(1978) 09 AHC CK 0069

In the Allahabad High Court

Case No : Civil Misc. Writ No. 1021 of 1977

Trilok Singh APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 08-09-1978

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 3(17), 3(7), 5(1), 5(3), 5(6)

Citation : (1978) AWC 782

Hon'ble Judges : K.N. Seth, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

K.N. Seth, J.—This petition by the tenure-holder is directed against the orders of the Prescribed Authority and the learned Civil Judge, Nainital, declaring an area of 1.97 acres as surplus land with the Petitioners.

2. The only question raised in this petition relates to a gift deed dated 7-10-1971 executed by Smt. Satwant Kaur, wife of the tenure-holder, in favour of her adult daughter Km. Harjeet Kaur covering an area of 7.6 acres of land. It was contended that the land gifted by Smt. Satwant Kaur was held by her in her own right and after execution of the gift deed in favour of Km. Harjeet Kaur it came to be held by the latter in her own right and was not liable to be included in the holding of the Petitioner. It was urged that since the Petitioner was a tenure-holder, his wife Smt. Satwant Kaur could not be treated as a tenure-holder and the transfer made by her in favour of her daughter could not be ignored although it was made after 24th January, 1971. Reference in this connection was made to Section 3(17) of the U.P. Imposition of Ceiling on Land Holdings Act (hereinafter referred to as the Act) which defines ''tenure-holder'' to mean a person who is the holder of a holding but, except in Chapter III, does not include (a) a woman whose husband is a tenure-holder; and (b) a minor child whose father or mother

is a tenure-holder.

3. The contention is untenable. Section 5(1) of the Act provides that on and from the appointed 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. Sub-section (3) of Section 5 provides that in determining the ceiling area for purposes of Sub-section (1) the land held by other members of the family of the tenure-holder shall be clubbed with the land held by the tenure-holder. The word "family" in relation to a tenure-holder, as defined in Section 3(7), means his self or her self and his wife or her husband as the case may be (other than a judicially separated wile or husband), minor sons and minor daughters (other than married daughters). Smt. Satwant Kaur admittedly must be treated as a member of the Petitioner''s family and the land held by her was liable to be clubbed with the land held by the Petitioner while determining the ceiling area applicable to him. By virtue of Sub-section (6) of Section 5 of the Act transfer of land made after the 24th day of January, 1971 which but for the transfer would have been declared surplus land was liable to be ignored and not taken into account. This provision is attracted to any transfer of land made after the relevant date which was liable to be included in the holding of the tenure-holder while determining the ceiling area applicable to him. It is not confined to transfer of land held by the tenure-holder in his own right but also covers transfer" of land which was held by any other member of the tenure-holder''s family whose land was liable to be included in the holding of the tenure-holder for purposes of determining the ceiling area applicable to him. Even it the wife of the tenure-holder holds the land in her own right the transfer effected by her after the relevant date is liable to be ignored since the land held by her in her own right is also liable to be included in the holding of the tenure-holder. To confine the applicability of Sub-section (6) of Section 5 of the Act to transfers made by the tenure-holder himself and to exclude from its purview the transfers made by other members of his family whose land was liable to be taken into consideration in determining the ceiling area applicable to the tenure-holder, would be contrary to the legislative intent and result in defeating the object of the Act. Neither the express language of Sub-section (6) of Section 5 nor the legislative intent behind it warrants or justifies the interpretation put forward by the Petitioner. The gift deed executed by Smt Satwant Kaur in favour of her daughter Km. Harjeet Kaur must, therefore, be ignored, Since even the benefit of proviso (b) is not attracted in case of a transfer by gift, as held by a Bench of this Court, of which I was a member, in Fateh Mohammad v. District Judge Writ Petition No. 915 of 1975, decided on 10-7-1978, the land covered by the gift deed had been rightly included in the holding of the Petitioner and he is not entitled to any relief.

4. The petition fails and is dismissed. Parties shall bear their own costs.

