

Oswal Fats And Oils Ltd vs Addl.Commnr.,Bareilly Division & Ors on 1 April, 2010

Author: G.S. Singhvi

Bench: Asok Kumar Ganguly, G.S. Singhvi

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7982 OF 2002

Oswal Fats and Oils Limited

.....Appellant

Versus

Additional Commissioner (Administration),
Bareilly Division, Bareilly and others

.....Respondents

JUDGMENT

G.S. Singhvi, J.

1. Feeling aggrieved by refusal of the learned Single Judge of Allahabad High Court to quash orders dated 24.5.1993 and 30.5.2001 passed by Collector, Pilibhit (for short, 'the Collector') and Additional Commissioner (Administration), Bareilly (for short, 'the Additional Commissioner') respectively under the U.P. Zamindari Abolition and Land Reforms Act, 1950 (for short, 'the Act'), declaring that 27.95 acres land purchased by the appellant in Shahi and Khamaria Pul villages of District Pilibhit shall vest in the State Government, the appellant has filed this appeal.

2. The appellant is a company incorporated under Section 149(3) of the Companies Act, 1956. In 1991, the appellant decided to set up agro based paper projects in the State of U.P. By resolution dated 14.10.1991, the Board of Directors of the appellant authorised Shri Kamal Oswal (Director), Shri T.R. Sharma (General Manager) and Shri Jai Prakash Kaushal (Authorised Signatory) to negotiate and finalise purchase of land in the State of Uttar Pradesh and/or other States and Union Territories, to sign sale deeds etc. for effective acquisition/transfer of land. Paragraphs (e) and (f) of that resolution read as under:

"To sign for and on behalf of the company all sales deeds conveyance deeds, Intkals, Mutations and other documents necessary for the effective acquisition/transfer of the land in the name of the company and for this purpose to appear for and on behalf of

the company before any court of law, Tehsildar, Naib Tehsildar, Patwari, Registrar, Sub Registrar of any other land transferring authority.

And to do all other acts, things and deeds for and on behalf of the company which any of the above noted persons in the discharge of their lawful duties consider proper and in the best interest of the company."

3. Soon thereafter, an application dated 24.10.1991 was submitted on behalf of the appellant to Joint Director of Industries, Bareilly Zone, Bareilly for grant of permission under Section 154(2) of the Act for purchase of land in excess of 12.5 acres. The relevant portions of that application are extracted below:

"Our Company is proposing to set up a 100 TPD (Gross) Agro based paper project in area adjoining villages of Shahi Kamariapul, Adhkata Nazrana. For this project we require about 200 Acres of land out of which about 50 Acres shall be in Pilibhit District and about 150 Acres in Nawabganj Tehsil of Bareilly District.

The proposed paper project shall utilise Agricultural wastes such as wheat Straw, Rice Straw and Bagasse etc. as the main raw materials. The project shall generate direct employment opportunities for about 750 persons and for many more indirectly. The project shall be of special benefit to the people living in the areas near the site.

We through this letter are applying to your office for the permission under section 154 of ZALR Act for purchase of land in excess of 12.5 Acres for industrial purpose. We are enclosing two additional copies of this letter. We are also enclosing the site plan, recommendations of Technical Consultants for your ready reference.

We shall be pleased to furnish any other information required by you in this connection. We wish to bring to your kind notice that we plan to start the purchase of land for this project from next month i.e. Nov. 1991."

4. However without waiting for response of the concerned authority, the appellant purchased 40.45 acres land in Shahi and Khamaria Pul villages, Pargana Jahanabad, Tehsil and District Pilibhit through different sale deeds executed between January and April, 1992.

5. The State of Uttar Pradesh challenged transfer of various parcels of land in favour of the appellant by filing identical suits under Sections 154, 167, 168A and 194 of the Act. The transferors, who were impleaded as parties in all the suits did not contest the same. However, the appellant filed identical written statements in all the cases. In first paragraph of the written statement filed in Suit No.133 of 1993, the appellant admitted all the paragraphs of the suit. In the additional statement, the appellant virtually conceded that the land was purchased in contravention of the Act and stated that it may be allowed to retain 12.5 acres out of the disputed land. This is evinced from English translation of paragraphs 2 to 4 of the written statement which are reproduced below:

"2. That all the lands of both the village had been purchased for establishment of Industry after making the payment to the farmers. But I had the knowledge of law in Punjab and was not well conversant with the provisions of U.P. Zamindari Abolition Act therefore, I purchased the land in question which is more than 12 acres. We had given an application dated 24.10.1991 to the State Government for the permission of establishment of Industry and only thereafter we started purchasing the land without waiting for the permission from the Government because we had the belief that permission will be granted to us for establishment of Industry.

3. That we filed application for mutation of whole of the land under the sale and all of them had been accepted and we continued the purchasing of land because we had the belief that we are not violating any provision of Zamindari Abolition Act.

4. That the details of land which we want to keep for the establishment of factory, measuring twelve and a half acres out of the disputed land, are being given in the succeeding paras and we have no objection for any legal action with regard to the remaining land."

The particulars of the land suit sought to be retained by the appellant were given in the affidavit of Shri T.R. Sharma. A sketch map showing those khasra numbers were also filed with the written statement.

