Supreme Court of India
State Of A.P vs S.B.P.V.Chalapathi Rao on 24 October, 1994
Equivalent citations: 1995 AIR 557, 1995 SCC (1) 725
Author: K Singh
Bench: Kuldip Singh (J)

PETITIONER:
STATE OF A.P.

Vs.

RESPONDENT:
S.B.P.V.CHALAPATHI RAO

DATE OF JUDGMENT24/10/1994

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
HANSARIA B.L. (J)
MAJMUDAR S.B. (J)

CITATION:
1995 AIR 557 1995 SCC (1) 725
JT 1994 (7) 178 1994 SCALE (4)637

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by KULDIP SINGH, J.--Chalapathi Rao and his son Ananda Mohan respondents in the herein, sold 220.25 acres of land by way of fourteen sale deeds executed on five different days between 16-12-1971 and 27-12-1971. The question for consideration is whether the transfers are to be disregarded for the purpose of computation of the ceiling area of the respondents under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (the Act). The Land Reforms Tribunal (the Tribunal) by its order dated 14-4-1977 answered the question in the affirmative and held that the transfers were made in anticipation of and with a view to avoiding or defeating the objects of the Act. The Land Reforms Appellate Tribunal (the Appellate Tribunal), however, by its order dated 17-12-1977 reversed the findings of the Tribunal and held as under:

"Therefore, in these cases we hold that the declarant had given a reasonable

> explanation for the sale of the lands and there was no intention to avoid the provisions of the Land Ceiling Act. Accordingly, we hold on point-1 that all the sales effected by the appellant, his wife and his son are true, genuine and supported by consideration and they were effected for the expansion of their industry and actually the amounts were invested for such expansion of the sugar factory and it cannot be said that they were intended to defeat or avoid the provisions of the Land Ceiling Act. It follows that all the extents covered by all the sale deeds have to be excluded from the holding of the appellant's family unit, for the purpose of computation of the ceiling area of the appellants."

Revision petitions filed by the State of Andhra Pradesh under Section 21 of the Act were admitted by the High Court on 6-7-1978 on the limited question regarding "the treatment of the lands as single crop wet lands" and in respect of all other questions the revision petitions were dismissed. The High Court, therefore, upheld the above quoted findings of the Appellate Tribunal. These appeals by the State of Andhra Pradesh are against the order of the Appellate Tribunal as upheld by the High Court.

2. Sections 7(1) and 21 of the Act, which are relevant, are reproduced hereunder:

> "7. Special provision in respect of certain transfers, etc. already made. Where on or after 24th January, 1971 but before the notified date, any person has transferred whether by way of sale, gift, usufructuary mortgage, exchange, settlement, surrender or in any other manner whatsoever, any land held by him or created a trust of any land held by him, then the burden of proving that such transfer or creation of trust has not been effected in anticipation of, and with a view to avoiding or defeating the objects of any law relating to a reduction in the ceiling on agricultural holdings, shall be on such person, and where he has not so proved, such transfer or creation of trust, shall be disregarded for the purpose of the computation of the ceiling area of such person." (May 2, 1972 is the notified date under the Act) "21. Revision.- An application for revision from any party aggrieved, including the Government, shall lie to the High Court, within the prescribed period, from any order passed on appeal by the Appellate Tribunal on any of the following grounds, namely:
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> (a) that it exercised a jurisdiction not vested in it by law, or
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> (b) that it failed to exercise a jurisdiction so vested, or
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> (c) that it acted in the exercise of its jurisdiction illegally or with material irregularity."

3. The Ordinance, which preceded the Act, came into force on 2-5-1972. Section 7(1) of the Act provides that any transfer of land made during the period from 24-1-1971 to 2- 5-1972 which was made in anticipation of, and with a view to avoiding or defeating the objects of any law relating to reduction in the ceiling of agricultural holdings, shall be disregarded for the purpose of the

computation of the ceiling area under the Act. It further provides that onus to prove that the transfer was not with a view to avoiding or defeating any such law would be on the landowner.

