

(1992) 08 AHC CK 0099

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 35412 of 1992

Irshad Ahmad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Aug. 12, 1992

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Section 10(2), 11(2), 5(1), 5(6)

Citation: (1993) 2 AWC 1016

Hon'ble Judges: B.L. Yadav, J

Bench: Single Bench

Advocate: G.N. Chandra, for the Appellant;

Final Decision: Dismissed

Judgement

B.L. Yadav, J.

By means of this petition under Article 226 of the Constitution of India the Petitioner has challenged the order dated 16-2-89 passed in proceedings u/s 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, (for short the Act), and the order dated 30-9-83 passed by the Prescribed Authority.

2. The factual matrix of the case is that the Petitioner has made an application u/s 11(2) of the Act to set aside the earlier exparte order alleging that he has purchased the land from one Vijai Rikh, the tenure holder, by a sale deed dated 30-5-72, hence he was required to be served with notice and the land covered by the sale deed need not be declared as surplus, as he was protected by the provisions of Sub-section (6) of Section 5 of the Act The Prescribed Authority in earlier proceedings rejected the contention of Vijai Rikh, the original tenure holder, and against that order the appeal of tenure holder was dismissed on 30-9-77. Thereafter the present Petitioner and some other persons filed an objection u/s 11(2) of the Act

alleging that they had no knowledge of the earlier proceeding and no notice was served upon them, and they were purchasers from tenure holder by a sale deed dated 30-5-72. The Prescribed Authority rejected the contention of Petitioner holding that the notice was served upon him and the sale deed was relied upon by another tenure holder. The tenure holder filed an appeal and after dismissal of the same he also preferred Writ Petition No. 268 of 1978. decided on 30-10-78 (Annexure-2), and the sale deed was held not to be bona fide transaction. Consequently, this Court has already decided that the purchaser would not be entitled to the benefit of Sub-section (6) of Section 5 of the Act. The appeal preferred by the Petitioner was also dismissed on 16-2-89. Against these orders the present petition has been filed.

3. Learned Counsel for the Petitioner urged that no notice was given to the Petitioner and he was entitled to the benefit of Sub-section (6) of Section 5 of the Act, and that the transfer was made in good faith and for adequate consideration. Reliance was placed on [Brijendra Singh Vs. State of Uttar Pradesh and Others](#), ;

4. As regards the first point urged by the learned Counsel for the Petitioner that he was not served with any notice, I have perused the impugned orders and I am satisfied that findings have been recorded to that effect vide Annexure-4 to the petition that notice was served on Petitioner, and even in earlier proceedings which was fought by the tenure holder himself, he was served with notice. The original tenure holder has set up a case that he has executed the sale deed but his allegation was not accepted to be correct. He has even filed a writ petition in this Court which failed. The proceedings were initiated by the Petitioner, the vendee, by filing an application u/s 11(2) of the Act and he has led evidence. But the findings of fact are that the Petitioner was served with notice.

5. There is another aspect also that the same sale deed was relied upon by the tenure holder while he had filed the writ petition and he has also led evidence, but the sale deed was not held to be bona fide. Under these circumstances, the vendee cannot set up the same sale deed again and file the objection. Any way after opportunity of hearing his objection was rejected and his appeal also failed. I am of the opinion that the orders are correct and under the impugned judgment a finding has been recorded that the sale deed set up by the Petitioner was not bona fide transaction and was not in good faith and nor the Petitioner was entitled to the benefit of Section 5(6) of the Act.

6. *Brijendra Singh v. State of U.P.* (supra) relied upon by the learned Counsel for Petitioner, was a case based on different facts, inasmuch as in that case the scope of Section 5(1) and Sub-section (6) and proviso (v) and the expression "good faith" were considered, and there the finding was recorded that the expression good faith may vary in the context of different statute, subject and situation. But in the context of proviso (v) as in that case the Appellant Brijendra Singh was Brigadier in the Army and has sold a part of land in August 1971 as he required money for building his

own house in Delhi. Their Lordships of the Supreme Court ruled that transfer could not be ignored on the ground that it was not for personal need. In the present case I am of the opinion that the facts or the present case are entirely different. Consequently that case was based on different facts would be of no assistance to Petitioner.

7. Recently in [Ram Chandra Singh \(dead\) through legal heirs Vs. State of U.P. and others](#), ; provisions of Sub-section (6) of Section 5 of the Act were considered and Interpreted by the Supreme Court and it was ruled that In view of provisions of Section 5(6) of the Act any transfer of land which, but for transfer, could have been declared surplus land, if made after 24-1-71, shall be ignored and not taken into account and the transfer falling within the ambit of Clauses (a) and (b) of proviso to Sub-section (6) are however excluded and such transfers, even though, made after January 24, 1971, have to be taken into account. In that case a gift deed was made on October 13, 1971, after January 24, 1971 for transfer of land and it was In respect of land which but for transfer would have been declared surplus. It was held that transfer did not fall within the ambit of Clauses (a) and (b) of proviso to Sub-section (6) of Section 5 of the Act and the gift deed was liable to be ignored for purposes of determination of ceiling area applicable to the Appellant.

8. In my opinion, as in the present case also the transfer was made after January 24, 1971. which but for transfer, could have been declared surplus land under the Act. The object of enactment of Sub-section (6) of Section 5 have also to be kept in mind. That provision have been enacted with the object of preventing evasion of ceiling law. The cardinal canon of construction is that in such matters the provision has to be strictly construed so as to curb mischief and advance remedy. Any construction which would curtail object of the provision cannot be appreciated. I am accordingly of the opinion that the sale deed set up by the Petitioner has correctly been ignored by the appellate court and also by the Prescribed Authority.

9. In view of the premises aforesaid, the present petition fails and it is dismissed summarily.