
(1980) 07 AHC CK 0009

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1278 of 1978

State of U.P.

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 23-07-1980

Acts Referred:

Contract Act, 1872 — Section 2, 56
Hindu Succession Act, 1956 — Section 14
Transfer of Property Act, 1882 — Section 53A
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(1),
10(2), 29, 3(17), 3(9)
Uttar Pradesh Tenancy Act, 1939 — Section 3(9)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 164, 9

Citation : (1980) AWC 439

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

Bench : Single Bench

Advocate : Ratnakar Bharti, for the Appellant;

Final Decision : Dismissed

Judgement

M.P. Mehrotra, J.—This petition arises out of the proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter called the Act).

2. The facts, in brief, are these. The opposite party No. 3 in the instant petition is Babu Lal and a notice u/s 10(2) of the Act was issued to him along with a copy of the statement, which was prepared in his case u/s 10(1). Objections were filed and they were decided by the Prescribed Authority by his order dated 28-7-1975, a true copy whereof is Annexure 1 to the petition. Thereafter, an appeal was filed by the said tenure-holder, Babu Lal and the same was allowed by the appellate court by its judgment dated 30-9-1977, a true copy whereof is Annexure 2 to the petition. Now the State has come up in the instant writ petition and in support thereof, I have heard the learned Standing Counsel. In opposition, Sri S.P. Gupta, learned Counsel for the said tenure-holder Babu Lal, had made his submissions.

3. There is only one point involved in this petition. Three agreements of sale

were made before 24-1-1971 between the said tenure-holder and certain persons. To be more precise, the agreement of sale dated 5-3-1970 was entered into between the said tenure-holder and one Babu Lal son of Ram Das, the second agreement of sale dated 8-3-1970 was made between the said tenure-holder and one Brij Kishore, and the third-agreement to sell dated 30-3-1970 was made between the said tenure holder and two persons by names Ram Het and Kali Charan. In pursuance of the said agreements, the transferees concerned paid a part of the sale consideration payable by them in respect of each agreement of sale and the said tenure-holder parted with the possession of the land which was agreed to be sold by him to the transferee concerned. The genuineness of the said agreements has been accepted by the appellate court and it was held that Section 53A of the Transfer of Property Act applied to the facts of the case. Therefore, the land which were agreed to be sold by the aforesaid three agreements of sale, were excluded from the holding of the said tenure-holder. The total area of such land comes to 73 Bighas 6 biswas or 29 Bighas, 6 biswas, 8 biswansi of irrigated land. The State could not be allowed to question the findings of fact recorded by the appellate court regarding the genuineness of the said agreements of sale and that in pursuance thereof, possession of land agreed to be sold passed to the transferees concerned. However, the learned Standing Counsel contended that the legal inferences drawn by the appellate court below were not sustainable in law and therefore, the appellate courts' aforesaid judgment should be quashed. The following aspects of the matter were emphasised:

(1). Under the Ceiling Law what is material is the title to the land and not merely its possession; reliance was placed on the decision of N.D. Ojha, J. in *Sheo Chandra Pathak v. State* 1978 AWC 332.

(2). The benefit of Section 53A can be claimed by the transferee and not by the transferor. In the instant case, the tenure holder Babu Lal as the transferor sought to take the benefit of Section 53A and the appellate court below acted illegally in allowing such benefit to the said tenure-holder.

(3). The provisions contained in Section 53A cannot be invoked against a third party. The said provisions have relevance between the transferor and the transferee but they have no application when the third parties are in the picture. In the instant case, the Ceiling Authorities as a third party, were not affected by Section 53A, which could only be applicable in a dispute between the transferor and the transferee.