6. By an order dated 24.5.1993, the Collector declared that the purchase made by the appellant in excess of 12.50 acres is against the provisions of Sections 154/167 of the Act and that it will be entitled to retain only 12.50 acres and the remaining land measuring 27.95 acres would vest in the State Government. The relevant portion of the order passed by the Collector is extracted below:

"I have heard the arguments of Government Counsel (Revenue) for State and the learned counsel for M/s. Oswal Fats and Oil Limited and perused the records. After hearing the arguments of both the parties and the perusal of records, I have reached on the conclusion that the defendants M/s. Oswal Fats and Oil Limited, New Delhi have purchased the total land measuring 40.45 Acres in Village Shahi and Khamaria Pul, Pargana Jahanabad, Tehsil and District Pilibhit, as detailed above. However as per the provisions of Section 154/167 of Jamindari Abolition and Land Management Act, they can possess only 12.50 Acres land. Therefore, the transfer of remaining land measuring 27.95 Acres, which is in excess than 12.50 Acres, is against the provisions of Section 154/167 of Z.A. Act. The defendant Company Oswal Fats and Oil Limited has also given the option for 12.50 Acres land, in their affidavit. Therefore, the remaining land except the 12.50 Acres land mentioned in the Affidavit dated 19.05.93 is liable to be merged into the State."

7. The appellant questioned the order of the Collector by filing revision under Section 333 of the Act. In the memo of revision, it was claimed that excess land was purchased under the belief that the State Government would grant permission under Section 154(2). It was then urged that although the

Board of Directors had given power to Shri T.R. Sharma to appear before any court of law on behalf of the appellant, he was not authorized to enter into a compromise or give consent for retaining the particular land. Another plea taken by the appellant was that the company consists of 8 directors and if each Director is entitled to have a share of 12.5 acres, the purchase made by the appellant will not exceed the prescribed limit. However, at the hearing of the revision petition, the plea that Shri T.R. Sharma had filed written statement and affidavit beyond the scope of his authority appears to have been given up and it was submitted that the general manager had been authorised to pursue the case but he did not do it properly. The Additional Commissioner dismissed the revision of the appellant and confirmed the order of the Collector by recording following reasons:

"It is clear from the perusal of records that the defendants themselves have admitted in their objections filed before the court below that the land in question had been purchased for establishment of Industry and purchased the land more than 12.50 acres intentionally. They have also given the details of land which they want to keep with them and agree for merging of remaining land into the State. Revisionist has stated that they had given an application for obtaining the permission and it has also been admitted that they had purchased the land in excess than 12.50 acres without waiting for the permission. In these circumstances, the court below has correctly passed an order for merging of 27.95 Acre land into the State, which is in excess than the 12.50 acres land and this order does not require any intervention. Therefore, the Revision, being devoid of merits, is liable to be dismissed."

8. The appellant challenged the orders of the Collector and the Additional Commissioner in Writ Petition No.25819/2001 by taking up the position that Shri T.R. Sharma was not authorised to enter into a compromise or to make a statement relinquishing the land in favour of the State Government. It was also pleaded that the appellant was entitled to purchase land in excess of 12.50 acres because its case is covered by the explanation appearing below Section 154(1) of the Act.

9. The learned Single Judge rejected the argument on the issue of lack of authority of Shri T.R. Sharma to indirectly admit violation of Section 154(1) of the Act and to agree to surrender excess land by making the following observations:

"It is apparent on face of record that petitioner Company has no authorization either general or special to hold land in excess of 12.50 acres by State Government. Indisputably the petitioner Company is not a Co-operative Society registered under the Co- operative Societies Act nor petitioner Company is established for charitable purposes. Nothing is brought to my notice that the present Company is established in the interest of general public. Contrary to it, there are overwhelming materials on record and also from attending circumstances it is inferable that the petitioner Company is an establishment established with profit orientation for its shareholders. It is pertinent to mention here that the petitioner Company has not produced its certificate of registration under the Companies Act. During the course of argument articles of association of Nuskar Enterprises Ltd. is produced by the learned counsel for the petitioner. It is not understandable as to why the certificate of registration

under the Companies Act is not produced before the Court. It is also not understandable as to how the Articles of Association of Nuskar Enterprises Ltd. has nexus with the petitioner Company. I am of the view that even if the affidavit dated 19.5.1993 (Annexure-7 to the writ petition) of the General Manager of the petitioner Company giving consent to relinquish the land in excess of 12.50 acres in favour of State Government is ignored even then the findings of respondents No.1 and 2 are sustainable for the reasons given hereinabove."

The learned Single Judge then referred to the provisions of Sections 152, 154, 166 and 167 of the Act and held that the purchase made by the appellant in excess of 12.50 acres was illegal per se and its case does not fall within the ambit of the exceptions carved out in sub-section (2) of Section

154. The learned Single Judge rejected the appellant's plea that surrender made by Shri T.R. Sharma was unauthorized and held that the Collector did not commit any illegality by declaring that excess land will vest in the State Government. Simultaneously, he gave a direction to the Chief Secretary to ensure that possession of the excess land is taken by the Government free from all encumbrances without any delay.

10. At this stage, we may mention that during the pendency of the suits filed by the State Government before the Collector, the appellant instituted Suit No.25/1992-93 under Section 143 of the Act, which was disposed of by Pargana Adhikari, Pilibhit vide her order dated 12.7.1993 by declaring that 7.97 acres land purchased by the appellant in Tehsil and District Pilibhit was non-agricultural land.

