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**(2008) 12 UK CK 0006**

**In the Uttarakhand High Court**

**Case No :** Writ Petition No's. 1116, 7110 and 7112 of 2001 (M/S)

Smt. Maya Shukla

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

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**Date of Decision :** 19-12-2008

**Acts Referred:**

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2),  
11(2), 5(6)

Uttar Pradesh Imposition of Ceiling on Land Holdings Rules, 1961 — Rule 8

**Citation :** (2009) 2 UC 800

**Hon'ble Judges :** B.S. Verma, J

**Bench :** Single Bench

**Advocate :** Alok Singh and Gajendra Tripathi, for the Appellant; Sudhir Kumar, Brief Holder for State for Respondent Nos. 1 to 3, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

B.S. Verma, J.—Since the controversy involved in all these writ petitions is similar, therefore, for the sake of convenience, all these petitions are being decided by this common judgment.

2. In all these writ petitions, the Petitioners have assailed the order dated 28th July 1989 passed by Prescribed Authority (Ceiling)/Additional District Magistrate, Nainital and the order dated 24th October 1990, passed by the Additional Commissioner (Administration), Kumaon Division, Nainital.

3. Relevant facts giving rise to the present writ petition, in brief, according to the Petitioners, are that Petitioners Devendra Kumar Shukla, Rajendra Kumar Shukla and Smt. Maya Shukla, who are brothers and sisters and their father Indra Dev Shukla, entered into a family settlement in the year 1960 and memorandum of the settlement was executed on 15th July 1967 and the entire holding was divided into four shares. The Petitioners got 1/4th share each in the land situate in village Gangapur Patia and they came over exclusive possession of their share in the year 1960. Subsequently, the matter was resettled between the Petitioners

and other tenure-holders and a gift deed dated 13th March 1972 was executed by Indra Dev Shukla in favour of the Petitioners and the same was registered. A notice u/s 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (for short the Act) was issued to Indra Dev Shukla, the father of the Petitioners and irrigated land measuring 9.49 Hectares was proposed to be declared a surplus vacant land. Indradev Shukla contested the notice on the ground inter alia that a family settlement took place in the year 1960 and memorandum was executed on 15th July 1967.

4. According to the Petitioners, the matter in dispute went upto the Hon'ble High Court and was finally decided by the High Court vide order dated 4-4-1979 passed in Writ Petition No. 2333 of 1977, Indra Deo Shukla v. State of U.P. and Ors. The order was passed to the following effect:

The result is that this writ petition is partly allowed and the judgment of the appellate authority relating to strength of the family members of the Petitioner is hereby quashed. The case is sent back to the appellate authority for deciding the appeal on that question afresh in accordance with law. In the circumstances of the case the parties shall bear their own costs. The stay order shall stand discharged.

5. The appellate court by its order dated 16-3-1983 dismissed the appeal of Indradev Shukla, who challenged the order dated 16-3-1983 before the High Court in Writ Petition No. 5963 of 1983, which too was dismissed on 10-10-1984.

6. The proceedings were initiated for taking possession the land of the Petitioners by Tahsil authorities. Then objection u/s 11(2) of the Act before Prescribed Authority/Sub Divisional Officer, Kichcha, who by his judgment and order dated 27-2-1986 rejected the objection of the Petitioners as not maintainable. Aggrieved by the said order, the Petitioners filed appeal and the appellate court by order dated 30-5-1987 allowed the appeal and remanded the matter to the Prescribed Authority for fresh consideration.

7. On remand, the Prescribed Authority rejected the claim of the Petitioners by order dated 28-7-1989. it was held that the Petitioners are not tenure holder as per Rule 8. Aggrieved by that order, the Petitioners preferred appeals separately before the Additional Commissioner (Administration), Kumaun Division, Mainital, All the three appeals were decided by a common judgment. The appellate court has held that no family settlement took place between the parties in the year 1960 or thereafter and possession was not taken buy the Petitioners on spot. It was also held that by the gift-deed of 1972, the land has been transferred by the tenure holder, which is of no avail in view of provisions of Sub-section 6 of Section 5 of the Act. Accordingly, the appeal preferred against the said order too was dismissed by its order dated 24-10-1990. Both the last two orders are under challenge in the present writ petitions.

8. Counter affidavit was filed in Writ Petition (M/S) No. 7110 of 2001 Smt. Maya Shukla v. State and Ors. on behalf of the State wherein the averments made in

the writ petition have been denied and the impugned orders passed by the courts below have been supported.

