Gopal Singh vs State Of U.P. & Ors on 15 April, 1988

Equivalent citations: 1988 AIR 1194, 1988 SCR (3) 540, AIR 1988 SUPREME COURT 1194, 1988 (2) SCC 532, 1988 ALL. L. J. 802, (1988) 2 SCJ 449, 1988 UJ(SC) 2 36, (1988) 14 ALL LR 64, (1988) REVDEC 183, (1988) 1 ALL WC 710, (1988) 2 JT 90 (SC), 1988 2 JT 90

PETITIONER:
GOPAL SINGH

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT15/04/1988

BENCH:
NATRAJAN, S. (J)
BENCH:
NATRAJAN, S. (J)
VENKATACHALLIAH, M.N. (J)

CITATION:
1988 AIR 1194 1988 SCR (3) 540
1988 SCC (2) 532 JT 1988 (2) 90
1988 SCALE (1)706

ACT:
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960: Section 3(7) and 5(6)- Determination of Ceiling area-Computation of land holding-Landholder-Transfer of land by registered gift deed to invalid daughter-Whether extent of such transferred land to be reckoned in computing total extent of land holding.

Constitution of India, 1950: Articles 14, 31A, 31B and Schedule IX-U. P. Imposition of Ceiling on Land Holdings Act 1960, Sections 3(7) and 5(6)- Constitutional validity of.

HEADNOTE:
In response to a notice issued under Section 10(2) of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, the appellant contended that he was not in possession of 23.61 acres of surplus agricultural land as set out in the said notice, and that the authorities had failed to notice that he had transferred by means of a registered deed of gift dated January 7, 1972 an extent of 12.35 acres of land to his invalid daughter who remained

unmarried inspite of being 30 years old because she was born a crippled child, and that the lands were part of Abadi and, therefore, stood excluded from the operation of the said Ceiling Act.

The Prescribed Authority as well as the Appellate Authority did not find favour with the aforesaid contentions, and held that the appellant had failed to establish that the transfer of land in favour of his daughter was made in good faith, and was not intended for the immediate or deferred benefit of the appellant and other members of his family, and furthermore the transfer appeared to be a device to defeat the provisions of the Act.

Being aggrieved with the order of the Prescribed Authority, that was affirmed by the Appellate Authority the appellant approached the High Court by way of Writ Petition to quash the said orders. The High Court, however, dismissed the Writ Petition.

In the appeal to this Court it was contended on behalf of the
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appellant: (1) though the registered deed of gift had been executed after the prescribed date viz. January 21, 1971, the transfer was in pursuance of an earlier family arrangement to provide maintenance for the invalid daughter and, therefore, the transfer falls outside the purview of Section 5(6) of the Act; (2) if the transfer attracted the operation of Section 5(6) and did not constitute an excepted transfer under Clause (b) of the proviso to Section 5(6), then Section 5(6) should be held ultra vires Article 31-A of the Constitution; (3) the Ceiling Act is violative of Article 14 of the Constitution in that it discriminates between major unmarried daughter and minor unmarried daughter by excluding the former from the definition of family' under Section 3(7) of the Act.

Dismissing the Appeal,

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HELD: 1(i) From the definition of 'family' in Section 3(7) it can be seen that a major daughter of a tenure holder, even if she is unmarried. is undoubtedly not treated as a member of the family. [544D]

(ii) The Legislature has provided by section 5(6) that any extent of land transferred after 24.1.197l has also to be included in the total extent of holding of the tenure holder for the purposes of calculation of the ceiling area, unless the transfer falls within the category of excepted transfers under clauses (a) or (b) of the proviso. [544E]

In the instant case, the finding of the Prescribed Authority and the Appellate Authority, which has found acceptance with the High Court, is a finding of fact and as such its correctness cannot be canvassed in an appeal under Article 136 of the Constitution. Even otherwise, the appellant had failed to prove that there was an earlier family arrangement and if there was one, to explain why he

had delayed the execution of gift till after the Ceiling Act came into force, especially when the purported gift would only result in himself and his sons being in possession of the land and enjoying the income therefrom. [544F-G]

2. There is, no scope for the appellant to raise any contention that section 5(6) is ultra vires Article 31-A. Its constitutionality cannot be assailed by reason of the immunity enacted in Article 31-B. [545A,B]

3. The provisions of the Ceiling Act do not discriminate between man and woman qua man and woman but merely organise a scheme where life's realism is legislatively pragmatised. [545E]

D.G. Mahajan v. Maharashtra, [1977] 2 SCR 790 and Ambika
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Prasad v. U.P. State, [1980] 3 SCR 1159, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1331 of 1978.

