

Ram Chandra Sinoh (Dead) Through Legal ... vs State Of U.P. And Others on 30 August, 1990

Equivalent citations: 1990 AIR 2186, 1990 SCR SUPL. (1) 118, AIR 1990 SUPREME COURT 2186, 1990 (4) SCC 546, 1990 ALL. L. J. 771, (1991) REVDEC 64, 1991 ALL CJ 1 61, (1991) 1 ALL WC 399, 1991 SCD 41, 1990 UJ(SC) 2 690, (1991) 1 JT 68 (SC)

Author: S.C. Agrawal

Bench: S.C. Agrawal, K.N. Saikia

PETITIONER:

RAM CHANDRA SINOH (DEAD) THROUGH LEGAL HEIRS

Vs.

RESPONDENT:

STATE OF U.P. AND OTHERS

DATE OF JUDGMENT 30/08/1990

BENCH:

AGRAWAL, S.C. (J)

BENCH:

AGRAWAL, S.C. (J)

SAIKIA, K.N. (J)

CITATION:

1990 AIR 2186

1990 SCR Supl. (1) 118

1990 SCC (4) 546

JT 1991 (1) 68

1990 SCALE (2) 380

ACT:

U.P. Imposition of Ceiling on Land Holdings Act 1960
Amended by Act of 1972 (18 of 1973) further amended by U.P.
Act 2 of 1975--Sections 5, 6, 8, 10, II--Ceiling area deter-
mination of.

HEADNOTE:

The 1960 Act makes provision for imposition of Ceiling on Land holdings and for determination of surplus land. It was amended by U.P. Act 18 of 1973 to lower the ceiling limit and to make provisions with regard to transfers of land in anticipation of the imposition of ceiling. This Act came into force on June 8, 1973. Further amendments were

made in the Act by U.P. Act 2 of 1975 inserting Explanation I & Explanation II after sub-section (1) of section 5 as substituted by 1973 Act and given effect retrospectively i.e. from June 8, 1973.

A notice under section 10(2) of Act was issued to the appellant and he filed objections submitting that Chhiddu Singh, his father, had executed a registered gift deed dated October 13, 1971 in respect of plot No. 111 measuring 63 Bighas, 12 Biswas and 17 Dhur in favour of appellant's mother. appellant's wife and two sons of the appellant. Chhiddu Singh died on April 28, 1973. Accordingly the said gifted land was not inherited by the appellant and it could not be treated as part of his holding for the purpose of imposition of ceiling. The prescribed authority overruled the objections, included the said land as part of the holding of the appellant and declared the surplus land of the appellant to the extent of 49 Bighas and 17 Biswas.

The appellant filed an appeal to the First Additional Civil Judge. It was allowed partly and the surplus land was reduced to 42 Bighas 13 Biswas and 6 Dhur. The appellant thereafter filed a writ petition in the High Court which was dismissed. Feeling aggrieved the appellant filed this appeal after obtaining special leave to appeal.

The appellant urged before this Court-that amendments introduced by the 1973 Act are not retrospective in nature and are operative only from June 8, 1973, that the surplus land has to be determined as on June 8, 1973, the date of coming into force of 1973 Act, and that the

land gifted by the appellant's father on October 13, 1971 could not be included in the holding of the appellant as he was not the tenure holder of the said land on the death of his father on April 28, 1973.

Dismissing the appeal, the Court,

HELD: The 1973 Act postulates that ceiling area of a tenure holder has to be determined in accordance with the provisions contained in sec. 5 of the Act. While determining the ceiling area, the surplus land held in excess of ceiling area, which is to be acquired by the State, has also to be determined. [123H; 124A]

For determining ceiling area sub-section (6) of section 5 provides that any transfer of land, which but for the transfer would have been declared surplus land under the Act if made after January 24, 1971 shall be ignored and not taken into account but transfers falling within the ambit of clauses (a) and (b) of the proviso to sub-sec. (6) are, excluded, and such transfers even though made after January 24, 1971, have to be taken into account. [124B]

