
(1995) 11 AHC CK 0114

Allahabad High Court

Case No: C.M.W.P. No. 1682 of 1987 and Ors. 8 connected writ petitions

Shree Arya Dharm
Sexna Sangh Birla Mills

APPELLANT

Vs

State of U.P. and
Another

RESPONDENT

Date of Decision: Nov. 3, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 - Section 31
- Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Section 14(8), 17, 6(1), 6(2), 6(3)

Hon'ble Judges: S.R. Singh, J

Bench: Single Bench

Advocate: Ranjit Saxma, for the Appellant;

Final Decision: Dismissed

Judgement

S.R.Singh, J.

This bunch of 108 writ petitions - one filed by Shree Arya Dharm Sewa Sangh Birla Mills, Sabzi Mandi, Delhi (in short the Trust) and Ors. by State of U.P. - may conveniently be disposed of by a common order in that the causes of action giving rise to these petitions are exactly similar/identical and same questions of law are involved In these writ petitions. It is not disputed that in proceeding for determination of surplus land, if any. held by the Trust, the prescribed authority, vide its order dated 22.11.1974. had held that the Trust was entitled to be exempted u/s 6(1) of the U.P. Imposition of Calling on Land Holdings Act, 1960 (in short "the Ceiling Act) and provisional notice dated 2.3.1974 issued to the Trust for determination of surplus land as tenure-holder was dropped vide order dated 22.11.1974 on the finding that the Trust was created before the prescribed date, Le., 1.5.1959 wholly for charitable purposes and its income was being utilized for such purposes.

2. For the convenience, it may be stated that writ petition No. 1682 of 1987 has been filed by Shree Arya Dharm Sewa Sangh, Birla Mills, Sabzi Mandi, Delhi against the notice dated 31.10.1986 u/s 9(2) read with Section 29/30 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, whereby the Manager, Arya Dharm Sewa Sangh Trust, Haripar Kalan, Dehradun was called upon to show cause, within 15 days, as to how much total area of land was held by the Trust at the time of commencement of the Act and how much area had been transferred by it in favour of individuals. The notice was also called upon to disclose how much area remained with it on the date of notice, so that fresh proceeding under the Ceiling Act is initiated, if necessary against the Trust. Writ Petition No. 17997 of 1987 and other connected writ petitions mentioned hereinabove have been filed by the State of Uttar Pradesh against the identically worded separate appellate orders dated 4.3.1987 whereby the Divisional Commissioner has allowed the appeals preferred by different transferees of the Trust foretasted against identically worded separate orders passed by the prescribed authority (ceiling) u/s 6(2) of the Act. It appears that an area of 62.01 acres was transferred by means of different sale-deeds executed by the Trust (tenure-holder) in favour of various persons between 6.3.1972 and 20.8.1974 (both dates inclusive) and 0.27 acre by sale-deed dated 13.2.1976 as per statement made by Sri K.N. Tripathi learned Counsel appearing for the Trust and its vendees. Orders in respect of some transfers went; passed by the prescribed authority while in respect of others the proceedings were stayed as a result of stay order dated 24.3.1987 passed by this Court on application for interim relief moved In Writ Petition No. 1682 of 1987. Orders already passed u/s 6(2) of the Act were, however, reversed by the appellate authority vide separate but identical orders dated 4.3.1987 which orders are under challenge in writ petitions filed by the State of Uttar Pradesh

3. The Divisional Commissioner has taken the view that Sub-section (2) of Section 6 of the Act does not have retrospective effect and hence the sale-, deeds executed without prior permission were not void and consequently the land covered by the sale-deeds would not be deemed to be surplus.

4. So far as the view taken by the Additional Commissioner is concerned, it is palpably and manifestly erroneous. According to Section 6(1) of the Act, land held from before the 1st day of May, 1959 by or under a public and religious or charitable waif, trust, endowment, or institution the income from which is wholly utilized for religious or charitable purposes, and not being a waif, trust or endowment of which the beneficiaries wholly or partly are settler or members of his family or his descendants is, no doubt, not to be taken into consideration for the purposes of determination of ceiling area applicable to, and the surplus land of a tenure-holder but Sub-sections (2), (3) and (4) which were inserted and "deemed always to have been inserted" by Section 7 of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Ordinance, 1975 (U.P. Ordinance No. 31 of 1975) which came into force on 10.10.1975 vide Notification No. 1 (36) 75-Revenue-1-75, dated 10.10.1975, makes it abundantly clear that any land transferred in contravention of Section 6(2) by such waif, trust or endowment, as is referred to above,

would be deemed to be surplus land to which provisions of Section 14(8) apply as if it were a land notified under Sub-section (1) of Section 14 of the Act. The said Ordinance was repealed by U.P. Ordinance No. 1976 which was finally repealed and substituted by U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1976 (U.P. Act No. 20 of 1976) which received the assent of the President of India on April 10, 1976 and was published in U. P. Gazette Extra Ordinary dated May 3, 1976 vide Notification No. 1948/XVII v. I-152-75. According to Section 1(2) of the U.P. Act No. 20 of 1976, the said Act came into force on October 10, 1975.

