

(2007) 07 UK CK 0028

In the Uttarakhand High Court

Case No : Writ Petition No. 1624 of 2001 (M/S)

State of U.P.

APPELLANT

Vs

Charless Neil Parsons and Others

RESPONDENT

Date of Decision : 23-07-2007

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 154

Citation : (2008) 8 UC 731

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

Bench : Single Bench

Advocate : Gopal Narain Srivastava, for the Appellant; M.C. Pande and V.N. Agarwal for Contesting Respondents, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Verma, J.—This writ petition has been preferred for issue a writ, direction or order in the nature of certiorari quashing the order dated 14th April 1983 passed by the I Additional District Judge, Nainital. Prayer for mandamus of this Court has also been made directing the Respondents not to proceed against the Petitioner in pursuance of the impugned order.

2. Brief facts giving rise to the present writ petition are that according to the Petitioner, father of Respondent Nos. 1 and 2 Sri C.H. Parsons was the original tenure holder of the land in dispute measuring 1709 Bigha and situated in village Vikrampur, Tahsil Bazpur, District Nainital and Respondent Nos. 1 and 2 succeeded him after his death in the month of November 1967. Before the Prescribed Authority, Ceiling Case No. 51/66 of 1974-75 proceeded against the Petitioner No. 2, while Ceiling Case No. 51/67 of 1974-75 was registered against the Petitioner No. 1. Notice u/s 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act (for short the Act) to the Respondent Nos. 1 and 2 separately to show cause as to why the disputed land be not declared surplus. They contested the proceedings and asserted that they are not tenure Holders of the disputed

land, as on 8th June, 1973, they had no right in the land in dispute. The father of the Petitioners Sri C.H. Parsons was the tenure holder of the disputed land in the year 1967. After his death, they succeeded their father and their names were entered in the revenue records. Subsequently, in the year 1968-69, they executed agreement for sale in favour of the persons, who have been arrayed as Respondent Nos. 3 to 33. The Respondent Nos. 3 to 33 also filed their objections in three sets. They asserted that they came into possession of the disputed land by way of registered sale deeds executed in their favour after 24th January, 1971 and prior to that the land was given to them in the year 1969 on Pattas. After coming into force of the U.P.Z.A. and L.R. Act, they acquired Bhumidhari rights. They asserted that the objectors were in possession of the land since May 1969 and they had been cultivating the same. They also contended that the sale transfers were made in their favour for adequate consideration and they were genuine. They also contended that they are not family members of the tenure holders.

3. The parties led oral as well as documentary evidence before the Prescribed Authority. The Prescribed Authority after perusing the evidence and hearing the parties came to the conclusion that the alleged Pattas were not registered and certified by the Supervisor Kanungo, hence they cannot be relied upon and no benefits can be given to the objectors. The Prescribed Authority also observed that the tenure holders could not prove that they had any right to execute Pattas in favour of the objectors. The Prescribed Authority however held that the sale transfers were not made for adequate consideration or in good faith and the sale consideration mentioned in the sale deeds, i.e. Rs. 2,000/- per acre does not seem to be proper market value of the land. The prescribed Authority ignored the sale deeds and declared the land surplus as mentioned in the order dated 29-9-1976.

4. Aggrieved by the order passed by the Prescribed Authority (Ceiling) Kashipur, in the aforesaid two ceiling cases, as many as 64 Ceiling Appeals were preferred before the III Additional District Judge, Nainital. The learned Additional District Judge has heard all the appeals together. After perusing the evidence and hearing both the parties, the learned appellate court has allowed all the appeals vide order dated 14-4-1983 holding that the disputed sale transfers were bona fide and for adequate considerations.

5. Dissatisfied with the judgment and order dated 14-4-1983 passed by the appellate court, the State has preferred the present writ petition mainly on the ground that the notices given to the Respondent Nos. 1 and 2 were valid and the finding of the appellate court to the contrary is illegal. It has also been contended that the sale deeds were in contravention of the provisions of Section 154 of the U.P.Z.A. and L.R. Act, therefore, they were liable to be ignored.

6. I have heard learned Counsel for both the parties and perused the record including the impugned judgment and order dated 14-4-1983 passed by the learned Additional District Judge, Nainital.