In the instant case, the gift was made and executed on October 13, 1971 and it was a transfer of land and as it was made after January 24, 1971 the transfer of land was in respect of land which would have been declared surplus land under the Act. This transfer did not fall within the ambit

of clauses (a) and (b) of the proviso to sub-section (6) of section 5. Thus such gift was liable to be ignored for the purpose of determining the ceiling area applicable to the appellant. Sub-section (6) of section 5 does not speak of a transfer by the tenure holder but it speaks of any transfer of land made after January 24, 1971. So the contention of the appellant that gift was made by his father and not by him as tenure holder and he did not inherit the same on the death of his father is untenable, since sub-section (6) of section 5 is applicable to a transfer even made by the predecessors-in-interest of the tenure holder whose ceiling area is to be determined and who inherited the land prior to June 8, 1973. The land which was transferred vide gift deed dated October 13, 1971 was land which but for the said transfer would have been declared surplus land under the Act. [124C-H; 125A]

Thus, once the gift is ignored it is to be treated to have continued to vest in the appellant's father and after his death the appellant inherited the same and as such was part of the holdings of the appellant on June 8, 1973 and has to be taken into consideration for determining the surplus land held by the appellant. [125B]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5653 1983.

From the Judgment and Order dated 31.8.1979 of the Allahabad High Court in Misc. Writ Petition No. 4994 of 1975 E.C. Agarwal for the Appellant.

Manoj Swarup and Ashok K. Srivastava for the Respondent. The Judgment of the Court was delivered by S.C. AGRAWAL, J. This appeal by special leave is directed against the judgment of the High Court of Judicature at Allahabad dated August 31, 1979 in Civil Misc. Writ Petition No. 4994 of 1975 filed by the appellant. The said writ petition related to proceedings for determination of surplus land under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as 'the Act'). The Act has been enacted by the U.P. State legislature to provide for the imposition of ceiling on land holdings in Uttar Pradesh and certain other matters connected therewith. In Section 4 of the Act provision is made for calculation of ceiling area. Section 5 provides for imposition of ceiling on existing holdings. Sections 6 to 8 provide for exemption of certain lands from the imposition of ceiling. Section 9 provides for issue of a general notice by the Prescribed Authority calling upon every tenure holder holding land in excess of the ceiling area to submit to him a statement in respect of all his holdings. Section 10 lays down that in every case where a tenure holder fails to submit a statement or submits an incorrect statement the Prescribed Authority shall, after making such enquiry as he may consider necessary cause to be prepared a statement indicating the plot or plots proposed to be declared as surplus land and thereupon cause to be served on every such tenure holder a notice together with a copy of the statement thus prepared calling upon him to show cause.

within a period specified in the notice. why the statement be not taken as correct. Section 11 provides for determination of surplus land by the Pre- scribed Authority in cases where no objection is filed within the period specified in the notice. issued under Section 10. Section 12 provides for determination of surplus land by the Prescribed Authority in cases where an objection has been filed. Section 13 makes provision for appeal against the order passed by the Prescribed Authority under Section 11 or Section 12.

In 1972 it was decided to lower the ceiling limit and to make further provisions with regard to transfers in antici- pation of the imposition of ceiling. The U.P. State legisla- ture enacted the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972. U.P. Act 18 of 1973 (hereinafter referred to as 'the 1973 Act') which came into force on June 8, 1973. By the 1973 Act Sections 3 to 8 were substituted and other amendments were made in the Act. Certain further amendments were made in the Act by the U.P. Act 2 of 1975. Among the amendments introduced by the Amendment Act of 1975 was insertion of Explanation I and Explanation II after sub-section (1) of Section 5 as substituted by the 1973 Act. U.P. Act 2 of 1975 was brought into force with effect from June 8, 1973.