11. Shri Manoj Swarup, learned counsel for the appellant argued that the order passed by the Collector was vitiated due to violation of the basics of natural justice inasmuch as the concerned officer did not give reasonable opportunity to the appellant to defend its case on the issue of alleged violation of Section 154 of the Act and the Additional Commissioner and the learned Single Judge gravely erred in confirming/upholding the order of the Collector. The learned counsel further argued that Shri T.R. Sharma, who was holding the post of General Manager was not authorised to make any concession on behalf of the appellant or give consent for surrendering 27.95 acres land on the ground that the purchase of land was made in violation of mandate of Section 154 and the Collector was not at all justified in acting upon the concession made by Shri T.R. Sharma. Learned counsel then referred to Section 154 of the Act and submitted that the embargo contained in that section is not applicable to the appellant's case because purchase made by a company does not fall within the ambit of that section. The learned counsel reiterated the plea that if each director of the company is held entitled to purchase 12.50 acres of land, the purchase of 40.45 acres land by the appellant cannot be treated as violation of Section 154(1). He lastly argued that even if transfer of land in favour of the appellant is held to be contrary to the mandate of Section 154(1), the Court may direct the State Government to accord post facto sanction in terms of sub-section (3) of Section 154 which was inserted by an amendment dated 24.3.2005. Learned counsel also criticized the direction given by the High Court to the Chief Secretary to take possession of the excess land and submitted that while deciding the writ petition filed by the appellant against the orders of the Collector and the Additional Commissioner, the learned Single Judge was not justified in treating the case as a public

interest litigation.

12. Shri T.N. Singh, learned counsel appearing for the respondents supported the impugned order and argued that the Collector did not commit any error by declaring that the excess land will vest in the State Government because the purchase was made by the appellant without obtaining permission in terms of Section 154 of the Act. Learned counsel relied upon the averments contained in the written statement filed on behalf of the appellant in Suit No. 133/1993 and argued that after having indirectly admitted contravention of Section 154(1) of the Act, the appellant did not have the locus to challenge the orders of the Collector and the Additional Commissioner on the ground that Shri T.R. Sharma was not authorized to give option for retaining the particular parcels of land and the learned Single Judge rightly held that the transfers made in violation of Section 154 were null and void.

13. Before dealing with the respective arguments/submissions, we consider it appropriate to note that after one year and five months of passing of order by the Collector, the appellant and the State Government entered into a lease agreement dated 15.10.1994 whereby the latter agreed to give excess land measuring 27.95 acres, the details of which were given in Schedule 'A' appended to the agreement, to the appellant on lease for a period of 30 years at an yearly rent of Rs.281.05. The lease agreement was signed on behalf of the appellant by Shri Kamal Oswal, Director and Shri J.P. Kaushal, General Manager (Liaison). In the lease agreement, a copy of which has been annexed as Annexure CA-1 with the counter affidavit filed on behalf of the respondents in this Court, the lessee i.e., the appellant candidly admitted that transfers made in its favour by the Bhumidhars were contrary to Section 154 of the Act and were void and, as such, land vested in the State Government under Section 167. This is evinced from the following paragraphs of the lease agreement:

"AND WHEREAS the transfers as aforesaid made by the Bhumidhars in favour of the Lessee in respect of the land described in Schedule 'A' hereto being in contravention of Section 154 of the Uttar Pradesh Jamindari Abolition and Land Reforms Act, 1950 (hereinafter called "the said Act") were void under Section 166 of the said Act and consequently the said land vested in the Government of Uttar Pradesh (hereinafter called "the State Government") under Section 167 of the said Act, free from all encumbrances with effect from the date of their transfer.

AND WHEREAS the lessor at the request of the Lessee has agree to demise and land vested in the State Government as aforementioned subject to the rights and restrictions and the several covenants hereinafter expressed for the purposes of the said project."

(emphasis supplied)

14. It is quite intriguing and surprising that the lease agreement was not brought to the notice of the Additional Commissioner and the learned Single Judge of the High Court and neither of them was apprised of the fact that the appellant had taken 27.95 acres land on lease from the Government by unequivocally conceding that it had purchased excess land in violation of Section 154(1) of the Act

and the same vested in the State Government. In the list of dates and the memo of special leave petition filed in this Court also there is no mention of lease agreement dated 15.10.1994. This shows that the appellant has not approached the Court with clean hands. The withholding of the lease agreement from the Additional Commissioner, the High Court and this Court appears to be a part of the strategy adopted by the appellant to keep the quasi-judicial and judicial forums including this Court in dark about the nature of its possession over the excess land and make them believe that it has been subjected to unfair treatment. If the factum of execution of lease agreement and its contents were disclosed to the Additional Commissioner, he would have definitely incorporated the same in order dated 30.5.2001. In that event, the High Court or for that reason this Court would have non suited the appellant at the threshold. However, by concealing a material fact, the appellant succeeded in persuading the High Court and this Court to entertain adventurous litigation instituted by it and pass interim orders. If either of the courts had been apprised of the fact that by virtue of lease deed dated 15.10.1994, the appellant has succeeded in securing temporary legitimacy for its possession over excess land, then there would have been no occasion for the High Court or this Court to entertain the writ petition or the special leave petition.

15. It is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person. In one of the earliest decisions on the subject i.e., - *R. v. Kensington Income Tax Commissioner* (1917) 1 KB 486, Viscount Reading, Chief Justice of the Divisional Court observed:

"Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the applicant was not candid and did not fairly state the facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that this Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit."