7. At the outset, it may be mentioned that the scope for scrutiny of evidence by the learned Appellate Court was confined in view of the judgment and order dated 23-10-1971 passed by the High Court of Allahabad. Earlier against the judgment and order dated 29-9-1976 passed by the Prescribed Authority, the tenure holders Respondent Nos. 1 and 2 Charles Neil Parsons and David Eric Parsons against whom the two ceiling cases were decided by the Prescribed Authority preferred Ceiling Appeals No. 1007 of 1976 and 1008 of 1976. The vendees in whose favour sale transfers were made by the Respondent Nos. 1 and 2 also filed objections before the Prescribed Authority to vindicate their rights in respect of the land purchased by them. As the sale deeds were not recognized by the Prescribed Authority, they also preferred as many as separate 62 appeals. All these appeals were earlier decided by the then III Additional District Judge Nainital vide his judgment and order dated 28-3-1977. He recognized only one sale deed dated 5-5-1970. He also held that these vendees were in possession of the land purchased by them and that the sale deeds were registered documents viz. irrevocable instruments of transfer and that they were not benami transaction and they were also not executed for the immediate or deferred benefit of the Respondent Nos. 1 and 2 for the benefit of other members of their family. It was found by the appellate court that the sale deeds had been executed for adequate consideration, but for want of good faith on the part of vendors, they were ignored.

8. Dissatisfied by the judgment dated 28-3-1977, the Respondent nos. 1 and 2 preferred Writ Petition No. 1314 of 1977 while the remaining Appellants (vendees) filed Writ Petition No. 1415 of 1977 before the Allahabad High Court. The High Court decided these two writ petitions by a common judgment dated 23-10-1971. The High Court did not agree with the finding of the appellate court that the sale deeds in question executed after 24-1-1971 were lacking good faith and observed that the finding regarding "good faith" was vitiated as the same had been recorded without due consideration of the evidence on record and the law on the point. Ultimately, the High Court remitted the matter to the appellate court to examine the claim of the Petitioners in the light of the observations made in the body of the judgment and in accordance with law. After remand of the appeals, they were again heard by the learned Appellate Court and the only question to be examined by the Appellate Court was whether the sale transfers were made in "good faith" or not.

9. It may be noted here that the State had not assailed the remand order passed by the Allahabad High Court before the Apex Court.

10. After remand of the appeals, the learned appellate court after perusing the entire evidence on record found that Charles Neil Parsons and David Eric Parsons had ceased to be the tenure holder on 8-6-1973, because they had bona fide sold their entire land earlier to the said date and not retained any part of the holding. It was held that the Ceiling Act ceased to apply to them.

11. Learned Counsel for the State has vehemently argued that the finding of the

appellate court that the Respondent Nos. 1 and 2 were not the tenure holder on 8-6-1973 is erroneous.

12. I do not agree with the contention of the learned Counsel for the Petitioner-State. The learned Appellate Court after considering the entire evidence led by the parties on record came to the conclusion that prior to 8-6-1973, the Respondent Nos. 1 and 2 ceased to be tenure holders. In this regard, the learned appellate court in paragraph No. 15 of the impugned judgment has observed that "the vendors executed the sale deeds themselves, in favour of the vendees much earlier to 8-6-1973 and thus completed the sales in all respects. They parted with the possession of the aforesaid land in favour of the vendees much before 8-6-1973 and ceased to have any interest in the land. Thus the vendors namely Charles Neils Parsons and David Eric Parsons permanently left possession and they were not entitled to (any, sic) get back the same from the transferees. Thus they could not be said to be holding the said land on 8-6-1973."

13. It is not disputed that after having executed the sale deeds in respect of the entire land in the holding of the Respondent Nos. 1 and 2 stood transferred, hence they ceased to be the tenure holder on 8-6-1973 as they had not retained any part of the holding. It is not disputed that the vendors Charles Neil Parsons and David Eric Parsons were living in England since before 1968 and they had executed a power of attorney in favour of Sri S.C. Mathur Advocate on 28-2-1968 for managing their land. The learned appellate court has found that they had instructed their power of attorney holder to dispose of their entire land. Therefore, in my opinion, the learned Appellate Court has rightly held that the Ceiling Act ceased to be applicable to Respondent Nos. 1 and 2.