4. The case of the respondents before the Tribunal was that as early as 1946 they obtained two licences for setting up of textile industry and sugar industry. According to them during the period from 1939 to 1960 large areas of lands were sold by them for the purposes of setting up of the two industries. The precise reason, according to the respondents, for the sale of the lands in dispute was to expand the sugar industry for which a valid licence was obtained.

5. The Tribunal on appreciation of the evidence before it and taking into consideration the relevant material on the record came to the following conclusions:

> (1) That the recitals in the sale deeds did not mention that the purpose for the sale of lands was to invest the proceeds in the expansion of sugar industry rather it was mentioned that the lands were not convenient for personal cultivation and reasonable price was offered by the purchasers;
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> (2) That in respect of all the sales only initial payments were accepted and pronotes were got executed in favour of the respondents for the major portion of the sale amounts; (3) That the purchasers were employees or relatives of the respondents;
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> (4) That the lands were sold at the rate of Rs 300 to Rs 1000 which according to the Tribunal was not the market price of the lanka lands;
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> (5) That more than 220 acres of lands were transferred on five different dates during the period from 16-12-1971 to 27-12-1971; and (6) That the disposal of large chunks of lands in December 1971 goes to show that the same might not have been sold but for the impending legislation on the land ceiling.

Supported by the above conclusions the Tribunal reached the finding that the transfers were made in anticipation of and with a view to avoid and defeat the provisions of the Act.

6.The Appellate Tribunal, however, came to the conclusion that the conduct of the respondents regarding the sale of lands owned by them was consistent. They have been selling the lands to raise funds for setting up of industries and the transfers in dispute were effected to raise money to meet the expenses for the expansion of the sugar industry. The Appellate Tribunal did not agree with the Tribunal that the price for which the lands were sold was not the market price. The Appellate Tribunal felt fully satisfied that the disputed sales were with a view to meet the expenditure to be incurred by the respondents on the expansion of the sugar industry. The Appellate Tribunal, therefore, held that the transfers in dispute were not made in anticipation of and with a view to avoid or defeat any provisions of the Act. As mentioned above the High Court upheld the finding of the Appellate Tribunal by dismissing the revision petitions in limine.

7.Mr K.K. Venugopal, learned counsel appearing for the respondents, has vehemently contended that there is no justification whatsoever in reversing the finding of the Appellate Tribunal to the effect that the sales in dispute were made to meet the expenses to be incurred for the expansion of sugar industry. According to him the finding of the Appellate Tribunal being a finding of fact, this Court in exercise of its jurisdiction under Article 136 of the Constitution of India read with Section 21 of the Act should not ordinarily interfere with the same. Mr T.VS.N. Chari, learned counsel appearing for the State of Andhra Pradesh, on the other hand contended that the proposal for the expansion of the sugar industry was mooted sometime in June 1970 but it was two years thereafter in April 1972 that the application for licence to expand the industry was made and the licence, in fact, was granted on 26-11-1973. According to the learned counsel, in December 1971, when the lands were sold, there was no question of spending any money on expansion of the industry because even the application for licence was made on 26-4-1972 and the licence was granted as late as 26-11-1973. It was forcefully contended by Mr Chari that the only urgency to sell the land in December 1971 was to defeat the provisions of the Act which was on its way and came to be enforced on 2-5-1972. Needless to say that from 2-5-1972 there was total prohibition on the sale of the lands which were subject- matter of the Act. There is plausibility in the argument of Mr Chari but we proceed on the assumption that the sales in dispute were made with a view to meet the expenses to be incurred on the proposed expansion of the sugar industry.