16. The above extracted observations were approved by the Court of Appeal in the following words:

"It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction: and it is

no excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward. If an applicant does not act with uberrima fides and put every material fact before the Court it will not grant him an injunction, even though there might be facts upon which the injunction might be granted." His Lordship rightly pronounced: "The Court, for its own protection, is entitled to say: We refuse this writ... without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before us." Warrington, L.J. was also of the same opinion. In a concurring judgment His Lordship observed: "It is perfectly well settled that a person who makes an ex parte application to the Court - that is to say, in absence of the person who will be affected by that which the Court is asked to do - is under an obligation to the Court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained by means of the order which has thus wrongly been obtained by him."

17. This Court and different High Courts have repeatedly invoked and applied the rule that a person who does not disclose all material facts has no right to be heard on the merits of his grievance - State of Haryana v. Karnal Distillery Co. Ltd. (1977) 2 SCC 431, Vijay Kumar Kathuria v. State of Haryana (1983) 3 SCC 333, Welcome Hotel and others v. State of Andhra Pradesh and others etc. (1983) 4 SCC 575, G. Narayanaswamy Reddy (dead) by LRs. and another v. Government of Karnataka and another (1991) 3 SCC 261, S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by LRs. and others (1994) 1 SCC 1, Agricultural and Processed Food Products v. Oswal Agro Furane and others (1996) 4 SCC 297, Union of India and others v. Muneesh Suneja (2001) 3 SCC 92, Prestige Lights Ltd. v. State Bank of India (2007) 8 SCC 449, Sunil Poddar and others v. Union Bank of India (2008) 2 SCC 326, K.D. Sharma v. Steel Authority of India Ltd. and others (2008) 12 SCC 481, G. Jayshree and others v. Bhagwandas S. Patel and others (2009) 3 SCC 141 and C.A. No. 5239/2002 - Dalip Singh v. State of U.P. and others, decided on 3.12.2009.

18. In Hari Narain v. Badri Das AIR 1963 S.C. 1558, this Court revoked the leave granted to the appellant by making following observations:

"It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue and misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the

conclusion that in such a case special leave granted to the appellant ought to be revoked."

19. In Dalip Singh's case, the appellant's grievance was that before finalizing the case under the U.P. Imposition of Ceiling on Land Holdings Act, 1960, the prescribed authority did not give notice to the tenure holder Shri Praveen Singh (predecessor of the appellant). On a scrutiny of the records, this Court found that the prescribed authority had issued notice to Shri Praveen Singh, which was duly served upon him and held that the appellant is not entitled to relief because he did not approach the High Court with clean hands inasmuch as he made a misleading statement in the writ petition giving an impression that the tenure holder did not know of the proceedings initiated by the prescribed authority. The preface and para 21 of that judgment read as under:

"For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

21. From what we have mentioned above, it is clear that in this case efforts to mislead the authorities and the courts have transmitted through three generations and the conduct of the appellant and his son to mislead the High Court and this Court cannot, but be treated as reprehensible. They belong to the category of persons who not only attempt, but succeed in polluting the course of justice. Therefore, we do not find any justification to interfere with the order under challenge or entertain the appellant's prayer for setting aside the orders passed by the Prescribed Authority and the Appellate Authority."

20. Notwithstanding our conclusion that the appellant is guilty of contumacious conduct and is not entitled to any relief, we have thought it proper to deal with the argument advanced by the learned counsel for the appellant on the issues of violation of rules of natural justice and non applicability of Section 154 of the Act.

21. The question whether the appellant was denied reasonable opportunity to defend its cause needs consideration in the light of the written statements filed on behalf of the appellant before the Collector, wherein it was admitted that land had been purchased without waiting for the permission of the Government under the belief that permission will be granted for establishing the industry. Not only this, it was candidly stated that the appellant has no objection if any legal action is taken with regard to land in excess of 12.50 acres. In the proceedings of the suits, no prayer was made on behalf of the appellant for permission to lead evidence to prove that the purchase made by it from Bhumidhars was not in violation of Section 154(1) of the Act. Before the Additional Commissioner and the High Court, the appellant did not make a grievance that the Collector had passed order without giving it a reasonable or effective opportunity of hearing. In this view of the matter, the appellant cannot now contend that the Collector did not act in consonance with the rule of *audi alteram partem*.

22. Though, Shri Manoj Swarup made strenuous efforts to convince the Court that Shri T.R. Sharma had no authority to make tacit admission of the illegality committed in the purchase of land and that he had no right to make an offer for surrender of excess land, we have not felt impressed. A reading of resolution dated 14.10.1991 makes it clear that Shri T.R. Sharma, the then General Manager of the appellant was authorised to take all actions necessary for transfer of land. That apart, in view of lease agreement dated 15.10.1994, which was not produced by the appellant before the Additional Commissioner, the learned Single Judge of the High Court and even this Court (for the first time, the lease agreement came to the fore when a copy thereof was annexed with the counter affidavit filed on behalf of the respondent), challenge to the competence of Sri T.R. Sharma to make an admission that the land was purchased by the appellant without waiting for the State Government's permission and that appropriate legal action can be taken with regard to excess land pales into the realm of insignificance. The learned counsel was at loss to explain as to how in the face of the lease agreement, which was signed by none else than Shri Kamal Oswal (Director of the appellant), whose name finds mention in Resolution dated 14.10.1991 and General Manager (Liaison) and which contains unequivocal admission that the land was purchased in violation of Section 154(1) and, as such, the transaction was void and that by virtue of Section 167, excess land vested in the State Government, it can be said that Shri T.R. Sharma acted beyond his authority in filing the written statement. This being the position, it is not possible to find any fault with the order of the Collector who relied upon the written statement filed on behalf of the appellant and declared that land in excess of 12.50 acres will vest in the State Government.