14. Learned Counsel for the State has vehemently argued that sale-deeds in question, which were executed by the Respondent Nos. 1 and 2 after 24-1-1971 should have been ignored by the appellate court under the provisions of the Act. This contention of the learned Counsel for the State is not acceptable, because, as mentioned earlier, the scope of examination/scrutiny by the Appellate Court was limited to the extent of the directions given by the Allahabad High Court. The appellate court was only required to examine whether the sale transfers were made in "good faith or not.

15. The Apex Court in the case of Brijendra Singh Vs. State of Uttar Pradesh and Others, wherein it has been held that the expression "good faith" has not been defined in the Ceiling Act. Although the meaning of "good faith" may vary in the context of different statutes, subjects and situations, honest intent free from taint of fraud or fraudulent design, is a constant element of its connotation. Even so, the quality and quantity of the honesty requisite for constituting "good faith" is conditioned by the context and object of the statute in which this term is employed. It is a cardinal canon of construction that an expression which has no uniform precisely fixed meaning, takes its colour, light and content from the context. It was further held inter alia in paragraph 19 that "once it is established by the transferring tenure-holder that the transfer in question effected in the

course of ordinary management of his affairs, was made for adequate consideration and he has genuinely, absolutely and irrevocably divested himself of all right, title and interest (including cultivatory possession) in the land in favour of the transferee, the onus under Explanation II, in the absence of any circumstances suggestive of collusion, or an intention or design to defraud or circumvent the Ceiling Act, on the tenure-holder to show that the transfer was effected in "good faith", will stand discharged and it will not be necessary for the tenure holder to prove further that the transfer was made for an impelling need or to raise money for meeting a pressing legal necessity."

16. Learned Counsel for State has contended that the finding of the learned appellate court is not tenable that the sale transactions were made in good faith by the Respondent Nos. 1 and 2 because the same were made for immediate benefit of the tenure holders. This is a bald argument. From a bare perusal of the impugned judgment it is obvious that the learned III Additional District Judge Nainital vide his judgment dated 28-3-1977 has already held that the sale deeds in question were registered documents viz. irrevocable instruments of transfer and they were not Benami transaction and they were also not executed for immediate or deferred benefit of the Respondent Nos. 1 and 2 for the benefit of other members of their family. The Allahabad High Court has not disturbed this finding recorded earlier by the III Additional District Judge, Nainital, but has remanded the matter to examine whether the sale transfers were made in good faith or not. Moreover, the Allahabad High Court in the case of "Hanumant Singh v. State of U.P. and Ors. 1978 All.L.J. 1143 has held that where a sale-deed for transfer of certain agricultural land was found to be for adequate consideration and under irrevocable instrument, not being benami transactions or for immediate or deferred benefit of the tenure holder or other members of his family, the transfer could not be said to be not bona fide on ground that the tenure-holder had failed to show any pressing necessity for transferring the plots. In the case at hand, all these tests were already applied and it was already held by the appellate court that all the sale deeds were registered and the land under those sale transfers was not sold for immediate or deferred benefit of the tenure holders or other members of their family. It is not disputed that the vendees are not the family members of the vendors.

17. On the other hand, learned Counsel for the Respondents while supporting the judgment of the appellate court has submitted that the sale transfers were effected by the Respondent Nos. 1 and 2 in the course of ordinary management of affairs and the same were made for adequate consideration and by the sale transfers in question Respondent Nos. 1 and 2 had parted with their entire holdings. In such circumstances, it was not necessary for them to prove further that the transfer was made to raise money for meeting a pressing legal necessity. Learned Counsel has relied upon the case of Bhupendra Singh v. State of U.P. and Ors. 1981 All.L.J. 400.

18. It would suffice to mention that the learned Appellate Court has dealt with

the ratio of all case-law referred to hereinabove elaborately, which need not to be reiterated here again.

19. In view of the discussion and reasons aforesaid, I find no perversity or infirmity in the conclusions arrived at by the learned Appellate Court. There is no merit in the writ petition, which deserves to be dismissed outright.

20. The writ petition is dismissed. No order as to costs.

21. All applications stand disposed of.