A notice under Section 10(2) of the Act was issued to the appellant and he filed objections wherein it was submit- ted that Chhiddu Singh. the father of the appellant, had executed a registered gift deed dated October 13, 1971 in respect of Plot No. 111 measuring 63 Bighas, 12 Biswas and 17 Dhur in favour of his wife, Smt. Roshan Kumari, Smt. Premwati, wife of the appellant, and Virendera Bahadur Singh and Tej Vir Singh, sons of the appellant. It was also stated that Chhiddu Singh died on April 28, 1973. The submission of the appellant was that the said land which was gifted by his father Chhiddu Singh was not inherited by the appellant and it could not be treated as part of the holding of the appel- lant for the purpose of imposition of ceiling. The Pre- scribed Authority overruled the said objection of the appel- lant and ignoring the gift made by Chhiddu Singh, included the said land as part of the holding of the appellant and declared the surplus land of the appellant to the extent of 49 Bighas and 17 Biswas. The appellant filed an appeal which was partly allowed by the First Additional Civil Judge. Aligarh, by his judgment dated January 31. 1975, whereby the area of surplus land was reduced to 42 Bighas, 13 Biswas and 6 Dhur. The appellant filed a writ petition in the High Court which was dismissed by the High Court by judgment dated August 31, 1979. Feeling aggrieved by the said judg- ment of the High Court the appellant has filed this appeal after obtaining special leave to appeal.

The expression 'holding' is defined in clause (9) of Section 3 as under:

"(9) 'holding' means the land or lands held by a person as a bhumidhar, sirdar, asami of Gaon Sabha or an asami mentioned in Section 11 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, or as a tenant under the UP. Tenancy Act, 1939, other than a sub-tenant, or as a Government lessee or as a sub-lessee of a Government lessee, where the period of sub-lease is co-extensive with the period of the lease;"

The expression 'tenure-holder' is defined in clause (17) of Section 3 as under:

"(17) 'tenure-holder' means a person who is the holder of a holding, but does not include--

(a) a woman whose husband is a tenure-holder;

(b) a minor child whose father or mother is a tenure-

holder."

The relevant provisions of Section 5 are:

"5 Imposition of ceiling----(1) On and from the commencement of the Uttar Pradesh Imposition of Ceiling of Land Holdings (Amendment) Act, 1972, 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. Explanation I--In determining the ceiling area applicable to a tenure-holder, all land held by him in his own right, whether in his own name, or ostensible in the name of any other person, shall be taken into account. Explanation II--(If on or before January 24, 1971, any land was held by a person who continues to be in its actual cultivatory possession and the name of any other person is entered in the annual register after the said date) either in addition to or to the exclusion of the former and whether on the basis of a deed of transfer or licence or on the basis of a decree, it shall be presumed, unless the contrary is proved to the satisfaction of the prescribed authority, that the first mentioned person continues to hold the land and that it is so held by him ostensibly in the name of the second mentioned person."

"(6) In determining the ceiling area applicable 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

(a) a transfer in favour of any person (including Govern- ment) 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 the immediate or deferred benefit of the tenure-holder or other members of his family. Explanation--The burden of proving that a case falls within clause (b) of the proviso shall rest with the part.x,' claiming its benefit."

Shri Agarwal has urged that the amendments that were introduced in the Act by U.P. Act 18 of 1973 are not retro- spective in nature and that the said amendments are opera- tive with effect from June

1973, and that surplus land has to be determined with reference to June 8, 1973, the date of coming into force of the 1973 Act. The submission of Shri Agarwal is that on June 8, 1973 the land covered by Plot No. 111 measuring 63 Bighas, 12 Biswas and 17 Dhur could not be included in the holding of the appellant and the appellant was not the tenure-holder in respect of the said land. Shri Agarwal has contended that in view of the gift deed dated October 13, 1971, executed by Chhiddu Singh, the father of the appellant, the land covered by the gift deed had vested in the donees and the appellant did not inherit the said land on the death of Chhiddu Singh on 28th April, 1973. Laying stress on the definition of expression 'holding' contained in clause (9) of Section 3 and the expression 'tenure-holder' contained in clause 117) of Section 3, Shri Agarwal has submitted that on June 8, 1973 the land that was gifted by Chhiddu Singh was not held by the appellant and it was not part of appellant's holding and the appellant was not the tenure-holder in respect of the same.

find no merit in this contention. The Act postulates that the ceiling area of a tenure-holder has to be determined in accordance with the provisions contained in Section