23. We shall now consider whether the restriction contained in Section 154(1) is not attracted in a case involving transfer of land by Bhumidhar in favour of a company. In this context, it is important to bear in mind that the Act was enacted by the State Legislature to achieve the goal of social and economic justice enshrined in the preamble of the Constitution. It provides for abolition of zamindari system, which involves intermediaries between tiller of the soil and the State and for acquisition of their rights, title and interest and to reform the law relating to land tenure. Sections 154, 166 and 167 of the Act, which contain restriction on transfer of land by Bhumidhar and also specify the consequences of transfer made in violation of that restriction, read as under:-

"154. Restriction on transfer by a bhumidhar.- (1) Save as provided in sub-section (2), no bhumidhar shall have the right to transfer by sale or gift, any land other than tea gardens to any person where the transferee shall, as a result of such sale or gift, become entitled to land which together with land if any, held by his family will, in the aggregate, exceed 5.0586 hectares (12.50 acres) in Uttar Pradesh.

Explanation.- For the removal of doubt it is hereby declared that in this sub-section the expression 'person' shall include and be deemed to have included on June 15, 1976 a 'Co-operative Society':

Provided that where the transferee is a co-operative society, the land held by it having been pooled by its members under clause

(a) of sub-section (1) of section 77 of the Uttar Pradesh Co-

operative Societies Act, 1965 shall not be taken into account in computing the 5.0586 hectares (12.50 acres) land held by it. (2) Subject to the provisions of any other law relating to the land tenures for the time being in force, the State Government may, by general or special order, authorise transfer in excess of the limit prescribed in sub-section (1) if it is of the opinion that such transfer is in favour of a registered cooperative society or an institution established for a charitable purpose, which does not have land sufficient for its need or that the transfer is in the interest of general public.

Explanation.- For the purposes of this section, the expression 'family' shall mean the transferee, his or her wife or husband (as the case may be) and minor children, and where the transferee is a minor also his or her parents.

(3) For every transfer of land in excess of the limit prescribed under sub-section (1) prior approval of the State Government shall be necessary:

Provided that where the prior approval of the State Government is not obtained under this sub-section, the State Government may on an application give its approval afterward in such manner and on payment in such manner of an amount, as fine, equal to twenty-five per cent of the cost of the land as may be prescribed. The cost of the land shall be such as determined by the Collector for stamp duty.

Provided further that where the State Government is satisfied that any transfer has been made in public interest, it may exempt any such transferee from the payment of fine under this sub-section.

166. Transfer made in contravention of the Act to be void.-

Every transfer made in contravention of the provisions of this Act shall be void.

167. Consequences of void transfers.- (1) The following consequences shall ensue in respect of every transfer which is void by virtue of section 166, namely-

(a) the subject-matter of transfer shall with effect from the date of transfer, be deemed to have vested in the State Government free from all encumbrances;

(b) the trees, crops and wells existing on the land on the date of transfer shall, with effect from the said date, be deemed to have vested in the State Government free from all encumbrances;

(c) the transferee may remove other movable property or the materials of any immovable property existing on such land on the date of transfer within such time as may be prescribed. (2) Where any land or other property has vested in the State Government under sub-section (1), it shall be lawful for the Collector to take over possession over such land or other property and to direct that any person occupying such land or property be evicted therefrom. For the purposes of taking over such possession or evicting such unauthorised occupants, the Collector may use or cause to be used such force as may be necessary."

24. While enacting law for abolition of zamindari system, the legislature was aware of the ground reality that despite the welfare measures which may be taken by the State to protect the interest of poor farmers, economically affluent class of people may persuade or pressurize them to part with their sole source of sustenance i.e., the land. This is the reason why a ceiling has been imposed on transfer of land by Bhumidhar. Section 154(1), in no uncertain terms, declares that no Bhumidhar shall be entitled to transfer any land other than tea gardens by sale or gift to any person if holding of the transferee would exceed 12.50 acres (Earlier the prescribed limit was 30 acres but by an amendment it was reduced to 12.50 acres). An explanation was subsequently added to clarify that the word 'person' shall include and be deemed to have included a cooperative society on June 15, 1976. Proviso to Section 154(1) lays down that where the transferee is a cooperative society, the land held by it having been pooled by its members under Section 77(1)(a) of the Uttar Pradesh Cooperative Societies Act, 1965 shall not be taken into account for the purpose of computing 12.50 acres. Under sub- section (2), the State Government is empowered to authorize transfer of land in excess of the limit prescribed in sub-section (1) if it is of the opinion that such transfer is in favour of a registered cooperative society or an institution established for a charitable purpose, which does not have sufficient land for its need or the transfer is in the interest of general public. The substantive part of sub-section (3), which was added by an amendment made in 2005, lays down that every transfer of land in excess of the limit prescribed under sub-section (1) shall require prior approval of the State Government. By virtue of proviso to this sub-section, the State Government has been clothed with power to give post facto approval on payment of the specified amount as fine. Section 166 declares that every transfer made in contravention of the provision of the Act shall be void. This obviously includes Section 154(1). Section 167 enumerates the consequences of void transfers. Clause

(a) of Section 167(1) lays down that a transfer which is void by virtue of Section 166, the subject matter of transfer shall be deemed to have vested in the State Government from the date of transfer. In terms of Section 167(2), the Collector is entitled to take over possession of any land or other

property which has vested in the State Government under sub-section (1) and also direct eviction of any person occupying such land or property.

