

Court No. - 6

Case :- WRIT - C No. - 3000047 of 2010

Petitioner :- Ran Vijay Singh S/O Babu Singh And Anr.

Respondent :- State Of U.P. Thru Collector Bahraich And Ors.

Counsel for Petitioner :- Mohan Singh,Raj Karan Singh

Counsel for Respondent :- C.S.C.,Shivendra Pratap Singh

Hon'ble Alok Mathur,J.

1. Heard Shri Raj Karan Singh, learned counsel for the petitioners as well as learned Standing Counsel on behalf of respondents no.1 to 3.

2. By means of the present petition, the petitioners have challenged the orders dated 19.03.2010 and 20.03.2009 passed by the appellate authority thereby rejecting the appeal preferred by the petitioners and also the application for review. The petitioners have also assailed the order dated 25.01.2007 passed by the Prescribed Authority thereby rejecting their objections under Section 11(2) of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960.

3. The facts in brief are that the proceedings under Section 10(2) of the Act of 1960 were initiated against the original tenure holder, namely, Mata Prasad, son of Shivraj Singh and after hearing the objections, the Prescribed Authority concluded the proceedings on 06.02.1975 declaring the certain area of the holding of the recorded tenure holder as surplus. The original

tenure holder had preferred an appeal against the order of the Prescribed Authority but the same was rejected on 03.05.1975. It has been stated subsequently being aggrieved by the order of the appellate authority, the petitioners have filed writ petition before the High Court.

4. The petitioners claim themselves to be the subsequent purchaser having purchased 24 kita Rakba 20.92 acres of village - Gorhahiya No.1 Pargana - Hisampur, Tehsil - Kaiserganj, District - Bahraich from the original tenure holder by means of registered sale-deed dated 31.12.1971. It has been stated that the names of the petitioners were also mutated in the revenue record by order dated 19.05.1972. It is in the aforesaid fact that the preferred objections under Section 11(2) of the Act of 1960 with a prayer to exclude the aforesaid land from the holding of the original tenure holder and also from being declared surplus. In the objections under Section 11(2), it was stated that no notice was given to the petitioners by the Prescribed Authority and the proceedings were concluded under Section 10(2) of the Act of 1960 ex parte against the petitioners. The Prescribed Authority by means of order dated 25.01.2007 rejected the objections preferred by the petitioners. The Prescribed Authority considered that the plots in question were sold by the original tenure holder to the petitioner no.2 who is the grand-daughter, the land was sold by the original tenure

holder in favour of his daughter after the cut off date i.e. 31.12.1971 and consequently, the said transaction was not bonafide and land of the transferee could not be excluded as it does not fulfill the conditions as prescribed in Section 5(6) of the Act of 1960. He further considered the fact that the writ petition has been preferred by the original tenure holder against the rejection of his appeal before this Court being Writ Petition No.55828 of 1985 (Mata Prasad Singh versus State of U.P. and others) which is under consideration in the High Court and accordingly, rejected the objections. The petitioners being aggrieved by the order of the Prescribed Authority has preferred an appeal under Section 13(1) of the Act of 1960 and before the appellate authority, where it was reiterated that the sale deed was bonafide and for adequate consideration and consequently the land purchased by the petitioners ought to have been excluded by the Prescribed Authority from the holding of the original tenure holder. The appellate authority by means of the order dated 20.03.2009 considered the facts of the case as presented by the petitioners and he further noticed that the sale deed was dated 31.12.1971 which was subsequent to the cut off date of 24.01.1971. He further took into account the fact that the transferee was the daughter of the original tenure holder and 20.92 acres of land had been sold for meagre amount of Rs.7000/- which according to him was highly inadequate and he

was of the considered view that the sale deed has been entered into for the purpose of evading from the clutches of the Act of 1960 and the said sale-deed was not bonafide and hence rejected the appeal. The petitioners had filed an application for review of the order dated 20.03.2009 which was also rejected on 19.03.2010.

5. Assailing the aforesaid orders passed by the appellate authority as well as the Prescribed Authority, the counsel for the petitioners has submitted that the land purchased by the petitioners by means of sale deed dated 31.12.1971 ought to have been excluded from the holding of the recorded tenure holder in light of the fact that the said sale deed was bonafide and for adequate consideration and also that it was the registered sale deed. He has relied upon the judgement of the Supreme Court in the case of **Bijendra Singh versus State of U.P. and others** reported in **(1981) 1 Supreme Court Cases 597** in support his contentions.

