

Supreme Court of India

Kripashanker vs Director Of Consolidation And ... on 11 January, 1979

Equivalent citations: AIR 1979 SC 1015, (1979) 4 SCC 199, 1979 (11) UJ 415 SC

Author: V Tulzapurkari

Bench: Y Chandrachud, V Tulzapurkar

JUDGMENT V.D. Tulzapurkari, J.

1. This appeal by certificate raised a short question as to whether a transfer by way of sale or gift in contravention of Section 154 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as 'the Act') is void or voidable to the extent of area in excess of the limit of 12 1/2 acres prescribed therein?

2. The facts lie in a narrow compass and are these One Basant resident of Gursandi village, since deceased, was the Bhumidhar of several plots of land comprised in two Khatas bearing Nos. 14 and 78 in villages Gurmandi and Saraiya, District Mirzapur. He executed a registered gift deed on December 19, 1964 in favour of the appellant in respect of the plots comprised in the said two Khatas but died before the mutation could be effected in the name of the appellant in the Revenue records. During the consolidation proceedings that were initiated under the U P. Consolidation of Holdings Act, the two villages having come under the operation of consolidation of holdings scheme, the appellant applied for mutation in his name in respect: of the plots covered by the gift Deed. Objections were filed by several persons under Section 9 of the Consolidation of Holdings Act claiming different rights in or over some of the plots gifted to the appellant. The principal objector was the Gaon Sabha of Gursandi village, which body in its objections filed on March 28, 1966 contended that the gift Deed in favour of the appellant contravened Section 154 of the Act because as a result of it the appellant had become entitled to an area of more than 12 1/2 acres, that the entire Gift Deed was, therefore, void, that no mutation could be ordered in favour of the appellant and that the appellant was liable to be ejected from the said lands to which the Gaon Sabha had become entitled under Section 163 of the Act. The Consolidation Officer heard the mutation application of the appellant and the various objections filed under Section together in respect of some of the plots he upheld the claims of the some of the objections but negatived the contention of the Gaon Sabha that the entire Gift was void and he allowed mutation to be effected in favour of the appellant on the basis of the Gift Deed in respect of the remaining plots after excluding those over which claims of others had been upheld by him.

2. Feeling aggrieved by the Consolidation Officer (sic) 31, 1966, the appellant as well as the Gaon Sabha preferred (sic) Settlement Officer, the former being against the claims of certa(sic) had been upheld by the Consolidation Officer while the latter being (sic) order directing mutation being made in appellant's favour in respect(sic) plots on the basis of the Gift Deed. The Settlement Officer upheld the (sic) tion of the Gaon Sabha that the Gift Deed in favour of the appellant being (sic)contravention of Section 154 of the Act was void and the transferee was liable to (sic) ejected from the lands at the instance of Gaon Sabha under Section 163 of the Act; in that view of the matter he allowed the appeal of the Gaon Sabha and dismissed the appeal of the appellant. Against the order dated August 4, 1967 of the Settlement Officer, the appellant preferred a revisional application to the Director of Consolidation who, confirmed, the view of the Settlement Officer & dismissed the

revisional application on Nov. 22, 1967. The appellant challenged the view taken by the Settlement Officer as well as the Director of Consolidation before the Allahabad High Court by filing a writ petition being Civil Miscellaneous Writ Petition No. 4389 of 1957 under Article 226 of the Constitution but the High Court summarily dismissed the writ petition on December 22, 1967. It is against this decision of the High Court that the appellant has come to this Court in appeal.

3. As stated at the outset the only question argued at the Bar before us was whether a transfer by way of sale or gift in contravention of Section 154 of the Act is void or voidable to the extent of area in excess of the limit of 12 1/2 acres prescribed therein. It was not disputed before us that the appellant prior to the execution of the Gift Deed on December 19, 1961 in his favour by Basant did not own or hold any land in Uttar Pradesh. It was also not disputed before us that the total area of the several plots of land that were gifted to him by that deed, even after excluding the area of those plots over which claims of others had been upheld by the Consolidation Officer, was in excess of the limit of 12 1/2 acres prescribed under Section 154 of the Act and, therefore, the question raised before us in this appeal directly arises for our determination. Two Sections, namely Section 154 and Section 163 of the Act are material and the former as it stood at the material time read thus :

154. Restrictions on transfers by a bhumidhar.-(1) Save as provided in Sub-sections (2) and (3), no bhumidhar shall have the right to transfer, by sale or gift, any land other than tea gardens to any person (other than an institution established for a charitable purpose) where such person shall, as a result of the sale or gift, become entitled to land which, together with land, if any, held by himself or together with his family, will in the aggregate, exceed 12 1/2 acres in Uttar Pradesh.