25. The argument of Shri Manoj Swarup that a company is not a 'person' within the meaning of Section 154(1) of the Act and, therefore, the restriction contained therein is not applicable to transfer of land in favour of a company sans merit. Since, the word 'person' has not been defined in the Act, reference can usefully be made to the definition of that word in the Uttar Pradesh General Clauses Act, 1904. Sections 3 and 4(33) of that Act read as under:

"3. Application of the Act to other enactments. - (1) The provisions of this Act shall apply to this Act and to all Uttar Pradesh Acts, whether made before or after the commencement of this Act.

(2) The provisions of this Act in their application to any enactment or statutory instrument shall be subject to any contrary requirements of the context of the enactment or instrument that is to be interpreted.

4. Definitions. - In all Uttar Pradesh Acts, unless there is anything repugnant in the subject or context, -

xxxx xxxx xxxx (33) "Person" shall include any company or association or body of individuals, whether incorporated or not;

xxxx xxxx xxxx"

A reading of Section 3(1) reproduced above makes it clear that the provisions contained in the U.P. General Clauses Act are applicable to all Uttar Pradesh Acts including the Act with which we are concerned. To put it differently, by virtue of Section 3(1) of the General Clauses Act, the definition of the word 'person' contained in Section 4(33) will be deemed to have been engrafted in the Act and the same cannot be given a restricted meaning as suggested by the learned counsel. Rather, in view of the definition contained in Section 4(33) of the U.P. General Clauses Act, the word 'person' appearing in Section 154(1) would include any company or association or body of individuals, whether incorporated or not. This view of ours is strengthened by the language of explanation added to Section 154(1) whereby it was declared that the expression 'person' shall include a cooperative society. The word 'include' is generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. The word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions used. It may be equivalent to 'mean and

include' and in that case it may afford an exhaustive explanation of the meaning which for the purposes of the Act must invariably be attached to those words or expressions. - Dilworth v.

Commissioner of Stamps (1899) AC 99. In State of Bombay and others v. Hospital Mazdoor Sabha and others AIR 1960 SC 610, Gajendragadkar, J., observed:

"It is obvious that the words used in an inclusive definition denote extension and cannot be treated as restricted in any sense. Where we are dealing with an inclusive definition, it would be inappropriate to put a restrictive interpretation upon terms of wider denotation.

In CIT, A.P. v. Taj Mahal Hotel, Secunderabad (1971) 3 SCC 550, this Court interpreted the word 'plant' used in Section 10(2)(vi-b) of the Income Tax Act, 1922. Speaking for the Court, Grover, J., observed:

"The very fact that even books have been included shows that the meaning intended to be given to 'plant' is wide. The word 'includes' is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include."

26. Moreover, if the word 'person' used in Section 154(1) is interpreted keeping in view the object of legislation and by applying the rule of contextual interpretation, the applicability of which has been recognised in Poppatlal Shah v. State of Madras AIR 1953 SC 274 (para 7), S.K. Gupta and another v. K.P. Jain and another (1979) 3 SCC 54 (para 25), Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others (1987) 1 SCC 424 (para 33) and Central Bank of India v. State of Kerala and others (2009) 4 SCC 94 (para 98), it becomes clear that the same would include human being and a body of individuals which may have juridical or non juridical status.

27. At the cost of repetition, we consider it appropriate to observe that the primary object of Section 154(1) is to put a restriction/ceiling on the transfer of land by a Bhumidhar to any other person by sale or gift. Though, sub-sections (2) and (3) of Section 154 empowers the Government to dilute the rigor of the restriction contained in Section 154(1), if that section is read in conjunction with Sections 166 and 167 which provide for consequences of transfer made in contravention of the Act including Section 154(1), the word 'person' appearing in Section 154(1) cannot be construed in a manner which would defeat the object and purpose of legislation. If a narrow meaning is given to the word 'person' appearing in Section 154(1), the purpose of legislation viz., abolition of zamindari and making tillers owner of the land, which is in consonance with the mandate of the object of social justice set out in the preamble and the provisions contained in Articles 38 and 39 of the Constitution, would be substantively defeated because in that event companies, corporations, etc. will be able to grab the land of the tillers by offering them comparatively remunerative prices and

again make them landless poor.

28. At this stage, we may notice two precedents which have direct bearing on the interpretation of word 'person'. In *Hasmukhlal Dahayabhai and others v. State of Gujarat and others* (1976) 4 SCC 100, this Court was called upon to interpret Section 6 of the Gujarat Ceiling Act, 1961. It was argued on behalf of the appellant that the concept of person embodied in Section 6(2) was contrary to the concept of that word in second proviso to Article 331A(1) of the Constitution. While repelling the challenge, this Court observed:

"It is evident that Section 6 conceives of each "person" holding land as a single unit whose holding must not exceed the ceiling limit. Section 2 sub-section (21) says: " 'person' includes a joint family",. Thus, the term "person" is not, strictly speaking, defined in the Act. Section 2 sub-section (21) only clarifies that the term "person" will "include" a joint family also. It certainly does not exclude an individual from being a person in the eyes of law.

This has been done apparently to make it clear that, in addition to individuals, as natural persons, families, as conceived of by other provisions, can also be and are persons. This elucidation of the term "person" is in keeping with Section 3(42) of the General Clauses Act, 1897, which lays down: "

'person' shall include any company or association or body of individuals, whether incorporated or not".