5. Sub-sections (2), (3) and (4) of Section 6 of the Act being relevant are quoted as below:

(2) No person shall transfer any land referred to in Clause (d) or Clause (e) or Clause (f) or Clause (g) of Sub-section (1) without prior permission of the State Government, and every transfer made without such permission shall, notwithstanding anything contained in any other law for the time being in force, be void:

Provided that nothing in this Sub-section shall apply to any transfer by or in favour of any person specified in Sub-section (2) of Section 5.

(3) Any land which is the subject of any transfer which by virtue of Sub-section (2) is void, shall be deemed to be surplus land, and shall with effect from October 10, 1975 or the date of such purported transfer, whichever is later, stand transferred to and vest in the State Government free from all encumbrances, and all rights, title and interests of all persons in such land shall stand extinguished.

Provided that the encumbrances, if any, shall be attached to the amount payable u/s 17 in substitution for the such land.

(4) Where any land is deemed to be surplus land under Sub-section (3)

(i) the provisions of Sub-section (8) of Section 14 shall apply as if it were a land notified under Sub-section (1) of that Section;

(ii) the amount payable therefore, u/s 17 shall be paid to the person in whose favour such transfer was purported to be made."

6. Section 7 of the U.P. Act No. 20 of 1976 provides in no uncertain language that Sub-sections (2), (3) and (4) as inserted thereby to Section 6 "shall be deemed always to have been inserted. Retrospectively given to Sub-sections (2), (3) and (4) of Section 6 of the Act is thus writ large on the face of the Amending Act. The contrary view taken by the Additional Commissioner is patently erroneous. Sri K.N Tripathi, learned senior counsel appearing for the Trust and its vendees did not dispute that Sub-sections (2), (3) and (4) were retrospective in their operation. What Shri Tripathi contended is that the requirement of taking prior permission of the State Government for transfer under Sub-section (2) was

impossible to be performed at least in respect of sale-deeds executed prior to 10.10.1975 and, therefore, urged Sri Tripathi, the performance of the obligation as to obtaining prior permission of the State Government for transferring land to be deemed to have been dispensed with as per legal maxim "lax non cogit ad impossibile" (law does not compel a man to do that which he cannot possibly perform). In support of his contention, Sri Tripathi placed reliance on Legislation and Interpretation by Sri Jagdish Swarup, 2nd Edition page 527-28, wherein it has been propounded that, "If in the Interpretation of a statute the court finds duty enjoined by it either impossible of performance and beyond the normal capacity of a reasonable or prudent man, or when the performance in the strictest language of the enactment is idle or impossible, then the enactment must be understood as dispensing with the strict performance of duty." Sri Tripathi also placed reliance on Maxwell "On the Interpretation of Statutes" 12th Edition by P. St. J. Langan page 326, wherein it has been propounded that

"Enactments which impose duties upon conditions precedent to the exercise of a Jurisdiction, are subject to the maxim, *lax non cogit ad impossibile*." They are understood as dispensing with the performance of what is prescribed when performance of it is impossible. "Reliance was also placed on the Apex Court's decision in *Re-Presidential Election*, 1974, AIR 1974 SC 1682 paragraph 15, wherein it has been held as under:

The impossibility of the completion of the election to fill the vacancy in the office of the President before the expiration of the term of the office in the case of death of a candidate as may appear from Section 7 of the 1952 Act does not rob Article 62(1) of its mandatory character. The maxim of law *impotent a excusal legmen* is intimately connected with another maxim of law *lax non cogit ad impossibile*. *Impotent a excusal legmen* is that when there is a necessary or invincible disability to perform the mandatory part of the law that *Impotent a excusal* excuses. The law does not compel one to do that which one cannot possibly perform. "Whether the law creates a duty or charge and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him." Therefore, when it appears that the performance of the formalities prescribed by a Statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance of the words of a Statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See *Broom's Legal Maxims*, 10th Edition, at pp. 162-163 and *Crazies on Statute Law*, 6th Edn., at p. 268."

