit Kumar, and Smt. Shakuntala Devi, the mother of one Vinit Kumar. According to the Prescribed Authority, two families came into existence after the death of Mahendra Pratap Singh, and both of them were entitled to inherit the holding left behind by him. Both the families were found to be entitled to 7.30 hectares of irrigated land as the ceiling area applicable to them. The Prescribed Authority held that on determining the said area of the two families no land was surplus with Respondents Nos. 1 to 3. The notice u/s 10(2) was accordingly, discharged. Aggrieved the State went up in appeal and the only question canvassed before the appellate Authority was that Sunit Kumar the step-son of Smt. Shakuntala Devi (Respondent No. 1) had to be treated as her son; and a member of her family within the meaning of Section 3(7) of the Act for the purposes of inclusion of his land in the holding of Respondent No. 1. The allotment of 7.30 hectares of land separately to Sunit Kumar u/s 5(3) of the Act was challenged as erroneous and it was contended that the Respondents were possessed of land in excess of the ceiling area applicable to them which could be declared as surplus. The learned District Judge rejected this contention and affirmed the order of the Prescribed Authority holding that Sunit Kumar, the son of the predeceased wife of the late husband of Smt. Shakuntala Devi, could not be held to be her son for the purposes of clubbing his land with the holding of Respondent No. 1. Aggrieved, the State has filed Writ Petition No. 4050 of 1976.

3. The main questions arising for consideration in these petitions thus are : (i) whether an adult step-son of a female tenure-holder can be held to be her son for the purposes of the allowance of additional hectares of land u/s 5(3) of the Act; and (ii) whether a minor step-son of a female tenure-holder born of a predeceased wife of the husband of the female tenure-holder, can be held to be her son for the purposes of clubbing the land held by the minor with the holding of the female tenure-holder u/s 5(3) of the Act. Both these questions concern the true scope and construction of that section which reads as follows: (Section quoted--Ed.)

4. The section deals with two matters; (i) the clubbing of land held by the members of the tenure-holder's family having holding and (ii) the grant of

additional hectares of irrigated land to the tenure-holder for the benefit of his adult son or sons and other members of his family exceeding five. By the explanation added to Section 5(3), an adult son who is dead includes his surviving minor sons and daughters who are not themselves tenure-holders. "Adult son" had thus been given a broad meaning for the grant of additional land under the section. The word "family" has been given a narrow meaning in Section 3(7) of the Act. It reads: (Section quoted--Ed.)

5. The Act is an expropriatory legislation encroaching upon the rights of the subject in respect of their property, and has to be interpreted strictly against the State and liberally in favour of the subject. The provisions of such an Act have to be interpreted in a manner so as to respect the rights of the subject--see Maxwell's Interpretation of Statutes 11th Edn., page 276; Raichand Gulabchand Accha Vs. The Secretary of State for India, ; and Bombay Namdeo Co-operative Agency Ltd. Vs. Virdhaval, . In the State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, it was observed "as the Act is an expropriatory Act, that interpretation of it should be accepted which puts the least burden on the expropriated owner." The following quotation in Crawford's Statutory Construction, 1940 Edn. page 457, from Lieber's Political Hermeneutics (Chap. 6, Section 10) furnishes a good guide:

Let everything that is in favour of power be closely construed; everything in favour of the security of the citizen and the protection of the individual be liberally and comprehensively interpreted; for the simple reason, that power is power, and therefore able to take care of itself, as well as tending by its nature to increase, while the citizen may need protection.

6. The provisions of Section 5(3) shall accordingly have to be construed liberally in favour of the expropriated tenure-holders in respect of the rights secured to them, and strictly against the State as regards the powers of expropriation. The Act aims at taking away a tenure holder's land and distributing it to those who are supposed to be landless. Section 5(3) deals with two matters; one, clubbing of land held by members of a tenure-holder's family with his land; and two, grant of additional land to the tenure-holder for the benefit of the persons mentioned in the section, who may or may not constitute members of his family. Clubbing depends on the artificial definition of family as given in the Act. A person whose land is sought to be clubbed had first to be found to be a member of the tenure-holder's family before his land can be made the subject of clubbing, while for the grant of the benefit of additional land, one need not be a member of the tenure holder's family. The first part of Section 5(3), thus must receive a strict construction while the second a liberal one. Section 5(3) determines the ceiling area of a tenure-holder at 7.30 hectares of irrigated land, which includes the land held by other members of his family. The family of a tenure holder u/s 3(7) has a limited dimension. It includes three classes of persons, namely, husband, wife, and minor sons and daughters. The popular notion of family has thus been narrowed down and the minor sons and daughters