We have referred to the Central General Clauses Act 10 of 1897 and not to the State General Clauses Act, which also contains a similar clarification, because Article 367 of our Constitution provides that the definitions contained in the Central Act "apply for the interpretation of the Constitution". The argument which has been advanced before us is that the concept of the term "person", having been fixed by the Central General Clauses Act, this concept and no other must be used for interpreting the second proviso to Article 31-A(1) of the Constitution which lays down:

"Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof."

It is true that, but for the provisions of Section 6, sub- section (2) of the Act, the term "person", which includes individuals, as natural persons, as well as groups or bodies of individuals, as artificial persons, such as a family is, the entitlement to the ceiling area would be possessed by every person, whether artificial or natural. In other words, if Section 6(2) of the Act was not there, each individual

member of a family would have been entitled to hold land upto the ceiling limit if it was his or her legally separate property. This follows from the obvious meaning of the term "person" as well as the inclusive definitions given both in the Act under consideration and in the General Clauses Act.

Spouses and minor children, as natural persons, have not been debarred from holding their separate rights to land by the provisions of the Act. It is not the object of the Act to do that. The object of the Act, as set out above, is twofold: firstly, to limit the ceiling area of each holder; and, secondly, to acquire what falls beyond the ceiling limit so that the State may distribute it to more needy persons. It is not disputed that compensation is provided for acquisition of what exceeds the ceiling area in every case. As was held by this Court in *H.H. Kesavananda Bharati Sripadagalavaru v. State of Kerala* the amount of compensation fixed cannot be questioned. Therefore, no provision of the Act could be or is challenged on the ground that the required compensation is not prescribed for an acquisition under it as required by Article 31(2) of the Constitution or is inadequate."

29. The issue was recently considered in *Ramanlal Bhailal Patel v. State of Gujarat* (2008) 5 SCC 449. That case involved interpretation of the provisions contained in the Gujarat Agricultural Land Ceiling Act, 1960. The High Court held that the word 'person' appearing in Section 6 of the Act includes an association of persons and as such 10 co-owners were entitled to only one unit i.e. 36 acres. It was argued on behalf of the appellant that the definition of "person" in the General Clauses Act cannot be read into the definition of "person" in the Ceiling Act and in any case co- owners cannot be considered as a body of individuals or association of persons and each co-owner should be considered as a person for the purposes of the Ceiling Act. The Court referred to the provisions of Gujarat General Clauses Act, which is *pari materia* to the General Clauses Act, 1897 and held:

"The extent of land that could be held by the appellants depends upon the interpretation of the word "person" in Section 6(1) of the Ceiling Act which provides that "no person shall ... be entitled to hold ... land in excess of the ceiling area". If the ten co-owners are considered as an "association of persons" or "body of individuals", and consequently as a "person", then the ten co-owners together as a person, will be entitled to only one unit of land which is the ceiling area per person. But if "association of persons" or "body of individuals" is not a "person", or if a co-ownership is not an association of person/body of individuals, then each co-owner or the family of each co-owner, as the case may be will be a separate "person"

having regard to the definition of person in Section 2(21) of the Ceiling Act, in which event, each family will be entitled to hold one unit of land.

The word "person" is defined in the Act, but it is an inclusive definition, that is, "a person includes a joint family". Where the definition is an inclusive definition, the use of the word "includes" indicates an intention to enlarge the meaning of the word used in the statute. Consequently, the word must be construed as comprehending not only such things which they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. Thus, where a definition uses the word "includes", as contrasted from "means", the word defined not only bears its ordinary, popular and natural meaning, but in addition also bears the extended statutory

meaning (see *S.K. Gupta v. K.P. Jain* following *Dilworth v. Commr. of Stamps* and *Jobbins v. Middlesex Country Council*).

The ordinary, popular and natural meaning of the word "person" is "a specific individual human being". But in law the word "person" has a slightly different connotation and refers to any entity that is recognised by law as having the rights and duties of a human being. Salmond defines "person" as "any being whom the law regards as capable of rights and duties" or as "a being, whether human or not, of which rights and duties are the attributes" (*Jurisprudence*, 12th Edn., p. 299). Thus the word "person", in law, unless otherwise intended, refers not only to a natural person (male or female human being), but also any legal person (that is an entity that is recognised by law as having or capable of having rights and duties). The General Clauses Act thus defines a "person" as including a corporation or an association of persons or a body of individuals whether incorporated or not. The said general legal definition is, however, either modified or restricted or expanded in different statutes with reference to the object of the enactment or the context in which it is used. For instance, the definition of the word "person" in the Income Tax Act, is very wide and includes an individual, a Hindu Undivided Family, a company, a firm, an association of persons or body of individuals whether incorporated or not, a local authority and every other artificial juridical person. At the other extreme is the Citizenship Act, Section 2(f) of which reads thus: "Person" does not include any company or association or body of individuals whether incorporated or not.' Similarly, the definition under Section 2(g) of the Representation of People Act, 1950, is "person" does not include a body of persons.