(2) A bhumidhar may transfer by sale or gift any land to any person for a specified industrial purpose provided such land does not exceed the area that may be specified as required by such person for the industrial purpose.

(3) The State Government may authorise a transfer in excess of the limit prescribed in Sub-section (1) when it is of the opinion that such transfer is in favour of a registered co-operative society, which does not have land sufficient for its needs, or that the transfer is in the interest of the general public.

(4) Where any land transferred for a specified industrial purpose, or any part of such land, which is in excess of the limit prescribed in Sub-section (1) remains unutilised for the specified industrial purpose for a specified period or such extended period, (sic) be allowed by the State Government, or is directed to any (sic) purpose, the transfer in respect of such excess land shall for (sic) purpose of Section 163 be deemed to have been made in contravention of the provisions of this Section.

Explanation I-For the purpose of this section a family shall include the transferee himself, his wife or husband, as the case may be, and his minor children.

Explanation II-In this section 'specified' means specified in a certificate granted by the Director of Industries, Uttar Pradesh in the prescribed form.

Section 163. Transfer in contravention of this Act. (1) Where a transfer of any holding or part thereof has been made in contravention of the provisions of Section 154, the transferee shall, notwithstanding anything in any law, be liable to ejectment from such holding or part on the suit of the Gaon Sabha, which shall thereupon become vacant land; but nothing in this section will prejudice the right of the transferer to realize the whole or portion of the price remaining unpaid, or the right of any other person other than the transferee to proceed against such holding or land in enforcement of any claim thereto.

(2) To every suit for ejectment under this section the transferer shall be made a party.

4. Counsel for the appellant urged before us that the object of the Legislature in enacting Section 154 of the Act was to place a ceiling on land holding, the policy being that nobody should hold more than 12 1/2 acres of land in Uttar Pradesh and it was a view to achieve that object that Section 154 put restrictions on transfers that could be made by a Bhumidhar. He therefore, urged that the restriction on the right of a Bhumidhar to transfer his land by way of sale or gift should operate in such a manner that the transferee does not become entitled to land together with the land already held by him in excess of the prescribed limit. In other words, the transfer to the extent that it leaves the total holding of 12 1/2 acres with the transferee would be valid and would not be in contravention of the section. According to him the consequence of a transfer in contravention of Section 154 as indicated in Section 163 is that the transferee becomes liable to ejectment only to the extent of the excess over and above the prescribed limit and it is such excess land that will become vacant upon the transferee's ejectment therefrom. On the other hand, counsel for the State and the Gaon Sabha contended that an embargo has been placed upon the very right of a Bhumidhar to effect a transfer of land by sale or gift the effect of which would make the transferee owner of land exceeding 12 1/2 acres in Uttar Pradesh in the aggregate and, therefore, the entire transfer deed which is in contravention of Section 154 would be void. He relied upon Section 163 whereunder the transferee is liable to be ejected from "such holding or part meaning the whole or part of the holding that has been transferred. Reliance was also placed by him upon Section 189 of the Act whereunder the interest of the transferor Bhumidhar in his holding or part thereof gets extinguished when the holding or part thereof has been transferred by him in contravention of Section 154 of the Act.

5. At the outset it may be noticed that the Legislature has made a distinction between a transfer made by a Bhumidhar in contravention of Section 154 and a transfer made by a Sirdar or Asami in contravention of the provisions of the Act. Unlike Section 166 whereunder any transfer made on behalf of a Sirdar or Asami in contravention of the provisions of Chapter VIII has been declared to be void, a transfer by a Bhumidhar in contravention of Section 154 has not been so declared. Section 163 merely provides that in contravention of the provisions of Section 154 there shall be ejectment of the transferee at the (sic) Sabha but till action is taken by the Gaon Sabha the transferee (sic) enjoys the land. Further the very fact that by an amendment of (sic) by UP. Act, XXXV of 1976 it was provided for the first time (sic) by a Bhumidhar in contravention of Section 154 could be declared (sic) emphasizes the position that under Section 163 as it stood prior to the (sic) such transfer would not be void.