(4). The aforesaid agreements of sale got frustrated by operation of law and the possession of the transferees became illegal. A reference was made to Sections 5, 7 and 39 of the Ceiling Act and to Sections 2 and 56 of the Indian Contract Act. The learned Standing Counsel placed reliance on the following cases:

Data Ram v. Addl. Civil Judge 1979 RD 23, *Kedar v. District Judge* 1978 RD 307, *Bhola Ram v. Bhagwati* 1978 RD 195 , *K.K. Handique Vs. Member, Board of*

Agricultural Income Tax, Assam, , Piarey Lal Vs. Hori Lal, , Bhutnath Chatterjee Vs. The State of Bihar and Others, , Raja Dhruv Dev Chand Vs. Harmohinder Singh and Another, , Delhi Motor Company and Others Vs. U.A. Basrurkar and Others, , AIR 1941 128 (Privy Council) , AIR 1940 1 (Privy Council) , Chinna Pillai Vs. N. Govindaswami Naidu and Another, , Kalawati v. C.O. Agra 1968 RD 45, J.R.R. Skinner v. R.H. Skinner AIR 1929 PC 269, Laxmi Lal v. State 1964 RD 104, Teekam Singh v. Chhattar Pal Singh 1963 RD 33 , Kashinath Bhaskar Datar Vs. Bhaskar Vishweshwar Karve, , New Delhi Municipal Committee Vs. H.S. Rikhy, , Pearey Lal and Another Vs. Prithi Singh and Others, , Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others, , Sheochandra Pathak v. State or U.P. 1978 ALJ 408 , Buddhan Singh and Another Vs. Nabi Bux and Another, , Data Ram v. Addl. Civil Judge 1978 AWC 614 , Eramma Vs. Verrupanna and Others, .

4. Sri S.P. Gupta, learned Counsel for the tenure holder, on the other hand, conceded that in law the said agreements of sale did not result in any transfer of title in favour of the transferees in respect of the lands agreed to be sold to them. He also conceded that the appellate court was not right in placing reliance on Section 164 of the U.P. Zamindari Abolition and Land Reforms Act (U.P. Act No. 1 of 1951). However, Sri Gupta contended that the expression "entitled to hold used in Section 5(1) of the Ceiling Act clearly contemplates the right of the tenure-holder to be in possession of the land to be included in his Ceiling area. u/ s 53A of the Transfer of Property Act, when the tenure-holder is debarred from claiming back possession of the land from the transferees, then such land cannot be said to be held by the tenure-holder. Therefore, such land has to be excluded while determining his ceiling area and the surplus land. Sri Gupta contended that it is not necessary that the tenure-holder should be in actual occupation of the land which is included in his holding as on 8-6-1973. Even if the tenure-holder is temporarily out of occupation, that will not mean the extinction of his title and his right to get back possession will subsist. However, where in law the tenure-holder has permanently lost possession and he is not entitled to get back the same from the transferees, then such land cannot be said to be held by the said tenure-holder. The learned Counsel for the tenure-holder further emphasised that pre-existing contracts were not nullified or wiped out by the Ceiling Act as amended by the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 (U.P. Act No. 18 of 1973).

5. The learned Counsel next contended that Section 7 of the Ceiling Act lays down that an agreement of sale can be enforced by a court of law if the ingredients of Clause (b) of the Proviso to Section 5(6) are established. Therefore, the transferees in the instant case could not be said to have wholly lost their rights to get the sale deed executed after 8-6-1973.

6. The learned Counsel also referred to Section 29 of the Ceiling Act and he placed reliance on the following cases:

Nathulal Vs. Phoolchand, , Bhudan Singh and Another Vs. Nabi Bux and

Another, , Pandit Ram Chander Vs. Pandit Maharaj Kunwar and Others, , Jahangir Begum v. Gulam Ali Ahmed AIR 1955 Hyd 101.

7. First, I shall briefly notice the cases relied upon by the learned Standing counsel.

(His Lordship then discussed the cases relied upon by learned Standing Counsel and the learned Counsel for the tenure-holder and proceeded on to observe-- Editor.)