spoken of seem to include only those children who have a body relationship with the tenure-holder. u/s 3(17), a minor child whose father or mother is a tenure-holder does not get the status of a tenure-holder. The word "whose" as occurring in Section 3(17)(b) and the word "his" as occurring in Section 3(7) lead one to think that the word "son" or "daughter" as used in the definition of "family" in Section 3(7), refer to a child born of a female tenure-holder. The construction would avoid an overlapping which may otherwise follow in the clubbing of a step-son's land with the holding of a step mother. If a person has three wives, and all of them have minor sons and daughters, the land held by the step-sons or step-daughters, would, if that construction is not put, be included in the aggregate area of all the step-mothers, resulting in an inordinate increase of the surplus land. This would never have been the intention of the legislature. The word "family" in Section 3(7) would thus be given a narrow meaning with a view to giving effect to the artificial concept of family as defined in the Act. This interpretation, to my mind, would accord with the intention and purpose of the statute. The Act being designed for an equitable distribution of land, Section 5(3) would aim at clubbing of land held by members of a tenure holder's family in such a manner that no members of his family who in the popular sense of that phrase may be tenure-holders themselves. The unit for the ceiling area is the artificial family under the Act and it seems to me that the Act has contemplated only one wife to a person for the purposes of the ceiling unit. This seems to be borne out from the terms of Sections 3(7), 3(17) and 12-A. As regards minor children if they are not tenure-holders themselves, they must fall in some family to receive maintenance, care and protection and when a question arises as to the grant of additional land to a tenure-holder for the benefit of the members of his family that phrase should receive a broad construction and be understood in a popular sense to include dependants of a tenure holder who may look upon him for support; otherwise they would be thrown on the street and that would be against the equity of the legislation. A provision thus concerned with maintenance will have to be interpreted liberally to give effect to the object of the Act which aims at subserving the common good and making an equitable distribution of land. The words "adult sons" in Section 5(3)(a) and 5(3) b) and the expression -"each of the members exceeding five" in Section 5(3)(b) should thus be given their ordinary meaning and construed in a popular sense to enable the persons to receive the benefits conferred by the Act. A step son would on that construction be included in the term -son" in the second part of Section 5(3) (a) and 5(3)(b) which deals with the grant of additional hectares of land to a tenure-holder. Such a construction of a statute is well recognised in law. "Even where an Act contains a definition section", says Maxwell in his Interpretation of Statutes, 11th Edn. page 30, "it does not necessarily apply in all the contexts in which a defined word may be found. If a defined expression is used in a context which the definition will not fit, the context must be allowed to prevail over the "artificial conceptions" of the definition clause, and the word must be given its ordinary meaning". At page 58 it is stated that the words used in a statute "are more or less elastic, and admit of restriction or expansion to suit the subject-

matter" while interpreting a statute, effort has to be made to avoid hardship or injustice to a subject whose rights to property are sought to be affected by an expropriatory legislation. Further, in order to avoid unjust results to follow same words can be interpreted in a manner which can best suit the equity of the legislation. A statute often uses the same words in different senses. "The same words", says Maxwell in his Interpretation of Statutes, 11th Edn. page 312, "may be used in different senses in the same statute and even in the same section...." Craies, in his Statute Law, 7th Edn., page 170, says: "Words used with reference to one set of circumstances may convey an intention quite different from what the self-same set of words used in reference to another set of circumstances would or might have produced..." At page 172 the author says: "...The meaning of ordinary words will vary according to the subject or occasion on which they are used,..." In *Shamrao Vishnu Parulekar Vs. The District Magistrate, Thana*, it was observed:

...it is proper if sufficient reason can be assigned, to construe a word in one part of an Act in a different sense from that which it bears in another part of an Act.