6. Learned Standing Counsel, on the other hand, has opposed the writ petition. He has submitted that the transaction in the present case between the father and his daughter and 20.92 acres have been sold on 31.12.1971 for meagre amount of Rs.7000/- and the petitioners could not demonstrate either before the Prescribed Authority or the Appellate Authority that the sale was bonafide or that the petitioners were in actually

cultivatory possession of the said land or were occupying the said land independently. He further submitted that on the face of it, the said sale was a cloak for retention of a right or interest in the land and prevent it from being declared surplus on coming into force of the Act of 1960.

7. I have heard the counsel for the parties and perused the record.

8. The facts are not in dispute inasmuch as the petitioners had purchased 20.92 acres of land by means of a registered sale deed on 31.12.1971. There is again no dispute with regard to the fact that the petitioner no.2 is the daughter of the original tenure holder from whom the said land has been purchased. The only question before this Court as to whether the said land deserves to be excluded on account of the fact that the sale was bonafide and for adequate consideration and whether the petitioners are entitled for the provisions of Section 5(6) of the Act of 1960. Whenever the sale is made between the close relatives, then it has to be shown that there was intention to sell the land and to transfer all the right and interest in the said land in favour of the transferee and the transferee has occupied the land independently and to the exclusion of the seller and was in actual cultivatory possession of the said land, otherwise a presumption will exist that the said purchase has been made only to avoid the operation of the ceiling provision as contained

in the Act of 1960. The petitioners did not adduce any evidence either before the Prescribed Authority or even at the appellate stage that she was in possession of the said land independent from the original tenure holder. There was no evidence of any of the member of the village that the petitioner was independently holding said land subsequent to the said purchase and it is also come on record that Rs.7000/- was not adequate consideration for sale of the 20.92 acres of the said land. With regard to the fact as to whether the sale is bonafide or not the Supreme Court in the case of **Bijendra Singh versus State of U.P. and others** reported in **(1981) 1 Supreme Court Cases 597** has held as follows:-

"18. The expression 'good faith' has not been defined in the Ceiling Act. The expression has several shades of meaning. In the popular sense, the phrase 'in good faith' simply means 'honestly, without fraud, collusion, or deceit; really, actually, without pretence and without intent to assist or act in furtherance of a fraudulent or otherwise unlawful scheme'. (See Words & Phrases, Permanent Edition, Vol. 18A, page 91). Although the meaning of 'good faith' may vary in the context of different statutes, subjects and situations, honest intent free from taint of fraud of fraudulent design, is a constant element of its connotation. Even so, the quality and quantity of the honesty requisite for constituting 'good faith' is conditioned by the context and object of the statute in which this term is employed. It is a cardinal canon of construction that an expression which has no uniform, precisely fixed meaning, takes its colour, light and content from the context.

19. The meaning and scope of the expression 'good faith' is therefore, to be considered in the light of the scheme and purpose of Section 5, in general, and the context of Proviso (b) to sub-section (6), in particular. We have already noticed that the primary object of the Ceiling Act, as adumbrated in the pivotal provision in Section 5(1) is to prohibit and disentitle a tenure-holder from holding land in the aggregate in the State of Uttar Pradesh, in excess of the ceiling area, in his own right, whether in his own name, or ostensibly in the name of any other person. The ceiling area and surplus land of a tenure-holder under the Ceiling Act, as already mentioned, are to be determined as on June 8, 1973 when the U.P.

(Amendment) Act 18 of 1973 came into force. A transfer, therefore, made after January 24, 1971 which is designed to serve as a cloak for retention of a right or interest of the transferor in the ostensibly transferred land in excess of the ceiling area, even on or after June 8, 1973, will be patently not in 'good faith'. But the Proviso (b) to subsection (6) of Section 5 extends the negative aspect of the concept 'good faith' a little further by indicating, that even if the transfer is not an ostensible transfer and the transferor divests himself of all interest and rights in presenti in the transferred land, but reserves some benefit in futuro for himself or other members of his family, then also the transfer will be not in 'good faith'. A transfer solely for the purpose of converting surplus land into cash without any kind of need (not to be confused with legal necessity) may also lack good faith.