8. The question of law, which has been argued before me, is that even if Section 53A was applicable to the facts of the case, still, the State was entitled to include the lands which were the subject matter of the aforesaid three agreements of sale, in the holding of the tenure-holder Babu Lai. It has seemed to me that the cases on which the learned Standing Counsel has placed reliance for his submission that Section 53A has relevance only in a dispute between the transferor and the transferee and has no application in the dispute when the third parties are in the picture, are easily distinguishable. The short controversy in the present case is whether on a true interpretation of Section 5(1) of the Ceiling Act, the tenure-holder can be said to be holding the lands which had gone out of his possession in pursuance of the three agreements of sale and which in view of Section 53A of the Transfer of Property Act, he was not entitled to get back from his proposed transferees. There is no question of any dispute regarding the title in which third party's interests might be in the picture. It is a question of the true interpretation of Section 5(1) of the Ceiling Act, which lays down that on and from the specified date "no tenure-holder shall be entitled to hold in the aggregate throughout Uttar Pradesh, any land in excess of the Ceiling area applicable to him." In view of this position in law, the argument of the learned Standing Counsel that the benefit of Section 53A can be claimed by the transferees and not by the transferor has also no relevance. When the State tells Babu Lal that as a tenure-holder he is holding so much land which is in excess of his ceiling area to a certain extent, the said tenure-holder is entitled to object that he is really not holding so much land but a lesser area and that certain lands which have been included in his holding, should not be so included because he is not holding such lands, being permanently out of their possession inasmuch as he is not entitled to dispossess the proposed transferees in whose favour he gave up possession in pursuance of the aforesaid agreements to sell. The third contention of the learned Standing Counsel that in view of Section 7 of the Ceiling Act the agreement of sale stood frustrated u/s 56 of the Indian Contract Act and, therefore, the contracts became void and the possession of the proposed transferees became illegal and as that of trespassers, is also not tenable. Firstly, it should be seen that in view of Clause (b) of the proviso to Section 5(6) of the Ceiling Act, if the agreement of sale can be shown to have been executed in good faith and for adequate consideration then the proposed transfer cannot be said to be liable to be ignored u/s 5(6) of the Act. Therefore, it cannot be contended that Section 7 of the Act has resulted in making all such

agreements of sale to be void u/s 7. Further, it should be seen that Section 7 is prospective in its operation. It speaks of suits which may be filed after the Amending Act 1973 came into force, i.e. after 8-6-1973. Section 5(1) refers to the position which prevailed on the commencement of the said Amending Act i.e. on 8-6-1973. Certainly it could not be said that on 8-6-1973 the proposed transferees were in possession of the lands as trespassers. They were in such possession on the basis of valid agreements of sale and in my opinion, the fact that subsequent to 8-6-1973 such agreements could be contended to have become void (I do not accept the correctness of the said contention), will be wholly immaterial for adjudging the position as on 8-6-1973.

9. So far as the first contention of the learned Standing Counsel is concerned, namely, that under the Ceiling law what is material is the title to the land and not merely its possession and for which submission reliance was placed on the decision of N.D. Ojha, J. in *Shiv Chand Pathak v. State* 1978 AWC 332, in my opinion, the argument is misconceived. It should be seen that in the aforesaid decision the learned Judge had to consider a case where some land was in the temporary occupation of the Government under the Land Acquisition Act. It was emphasised:

When the Government temporarily occupies the land of a tenure-holder u/s 35 of the Act it cannot be said that the said land has been acquired by the Government. The tenure-holder continues to be the tenure-holder of the said land. He only remains out of possession for the period during which the land is temporarily occupied by the Government and is paid compensation for being so kept out of possession. He, however, as already pointed out continues to be the tenure-holder, in this view of the matter notwithstanding the temporary occupation of the land by the Government u/s 35 of the aforesaid Act, Sheo Chandra Pathak continued to be the tenure holder thereof for purpose of determination of the Ceiling area u/s 5(1) of the Act.