7. Mother, in a popular sense, has been held to include a step-mother and a sister a step sister--see *Mt. Sahodra v. Ram Babu* 1943 AWR PC 38 and *Mt. Besur Kuer v. Bishundas Singh* 1943 AWR PC 42 and a son a step son--see *Ram Katori v. Prakashwati* 1968 ALJ 484 . Even an illegitimate son has been held to be a son--see *Singhai Ajit Kumar and Another Vs. Ujayarsingh and Others*, . An adoptive mother is a mother and an adopted son a son under the Hindu Law. A family can have a variable constitution--see *Corporation of the City of Nagpur Vs. The Nagpur Handloom Cloth Market Co. Ltd.*, .

8. A body relationship thus may or may not be important according to the subject or the occasion with reference to which the ?kinship has been mentioned. As to the construction of a Statute "...A construction is preferred which is either strict or liberal with reference to the purposes and objects of the statute...a statute is liberally construed when the letter of the statute is extended to include matters within the spirit or purpose of the statute; and a statute is strictly construed when the letter of the statute is narrowed to exclude matters, which if included would defeat the policy of the legislation..."--See *Sutherland's Statutory Construction*, Third Edition, Volume 3, Section 5505.

9. The allowance for additional land in Section 5(3) is in the following terms:

...plus two additional hectares of irrigated land or such additional land which together with the land held by him aggregates to two hectares, for each of his adult sons, who are either not themselves tenure-holders or who hold less than two hectares of irrigated land, subject to a maximum of six hectares of such additional land.

10. An adult son does not constitute a member of a tenure-holder's family. The provision thus is for the benefit of a person who is not a member of the tenure-holder's family. Such a beneficial provision has, in view of the canons stated, to

be interpreted liberally. The grant of additional land is for the benefit and maintenance of adult son or sons who, seek or need the support of the tenure-holder. Object of the legislation is to make an equitable distribution of land and to subserve the common good. If an adult son has to receive benefit out of the land belonging to the tenure-holder or members of his family, I can see no bar to construing the words "adult sons" as including step sons of a female tenure-holder. This would accord with the legislative intent behind the provision, and would also prevent inequitable results following in the benefits which the step sons would obtain in their parent's holding. The maximum grant of six hectares makes a sufficient safeguard against over-lappings if any in this regard.

11. u/s 5(3)(b) allowance of additional land is provided for each member exceeding five, and for adult sons who are landless or who hold less than two hectares of irrigated land. A tenure-holder's family, in a technical sense, consists of a husband, wife and minor sons and daughters. A step-son of a female tenure-holder whose father and actual mother has died, will either have to look for support to the step mother or will go about begging like an orphan. The benefit conferred under Clause (b) of Sub-section (3) of Section 5 to my mind would not be confined to the blood relationship of the mother and her son but would extend to a step son as well. The benefit has been conferred on those who constitute members and also on those who, do not constitute members of a tenure-holder's family; and it seems to me wholly unjust that adult sons who may be able bodied persons fully equipped in all respect to support themselves should receive benefit under this provision while those who are minors and can look to no other than their parents should be rendered homeless, landless and be deprived of all means of livelihood.

12. The word "members" in Clause (b) of Sub-section (3) of Section 5 is not qualified by any words, and should, in my opinion, be understood in a broad sense in regard to the benefit conferred under the provision. Thus, the word "son" as occurring in Section 3(7) for the purposes of clubbing of land u/s 5(3) would not include a step son but it would include a stepson, as regards the grant of additional land and this, to my mind, would advance the equity of the legislation. The Petitioner in petition No. 3574 of 1976 was, accordingly, entitled to claim additional hectares of land u/s 5(3)(a) for the adult sons of the predeceased wife of her husband. The authorities below erred in disallowing the same. The ceiling area and the surplus land would thus have to be re-determined and the case remanded for that purpose. In petition No. 4050 of 1976, the authorities below rightly held that Sunit Kumar, the stepson of Smt. Shakuntala Devi, could not be included in her family for the purposes of clubbing of his land with the land of Respondent No. 1, for determining the ceiling area.

13. In the result, writ petition No. 3574 of 1976 is allowed with costs. The order of the appellate authority dated 27-5-1976 is set aside and the case is remanded to that authority for a fresh decision according to law in the light of the observations made. Writ petition No. 4050 of 1976 is dismissed with costs.