20. Broadly speaking, the benefit of clause (b) of the Proviso to subsection (6) is available to a transfer made in good faith, that is, to a bona fide transfer whereby the tenure-holder genuinely and irrevocably transfers all right, title and interest in the land in favour of the transferee, in the ordinary course of management, of his affairs and which is not a collusive arrangement, or device or subterfuge to enable the tenure-holder to continue to hold the surplus land or any reserved interest in presenti or in futuro, therein (or merely to convert it into cash), and thus circumvent the ban under Section 5(1) of the Ceiling Act. In order to be entitled to the benefit of Proviso (b), a transfer made in good faith, must satisfy the further conditions, (ii) to (iv), enumerated in the Proviso (b). The positive conditions laid down in Proviso (b) are : that the transfer should be for adequate consideration; that it should have been made under an irrevocable instrument. The negative conditions set out in clause (b) of the Proviso are : that it must not be a benami transaction; that it must not be for immediate or deferred benefit of the transferring tenure-holder or other members of his family. These tests or conditions (ii), (iii) and (iv) provided in Proviso (b) may not by themselves be conclusive to hold that the transfer was in 'good faith'. For instance, another important test for judging the genuineness or otherwise of a sale would be whether or not cultivatory possession and enjoyment of the land has passed under the sale to the vendee. Even so, once it is established by the transferring tenure-holder that the transfer in question effected in the course of ordinary management of his affairs, was made for adequate consideration and he has genuinely, absolutely and irrevocably divested himself of all right, title and interest (including cultivatory possession) in the land in favour of the transferee, the onus under Explanation II. in the absence of any circumstances suggestive of collusion, or an intention or design to defraud or circumvent the Ceiling Act, on the tenure-holder to show that the transfer was effected in 'good faith', will stand discharged, and it will not be necessary for the tenure-holder to prove further that the transfer was made for an impelling need or to raise money for meeting a pressing legal necessity. Although proof of the fact that a transfer was made for a valid pressing necessity, may highlight or strengthen the inference in favour of the genuineness of the transfer, it is not an indispensable constituent of 'good faith', nor is the proof of legal necessity requisite, as a

matter of law, to enable a tenure-holder to avail of the benefit of clause (b) of the Proviso. It may be remembered that at the time when such a transfer was made, there was no legal restriction on his power to alienate the whole or any part of his holding. In other words, at the time when such a transfer was made it was not unlawful, even if it were made without any pressing necessity. It became unlawful by the subsequent enactment of a legal fiction introduced in Section 5 (6) of the Ceiling Act (No. 18 of 1973) with retrospective effect from January 24, 1971. Even so, under this statutory fiction, a transfer of land made after January 24, 1971 does not become wholly void for all purposes; it can be ignored and would not be taken into account in determining the ceiling area of the transferring tenure-holder for purposes of the Ceiling Act, and that too, if the following two conditions are satisfied:

(a) that the land but for the transfer would have been declared surplus land under the U.P. Act 18 of 1973; and

(b) that the transfer is not of a kind covered by proviso (b) to Section 5(6) of the Act.

This being the position, once a transfer is shown to be bona fide and further satisfies all the other positive and negative conditions laid down in the Proviso (b) to Section 5(6), there is no justification in law to stretch the legal fiction further and to spell out from the expression 'good faith' an additional requirement of proving pressing necessity for the transfer before the tenure-holder is entitled to the benefit of the aforesaid Proviso (b).

9. A perusal of the aforesaid judgement of the Supreme Court clearly indicates that whenever the transfer of land is made after the 24.01.1971 which transfer is to serve as a cloak for retention of a right or interest of the transfer in the ostensible transfer, then the said sale would not be held to be in good faith. In order to indicate that the transfer was in good faith, it has to be demonstrate that the transferor has divested of all rights or interest in the said land which stands vested in the transferee. In the present case, there is no material on record to conclude that the petitioner was independently holding any right in the said land and even otherwise there is finding of the authority below that the sale consideration was inadequate.

10. In the aforesaid circumstances, this Court of the view considered view that that the benefit of Section 5(6) of the Act of the 1960 cannot be granted to the petitioners inasmuch as he has been unable to demonstrate either that the sale was bonafide or for adequate for consideration. Accordingly, this Court does not find any infirmity in the impugned orders and hence, the petition being devoid of merits and is hereby **dismissed.**

Order Date :- 21.3.2024

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