5. Alongwith such determina-

tion of ceiling area there has to be determination of the surplus land held in excess of the ceiling area which is to be acquired by the State. For the purpose of determination of the ceiling area provision has been made in sub-section (6) of Section 5 that any transfer of land, which but for the transfer would have been declared surplus land under the Act, if made after January 24, 1971, shall be ignored and not taken into account. Transfers falling within the ambit of clauses (a) and (b) of the proviso to sub-section (6) are, however, excluded and such transfers even though made after January 24, 1971 have to be taken into account. The gift made under the gift deed dated October 13, 1971 executed by Chhiddu Singh was a transfer of land. It was made after January 24, 1971. It was in respect of land which but for the transfer would have been declared surplus land under the Act. The said transfer did not fall within the ambit of clauses (a) and (b) of the proviso to sub-section (6) of Section 5. In view of sub-section (6) of Section 5 the said gift was, therefore, liable to be ignored for the purpose of determining the ceiling area applicable to the appellant.

Shri Agarwal has urged that sub-section (6) of Section 5 cannot be applied to the present case inasmuch as it postulates a transfer by the tenure-holder whose ceiling area is to be determined under the Act and that in the present case the gift was not made by the appellant but by his father and, therefore, the said gift cannot be ignored on the basis of the provisions of Sub-section (6) of Section 5. We are unable to agree. Sub-section (6) of Section 5 does not speak of a transfer by the tenure-holder. It speaks of any transfer of land made after January 24, 1971 which but for the transfer would have been declared surplus land under the Act. It is not the requirement of sub-section (6) of Section 5 that the transfer should be by the tenure-holder whose ceiling area is to be determined. We cannot read this requirement in it. While construing sub-section (6) of Section 5 it has to be borne in mind that this provision has been made with the object of preventing evasion of the ceiling law by owners of large holdings making transfers in anticipation of the imposition of the lower limit on the ceiling area. Such a provision must be so interpreted as to curb the mischief and advance the remedy. A construction which will cut down the scope of this provision cannot be adopted. In our opinion, therefore, sub-section (6) of Section 5 is applicable to a transfer made by

the predecessor-in-interest of the tenure-holder whose ceiling area is to be determined in cases where such predecessor died before June 8, 1973 and the tenure-holder whose ceiling area is to be determined inherited the lands of such predecessor prior to June 8, 1973. In the instant case the land which was transferred by Chhiddu Singh under gift deed dated October 13, 1971 was land which but for the said transfer would have been declared surplus under the Act. Once the gift made by Chhiddu Singh is ignored the land so gifted should be treated to have continued to vest in Chhiddu Singh at the time of his death on April 28, 1973 and on the death of Chhiddu Singh the appellant inherited the same. The said land has to be treated as part of the holding of the appellant on June 8, 1973 and he was the tenure- holder in respect of the same on that date. The said land was required to be taken into consideration for determining the surplus land held by him.

Shri Agarwal has relied upon the decision of this Court in Arjan Singh and Another v. The State of Punjab and Others, [1969] 2 S.C.R. 347. This case turns on the interpretation of the expression 'this Act' in Section 7 of the Pepsu Tenancy and Agricultural Lands (Amendment and Validation) Act, 1962 whereby Section 32KK was introduced in the Pepsu Tenancy and Agricultural Lands Act, 1955 with effect from October 30, 1956. By Section 32KK it was provided that land owned by a Hindu undivided family would be deemed to be land of one land owner and partition of land owned by such a family shall be deemed to be a disposition of land for the purposes of Section 32FF and the question was whether a partition effected by a registered partition deed dated September 6, 1956 was covered by the said provision. It would have been so covered if the expression 'this Act' was construed to mean the principal Act of 1955. This Court, however, held that in view of the various provisions contained in the Amendment Act of 1962 the expression 'this Act' meant the Amendment Act of 1962 and not the principal Act. This decision, therefore, turns on the interpretation of the particular provision of the Amendment Act of 1962 and it has no bearing on the present case.

We, therefore, find no merit in the appeal and it is accordingly dismissed. No order as to costs.

S.Bali

Appeal dismissed.