From the Judgment and order dated 31.3.1977 of the Allahabad High Court in C.M. Writ No. 72 of 1777.

Arvind Kumar, K.B. Chatterjee, R.K. Mathur and Mrs. Laxmi Arvind for the Appellant.

Prithvi Raj and Ashok K. Srivastava for the Respondents.

The Judgment of the Court was delivered by NATARAJAN, J. This appeal by special leave arises out of and is directed against the dismissal of Civil Misc. Writ No. 72/77 filed by the appellant by the High Court of Allahabad by judgment and order dated 31.3.1977. The facts are not in controversy and the only question for consideration in the appeal is whether the High Court was in error in affirming the view taken by the Prescribed Authority and the Appellate Authority (the District Judge, Mathura) that an extent of 12.35 acres, which the appellant claimed to have transferred to his daughter, by means of a registered gift deed, has also to be reckoned in computing the total extent of land in the appellant's holding for determination of the ceiling area in his holding under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act (hereinafter the Act) 1960.

In response to a notice issued under Section 10(2) of the Act, the appellant contended that he was not in possession of 23.61 acres of surplus agricultural land as set out in the notice and that the authorities had failed to notice that he had transferred by means of a registered deed of gift dated 7.1.1972 an extent of 12.35 acres of land to his invalid daughter Pushpa Devi who remained unmarried inspite of being 30 years old because of her being born a crippled child and, secondly, the lands bearing khasra No. 226, 227 and 229 were part of Abadi and, therefore, stood excluded from the operation of the Ceiling Act. Both the contentions did not find favour with the Prescribed Authority as well as the Appellate Authority. In so far as the first contention is concerned, with

which alone we are concerned in this appeal, both the authorities held that the appellant had failed to establish that the transfer of land in favour of his daughter was made in good faith and was not intended for the immediate or deferred benefit of the appellant and other members of his family and furthermore the transfer appeared to be a device to defeat the provisions of the Act The appellant filed Civil Misc. Writ No. 72/77 in the High Court for having the order of the Prescribed Authority as affirmed by the Appellate Authority quashed but failed to meet with success and hence the present appeal by special leave.

The learned counsel for the appellant assailed the finding rendered against the appellant as regards the purported gift of land to his daughter, on the following grounds:

(1) Though the registered deed of gift had been executed after the prescribed date viz. 21.1.71, the transfer was in pursuance of an earlier family arrangement to provide maintenance for the invalid daughter and, therefore, the transfer falls outside the purview of Section 5(6) of the Act.

(2) Alternatively, if the transfer attracted the operation of Section 5(6) and did not constitute an excepted transfer under Clause (b) of the proviso to Section 5(6), then Section 5(6) should be held ultra vires Article 31-A of the Constitution. (3) The Act is violative of Article 14 of the Constitution in that it discriminates between major unmarried daughters and minor unmarried daughters by excluding the former from the definition of 'family' under Section 3(7) of the Act Before examining the merits of the above said contentions, it has to be stated that the Act as well as the amending Acts viz. Uttar Pradesh Act 18 of 1973 and Uttar Pradesh Act 2 of 1975 have been included in the Ninth Schedule and therefore Section 5(6) is not open to attack on the ground of constitutional infirmity by reason of the immunity conferred by Article 31-B. Bearing this position in mind, we may refer to the definition of Section 3(7) and Section 5(6) of the Act The relevant provisions read, as under:

"Section 3(7): 'family' in relation to a tenure-holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters)".

"Section 5(6): In determining the ceiling area appli-

cable to a tenure-holder, any transfer of land made after the twenty fourth day of January, 1971 which but for the transfer would have been declared surplus land under this Act, shall be ignored and not taken into account:

Provided that nothing in this sub-section shall apply to

(a) a transfer in favour of any person (including Government) referred to in sub-section (2);

(b) a transfer proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a benami transaction or for immediate or deferred benefit of the tenure holder or other members of his family.