6. Secondly, Sub-section (1) of Section 154 merely places a restriction on transfers by a Bhumidhar but does not deal with the effect of a deed executed in breach of the restriction imposed. The effect of the

contravention of Section 154 has been specified in Section 163 and all that Section 163 provides is that where such a transfer in contravention of Section 154 has been made the transferee shall be liable to ejectment but the question is from what portion he is liable to be ejected? The section provides "the transferee shall, notwithstanding anything in law, be liable to enactment from such hold or part". The expression "holding or part", which undoubtedly refers to the holding or part that has been transferred by the Bhumidhar, is preceded by the word 'such' and that whole expression "such holding or part" clearly means that holding or part thereof which has been transferred in contravention of Section 154. In other words, the use of the words "such" clearly suggests that the ejectment should be from the land transferred in contravention of Section 154, that is to say, from the land in excess of the prescribed limit. Reading Sections 154 and 163 together, therefore, it seems to us clear that any transfer by a Bhumidhar in contravention of Section 154 is not void but voidable at the instance of the Gaon Sabha only to the extent of the contravention, that is to say, only to the extent of excess, over and above the prescribed limit. Section 189, on which reliance was placed by counsel for the respondent deals with extinction of interest of a transferor Bhumidhar who has affected a transfer in contravention of Section 154 and has no bearing on the question as to how and to what extent the transferee is affected by the contravention.

7. The aforesaid interpretation receives support from the provision which is to be found in Sub-section (4) of Section 154. Under Sub-section (2) a Bhumidhar has been permitted to transfer by sale or gift any land to any person for a specified industrial purposes provided such land does not exceed the area that may be specified as required by such person for the industrial purpose, and in respect of such transfer of land for a specified industrial purposes Sub-section (4) provides that if any part of such land is in excess of the prescribed limit remains unutilized for the specified industrial purpose for a specified period the transfer in respect of such excess land shall for the purpose of Section 163 be deemed to have been made in contravention of provision of this section. It will thus appear clear that for purpose of Section 163, that is to say, for the purpose of ejectment contemplated therein it is only in respect of excess land over and above the prescribed limit that the transfer shall be deemed to have been made in contravention of the section. By parity of reasoning it can be legitimately said that in respect of the transfer referred to in Sub-section (1) of Section 154 the consequence contemplated in Section 163 should be visited on that portion of the land which is in excess of the prescribed limit.

8. Lastly, it appears to us clear that the object behind enacting Section 154 is to place a ceiling on land holding and it is with that object in view that a restriction of the type specified therein is placed on the right of a Bhumidhar to transfer his land by way of sale or gift and if this be the real object of the Legislature then that object would be achieved if on proper interpretation it is held that the deed by which transfer is effected in contravention of Section 154 (sic) sequences under Section 163 not entirely but only to the (sic) over and above the prescribed limit. In this behalf we to the decision of this Court in *Kishan Pal Singh and Ors. v. (sic) G.A. No. 1333 of 1966* decided on September 8, 1969 where observed thus :

The object of the Legislature in enacting Section 154 of the Act is to place a ceiling on the land holding. The policy of the Legislature in enacting Section 154 of the Act was that nobody should hold more than 30 acres of land (the then prescribed limit).

9. Having regard to the above discussion we are clearly of the view that the appeal must be allowed and the decision of the Settlement Officer as well as that of the Director of Consolidation which was impliedly confirmed by the High Court be summarily dismissing the writ petition must be set aside. We accordingly set aside and sent the matter back to the Consolidation Officer to dispose of the appellant's application for mutation in accordance with law in the light of the above judgment. The Consolidation Officer will give the option to the appellant to select such plots out of those gifted to him under the Gift Deed as would be within the limit prescribed under Section 154 of the Act.

10. There will be no order as to costs.