7. Relying upon the aforesaid authorities, Sri K.N. Tripathi urged that Section 6(2) of the Act be construed as dispensing with the requirement of obtaining prior permission of the State at least in relation to the sale-deeds executed prior to 10.10.1975 inasmuch as performance of the obligation imposed by Sub-section (2) of Section 6 of the Ceiling Act was impossible in relation to such sale-deeds.

8. The submission made by Sri K.N. Tripathi is fallacious and it ignores the retrospectively given to Sub-sections (2), (3) and (4) of Section 6 of the Ceiling Act. Once it is held that Sub-sections (2), (3) and (4) are retrospective in operation, the question of applying the doctrine of impossibility expressed in maxim "lax non cogit ad impossibilia" would not arise. The power of Parliament and State Legislature to make laws within their respective fields includes the power to give retrospective effect to any enactment. The only express limitation imposed upon the power of retrospective legislation is the one contained in Article 20(1) of the Constitution which prohibits any penal law being given retrospective effect. It is settled that any other law including a taxing law may be, given retrospective effect provided no fundamental right is infringed by reason of taking away a vested right by the retroactive legislation. Transfer of a property is basically a contract and since freedom of contract is not guaranteed as fundamental right, the restriction imposed upon contractual right by virtue of Sub-section (2) of Section 6 of the Ceiling Act or the effacement of a subsisting contract as implicit in Sub-section (3) of Section 6 of the Act would not be ipso facto unreasonable if done with retrospective effect even though it takes away an existing right and in fact it was not urged by Sri K.N. Tripathi that restriction imposed upon contractual right by Sub-section (2) of Section 6 of the Act was unreasonable. See [Shri Kishan Singh and Others Vs. The State of Rajasthan and Others](#), ; [Raghubar Dayal Jai Prakash Vs. The Union of India \(UOI\) and Others](#), . In any event, exercise of power to grant permission is regulated by Rule 4A of the rules made under the Act and, therefore, Section 6(2) does not suffer from any vice of arbitrariness and no such suggestion was made by the learned Counsel who was fair enough to point out that the Ceiling Act has been placed under the IXth Schedule of the Constitution. I am of the considered view that the doctrine of impossibility applies in relation to future transactions and has no application to completed transactions which may stand nullified as a result of any retroactive enactment. The maxim aforesaid, or, as it is also expressed, "impotent a excusal legmen" must be understood in the sense that "impotent excuses" where there is a necessary or invisible disability to perform the mandatory part of law, or forbear the prohibitory.

9. Sri Tripathi then urged that the proceeding initiated by the prescribed authority was barred by two year's period of limitation prescribed by Section 31 of the U.P. Act No. 20 of 1976. The submission made by learned Counsel is misconceived. Section 6 of the Ceiling Act does not provide for re-determination of surplus land. All that the section requires the prescribed authority to do is to find out if any transfer has been made without permission of the State. Consequence of transfer of land without such permission is provided under the Act itself. Sub-section (3) of Section 6 provides in unambiguous language that any land which is subject of any transfer which by virtue of Sub-section (2) is void, shall be deemed to be surplus land w.e.f. 10.10.1975, or the date of such purported transfer whichever is later. It is evident that in respect of transfers made prior to October 10, 1975 without permission of the State Government, land which is subject-matter of transfer would be deemed to have become surplus land automatically w.e.f. 10.10.1975 and by virtue of Sub-section (4) of Section 6, the provisions of Section

14(8) and those of Section 17 of the Act would get attracted. There is thus no question of re-determination of surplus land in accordance with the amended provisions for which limitation is provided u/s 31 of the Amending Act.

10. No argument was advanced by the learned Counsel on the question as to whether the State Government could grant permission u/s 6(2) read with Rule 4A of the Rules framed under the Ceiling Act with retrospective effect. I, therefore, need not go into this question.

11. In view of the above discussion, the Writ Petition No. 1682 of 1987 filed by the Trust is liable to be dismissed and the Writ Petition No. 17997 of 1987 and other connected writ petitions filed by the State of Uttar Pradesh deserve to be allowed.

12. In the result, the Writ Petition No. 1682 of 1987 fails and is dismissed, whereas the Writ Petitions No. 17997 of 1987 and other connected writ petitions filed by the State of Uttar Pradesh mentioned hereinabove succeed and are allowed and the appellate orders impugned in the writ petitions filed on behalf of the State of Uttar Pradesh are quashed. Parties shall bear their own costs.