9. I have heard learned Counsel for the parties and have perused the entire material on record.

10. The main contention of the learned Counsel for the Petitioners is that the courts below committed manifest error of law in not considering the family settlement which took place in the year 1960 and also gift-deed made by Indradev on 13-3-1972, therefore, the order passed by the Prescribed Authority as well as the appellate authority are not tenable in the eye of law.

11. The short controversy to be decided in these writ petitions is whether the disputed land was settled between the Petitioners and whether the alleged gift made by the tenure holder Indra Dev Shukla on 13-3-1972, i.e. after 24-1-1971, is of any help to the Petitioners or not.

12. I have given my anxious thought to the controversy involved in these writ petitions and the contention raised by the learned Counsel for the Petitioners.

13. So far as the stand of alleged oral family settlement, which took place in the year 1960 between the Petitioners is concerned, it is pertinent to mention that when the original tenure holder Indra Dev Shukla was issued notice u/s 10(2) of the Act, she did not disclose this fact in her objection. Learned Prescribed Authority in its order has mentioned that Indradev Shukla has not made any reference to the alleged family settlement in her objection filed before the Prescribed Authority. Moreover, such a family settlement between the Petitioners was never acted upon and the Petitioners never bothered to get their names entered in the revenue record on the basis of alleged family settlement. Moreover, if the contention of the Petitioners be accepted just for the sake of arguments that the land had been settled in terms of family settlement, there was no occasion for the original tenure holder to execute a gift-deed in respect of the land, which was already settled between the parties, rather he could not have been legally competent to execute the gift-deed, which has been relied upon by the Petitioners.

14. It would suffice to mention that had there been any family settlement between the Petitioners either in the year 1960 or 1967, the Petitioners ought to have got their names entered in the revenue records on the basis of alleged family settlement. Moreover, since the Petitioners are pressing into service the gift-deed of 13-3-19972 made by the original tenure holder, hence the contention of family settlement is not tenable.

15. So far as the gift-deed dated 13-3-1972 made by tenure holder Indradev Shukla is concerned, I am not inclined to accept the contention of the Petitioners in view of the Apex Court verdict in the case of Km. Sonia Bhatia Vs. State of U.P. and Others, . In that case, the Apex Court has considered and interpreted the provisions of Section 5(6) proviso (b) (as introduced by U.P. Act 18 of 1973)

of the Act. The Apex Court has approved the observations made by the Division Bench of the Allahabad High Court in Civil Writ Petition No. 915 of 1975, Fateh Mohammad v. District Judge, decided on July 10, 1978. In paragraph No. 27 the following observations were made:

27. In the Division Bench decision of the Allahabad High Court referred to above, after a consideration of a large number of authorities the following observations were made:

The legislature while enacting the U.P. Imposition of Ceiling on Land Holdings Act, was alive to the provisions of the Transfer of Property Act dealing with the transfer of immovable property. The terms "transfer", "sale", "mortgage" and "lease" have not been defined in the Act. Therefore, these terms must have been used only in the sense in which they have been used in the Transfer of Property Act. If the legislature intended to use those terms in a different sense and with a different connotation, it would have defined those terms in the Act. But that has not been done....

The legislature, however, thought that there may be genuine and bona fide transfers for consideration. To protect such tenure holders and other transfers, proviso (b) to Sub-section (6) of Section 5 of the Act was enacted. It saved transfers for adequate consideration. Gift is a gratuitous transfer and there is no consideration, which obviously means valuable consideration. If transfer for love and affection is taken to be a transfer for consideration then the purpose of the Act would be completely defeated as the tenure holders would transfer their land by gift after January 24, 1971.

16. It is not disputed that the alleged gift was made by the tenure holder Indradeo Shukla in the year 1972, i.e. after 24th January 1971. The said gift could not have been taken into account. The protection of proviso (b) to Sub-section (6) of Section 5 could not be extended to the Petitioners, because it saved transfers for adequate consideration, and there is no consideration in the gift deed which obviously means valuable consideration, as has been held by the Apex Court in the case of *Km. Sonia Bhatia* (supra) as well as the Division Bench of the Allahabad High Court in the case of *Fateh Mohammad* (supra). Therefore, the Prescribed Authority as well as the appellate Court has rightly ignored the gift deed. The impugned orders passed by the courts below do not call for any interference by this Court in these writ petitions.

17. All the three writ petition being devoid of merit must fail.

18. All the three writ petition are dismissed. Costs easy.

19. The interim orders dated 18-12-1990, 24-1-1991 and 30-7-1991 passed by the Allahabad High Court in these writ petitions are vacated.

20. All pending applications stand disposed of.