8.Mr Venugopal contended that the sales in dispute, being valid and genuine, were made in good faith. According to him the sales made in good faith, cannot be considered to have been made with a view to avoid or defeat the provisions of the Act. To support his contention he relies on the judgments of this Court in Brijendra Singh v. State of U.R 1 and Jagmal Singh v. State of Up2 In these cases this Court was called upon to interpret sub-section (6) of Section 5 of The Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (the U.R Act) which is reproduced hereunder:

> "(6) In determining the ceiling area applicable to a tenure-holder, any transfer of land made after twenty-fourth of January, 197 1, 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)
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> (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.
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> Explanation I.-
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> Explanation II.- The burden of proving that a case falls within clause (b) of the proviso shall rest with the party claiming its benefit."

The provisions of the Act and the U.P. Act are not pari materia. Under the U.R Act where it is proved to the satisfaction of the prescribed authority that the transfer of land in a given case is in good faith, and satisfies other conditions laid down in clause (b) of the proviso to sub-section (6) of Section 5,

the transfer is valid and cannot be ignored while determining the ceiling area of the landowner. On the other hand, under the Act the bona fide or genuine nature of the transfer or the same being made in good faith has no relevance at all. What is required to be proved under the Act by the landowner is that the transfer was not made in anticipation of and to avoid or defeat the provisions of the Act. We are of the view that Section 7(1) of the Act not only requires the transfer to be valid and genuine but also makes it obligatory for the transferor to prove that there was some compelling reason to sell the land at that point of time. Some sort of necessity or compulsion to sell the land has to be proved.

9. The view we have taken on the interpretation of Section 7(1) of the Act, is supported by a three Judge Bench order of this Court in Meria Venkata Rao v. State of A.p3 In the said case while interpreting Section 7(1) of the Act this Court held as under:

> "As far as the transactions between 24-1-1971 and 2-5-1972 are concerned, the High Court has accepted the conclusions reached by the Tribunal. The High Court has pointed out that a large extent of over 220 acres of land was alienated by the appellant and his wife within a short period of eight months between 4-6-
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> 1971 and 1-2-1972. It was not the
> 1 (1981) 1 SCC 597 :(1981) 2 SCR 287
> 2 1991 Supp (2) SCC 639 : AIR 1991 SC 1928
> 3 1995 Supp (1) SCC 245, para 2: AIR 1994
> SC 471
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> case of the appellant that there was any pressure on the estate for the discharge of debts or that the alienations were in fact made for discharge of, or meeting any binding debts, or for meeting the marriage or educational expenses of any member of the family. It was on the basis of this finding that the Tribunal came to the conclusion that the said transactions were made in anticipation of the said Act and the High Court was, in our view, justified in declining to interfere with the same."

10.In the present case the respondents might be wanting to raise money for the expansion of the sugar industry but there is nothing on the record to show as to why they chose December 1971 when the Act was in the legislative process to sell more than 220 acres of land. They applied for the licence sometime in 1972 and the licence was in fact granted to them in November 1973. There was no question of making any expansion till the time the licence was granted. Needless to say that keeping in view the continuous rise in land prices the respondents prudent as they are should have ordinarily waited till the time it became absolutely necessary for them to sell the land. In any case they could have waited till November 1973 when they obtained the licence. The only logical conclusion which can be drawn is that they sold huge chunks of lands in December 1971 in anticipation of, and with a view to avoid and defeat the provisions of the Act which came into force on 2-5-1972. We are, therefore, of the view that the Appellate Tribunal acted illegally in exercise of its jurisdiction in reversing the order of the Tribunal.

11.Mr Chari sought further support from the judgment of this Court in Authorised Officer v. S. Naganatha Ayyar4 wherein this Court interpreted Section 22 of The Tamil Nadu Reforms (Fixation of Ceiling of Land) Act, 1961 (the Tamil Nadu Act). The provisions of the Tamil Nadu Act and the Act are entirely different. Therefore, the judgment of this Court in S. Naganatha Ayyar case4 relating to the Tamil Nadu Act has no relevance whatsoever.

12.The appeals are allowed. The impugned orders of the Appellate Tribunal and that of the High Court are set aside. The order of the Tribunal is restored. The respondents shall pay the cost of the proceedings which we quantify at Rs 11,000.

4 (1979) 3 SCC 466