10. In the instant case, I have to deal with a situation where the land agreed to be sold went into the permanent possession of the proposed transferees. In law, it was not open to the tenure holder to dispossess them in view of Section 53A of the Transfer of Property Act. A significant aspect of the matter which has to be emphasised is that in Section 5(1) the requirement laid down is not only that there should be subsisting title in the tenure-holder but additionally that he should be holding the land. As a reference to the aforesaid cases will show, the word "held" has been used in different contexts and some times the aspect of title has been emphasised and some times the aspect of possession. As Subba Rao, J. laid down in *K.K. Handique Vs. Member, Board of Agricultural Income Tax, Assam*, , the expression "holds" includes a two-fold idea of the actual possession as also of legal title, but some times the said expression is used only to mean actual possession. From the afore-said pronouncement of the Supreme Court, it is clear that if a title-holder has permanently lost possession he cannot be said to be holding the property merely on the basis of his subsisting title. In some of the

cases, which have been noticed above, for example the cases decided u/s 9 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and the cases decided u/s 14 of the Hindu Succession Act 1956, the courts emphasised that possession must be legal and should not be that of a trespasser. The learned Standing Counsel could not cite any case where it might be held that a person can be said to be holding the property merely on the basis of his title and when such a person has permanently lost his right to recover possession of such property. Subba Rao, J.'s observation in the aforesaid Supreme Court case clearly shows that the expression "held" is not to be interpreted in terms of title only. Title should be coupled with possession. It is true that it is not necessary that the title-holder should also have present possession of his property. If such property is in possession of a trespasser then the title holder can still be said to be holding the property because in law he is entitled to get back the possession of such property. In the same manner, when the Government is in temporary occupation of some land under the Land Acquisition Act, then the owner of the property can be said to be holding the property because his right to get back possession is not denied. In such cases, the trespasser and the Government cannot be said to be holding the property because they have no right to a permanent possession in law; they are bound and can be compelled to part with the possession of the property in favour of the title-holder. However, the position is different in a case to which Section 53A of the Transfer of Property Act is applicable. In such a case, the title-holder cannot dispossess the proposed transferee in view of the prohibition contained in Section 53A of the Act. In such a circumstance, despite the subsisting title, the tenure-holder cannot be said to be holding the land in question. In Section 5(1) of the Ceiling Act if the legislative intention were only to emphasise the aspect of title, then two expressions would not have been used. The aspect of title is emphasised by the expression "tenure-holder", which is defined in Section 3(17) read with the definition of "holding" in Section 3(9) of the Ceiling Act. The "tenure-holder", in brief, means a Bhumidhar, sirdar or an Asami of the two varieties mentioned in Section 3(9) or a tenant under the U.P. Tenancy Act other than a sub-tenant or Government lessee. It is, therefore, clear that when Section 5(1) uses the expression "tenure-holder" it means a person who belongs to any of the aforesaid categories and who has subsisting title in his favour, but the additional requirement laid down in Section 5(1) is that such tenure-holder should be holding the land of which he is the tenure-holder. I believe that here the expression "hold" has been used to emphasise the aspect of possession as against the aspect of title which has been emphasised by the use of the expression "tenure-holder". A reference to C.L.H. Form 3, which is the statement prepared u/s 10(1) of the Act, will disclose that in Parts A & C the expression used is Statement of the total area or area of land held by the tenure holder. Neither u/s 5(1) nor in C.L.H. Form 3, the expression used is land of which the person concerned is the tenure holder. By using the expression "hold" or "held", the Legislature has emphasised the aspect of possession also alongwith the aspect of title which has been emphasised by using the expression "tenure-holder".

11. Accordingly, I find that in the instant case the tenure-holder Babu Lal did not hold the lands which were in the possession of the proposed transferees on the basis of the three agreements of sale and, therefore, they were liable to be excluded from the holding of the said tenure-holder.

12. Accordingly, I dismiss this petition but make no order as to costs.