From the definition of family in Section 3(7) it may be seen that a major daughter of a tenure holder, even if she is unmarried, is undoubtedly not treated as a member of the family. As regards Section 5(6) the legislature has provided that any extent of land transferred after 24.1.1971 has also to be included in the total extent of holding of the tenure holder for the purposes of calculation of the ceiling area unless the transfer falls within the category of excepted transfers under clause (a) or (b) of the proviso.

Taking up the first contention of the appellant s counsel, we find no merit in it because the finding of the Prescribed Authority and the Appellate Authority, which has found acceptance with the High Court, is a finding of fact and as such its correctness cannot be canvassed in an appeal under Article 136 of the Constitution Even otherwise we do not see any error in the impugned finding because the appellant had failed to prove that there was an earlier family arrangement and if there was one, to explain why he had delayed the execution of the deed of gift till after the Act came into force, especially when the purported gift would only result in himself and his sons being in possession of the land and enjoying the income therefrom. That apart, there is no scope for treating the gift as falling outside the purview of Section 5(6) because the sub- section mandates "any transfer of land made after the twenty forth day of January, 1971", to be ignored and not to be taken into account unless the transfer stands protected by proviso (a) or (b) of the sub-section.

As regards the second contention that Section 5(6) is violative of Article 31-A of the Constitution, we may straightaway observe that the question is no longer res integra. In D. G. Mahajan v. Maharashtra, [1977] 2 SCR 790 at pages 810 to 812 and at page 824 this Court has held that "that Section 5, sub clause 6 of the amended U.P. Imposition of Ceiling on Land Holdings Act, even if it contravenes the seconds proviso to clause 1 of Article 31-A, a matter on which we do not wish to express any opinion since it is unnecessary to do so, is validated under Article 31-B" and "that Section 5 sub-clause (6) of the U P Imposition of Ceiling on Land Holdings Act is valid and its constitu- tionality cannot be assailed by reason of the immunity enacted in Article 31-B."

In a later case Ambika Prasad v. U.P. State, [1980] 3 SCR 1159 the validity of the Act was declared and inter-alia it was held that "the provision in Section 5(6) when read in the light of the proviso is fair and valid." There is, therefore no scope for the apellant to raise any contention that Section 5(6) is ultra vires Article 31-A. So far as the last contention is concerned, even this question is concluded by the pronouncement in Ambika Prasad's case (supra) and does not, therefore, survive for consideration. This Court while observing that though "the anti-female kink is patent in that the very definition of family discloses prejudice against the weaker sex by excluding adult daughter without providing for any addition to the ceiling on their account," has nevertheless held that the provisions do not discriminate between man and woman qua man and woman but merely organise a scheme where life's realism is legislatively pragmatised The relevant portion of the judgment reads as under:

> "Section 5(3) does not confer any property on an adult son nor withdraw any property from an adult daughter. That provision shows a concession to a tenure-holder who has propertyless adult sons by allowing him to keep two more hectares per such son. The propertyless son gets no right to a cent of land on this scope but the father is permitted to keep some more of his own for feeding this extra mouth. If an unmarried daughter has her own land, this legislation does not deprive her any more than a similarly situated unmarried son. Both are regarded as tenure-holders. The singular grievance of a chronic spinster vis a vis a similar bachelor may be that the father is allowed by s. 5(3) to hold an extra two hectares only if the unmarried major is a son.
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> Neither the daughter nor the son gets any land in consequence and a normal parent will look after an unmarried daughter with an equal eye. Legal injury can arise only if the daughter's property is taken way while the son's is retained or the daughter gets no share while the son gets one. The legislation has not done either. So, no tangible discrimination can be spun out. May be, the legislature could have allowed the tenure holder to keep another two hectares of his on the basis of the existence of an unmarried adult daughter. It may have grounds rooted in rural realities to do so. The Court may sympathise but cannot dictate that the land holder may keep more land because he has adult unmarried daughter. That would be judicial legislation beyond permissible process. "

The above pronouncement of the Constitution Bench concludes the issue regarding the vice of discrimination.

For the reasons aforesaid, all the contentions of the apellant fail and the appeal will stand dismissed. The parties are, however, directed to pay and bear their respective costs.

N.V.K. Appeal dismissed.