Both definitions of the word "person", in the General Clauses Act and the Ceiling Act, are inclusive definitions. The inclusive definition of "person" in the General Clauses Act applies to all Gujarat Acts unless there is anything repugnant in the subject or the context. The inclusive definition of "person" in Section 2(21) of the Ceiling Act, does not indicate anything repugnant to the definition of "person" in the General Clauses Act, but merely adds "joint family" to the existing definition. Therefore the definition of person in the Ceiling Act, would include the definition of person in Section 3(35) of the General Clauses Act. The resultant position can be stated thus: the definition of person in the General Clauses Act, being an inclusive definition, would include the ordinary, popular and general meaning and those specifically included in the definition. The inclusive definition of "person" in the Ceiling Act, in the absence of any exclusion, would have the same meaning assigned to the word in the General Clauses Act, and in addition, a "joint family" as defined. Thus, the word "person" in the Ceiling Act will, unless the context otherwise requires, refer to:

- (i) a natural human being;
- (ii) any legal entity which is capable of possessing rights and duties, including any company or association of persons or body of individuals (whether incorporated or not); and
- (iii) a Hindu Undivided Family or any other group or unit of persons, the members of which by custom or usage, are joint in estate and residence."

30. In view of the above, the argument of the learned counsel that the word 'person' in Section 154(1) means a human being or a natural person only and that the explanation by which a cooperative society was included in the said word is indicative of the legislature's intention to give a narrow meaning to the word 'person' is liable to be rejected. In our view, the explanation instead of narrowing the meaning of the word 'person' makes it clear that the same would include a non natural person.

31. The submission that if share of the individual Director is taken into consideration, the total land of the appellant would not exceed 12.50 acres is being mentioned only to be rejected in view of the contents of lease agreement. That apart, no evidence was produced before the Collector or the Additional Commissioner to prove that the land was purchased in the name of the Directors of the appellant. Even before the learned Single Judge of the High Court and this Court, no such evidence has been produced. In Ramanlal Bhailal Patel's case, this issue was considered and answered in negative in the following words:

"Instead of buying the land (172 acres 36 guntas) jointly under the four sale deeds it was open to the ten persons to have bought the lands individually, that is each of them purchasing such extent of land as he or she wanted. If they had registered the sale deeds individually (subject to each of them being entitled to buy agricultural land, under the land reforms laws in force) each couple would have been entitled to hold land to the extent of one unit. Instead of each individual or couple purchasing the land in their respective names, if for convenience in negotiations, ten individuals buy the land jointly, the position will be no different. It cannot be said that merely because the sale deed is in the joint names of ten persons, they purchased the land as "an association of persons"

or as "body of individuals" with the common intention of carrying on agricultural activities jointly or producing income, profit or gain or carry on some common joint venture. In fact before purchasing the lands, the ten persons had entered into an agreement placing on record that the object of purchasing the lands jointly was only to facilitate negotiations and avoid duplicating the purchase procedures and not to cultivate them jointly. There is no evidence of any joint cultivation, nor any evidence of any intention to have a joint venture. On the other hand, after purchase, they divided the lands and informed the Land Revenue Authorities and each co-owner was registered as the owner of the respective land allotted to him/her. This is not a case where a body of individuals purchased the land with the intention of having a continued community of interest by way of a joint venture or as a business venture. It is therefore not possible to treat the ten purchasers as an "association of persons/body of individuals" nor is it permissible to treat them as a single "person", thereby restricting their entitlement to hold land to only one unit, even though there are ten purchasers. The Tribunal and the High Court were right in holding that the word "person" in the Ceiling Act includes an "association of persons/body of individuals". But they were not justified in treating the co-owners as an "association of persons", or in holding that the ten co-owners will be entitled to own only one unit. Having regard to Section 6(2) of the Act, the share of each couple (husband and wife) in the land, plus any other land individually held by them will have to be calculated to find out whether they held any land in excess of the ceiling limit. Therefore, the share of each appellant in the lands

jointly purchased, with the addition of the lands held by his spouse, and addition of any other land held by them, will give the basis for determining the surplus land. For example, if a husband's share as co-owner is 20 acres and wife's share as co-owner is 20 acres, and their other individual holding is another 10 acres (all of the same category in `C' Class), the total holding of the family will be 50 acres (20+20+10 acres) and the surplus will be 14 acres."

32. The submission of Shri Manoj Swarup that a direction may be given to the State Government to accord post facto sanction to the purchase of excess land cannot be entertained much less accepted because the appellant has been found guilty of not coming to the Court with clean hands. In any case, in the absence of any factual foundation, such a plea cannot be entertained at this stage.

33. The appellant's grievance against the direction given by the learned Single Judge to the Chief Secretary to ensure that possession of excess land is taken without delay does not merit consideration because as mentioned in the earlier part of this judgment, the State Government had already granted lease of excess land to the appellant.

34. Before parting with the case, we deem it necessary to express our serious reservation about the bona fides of the State Government in granting lease of excess land to the appellant. It is impossible to fathom any rational reason for this action of the State Government ignoring that the appellant had purchased land in patent violation of Section 154(1) of the Act. By executing lease agreement dated 15.10.1994, the concerned officers of the State effectively frustrated the object sought to be achieved by the legislature by enacting the Act and the order passed by the Collector.

35. In the result, the appeal is dismissed. Since the appellant has not approached the quasi judicial and judicial forums i.e., the Additional Commissioner, the High Court and this Court with clean hands and succeeded in securing interim orders, it is ordained to pay costs, which is quantified at Rs.2 lacs. With a view to ensure that functionaries of the State Government may not connive with the appellant and compound the wrong already done, we direct the Government of Uttar Pradesh not to renew the lease of the appellant at the end of 30 years period and deal with excess land in accordance with the provisions of the Act.

.....J. [G.S. Singhvi]J. [Asok Kumar Ganguly] New Delhi April 01, 2010.