SUPREME COURT OF INDIA

Hiralal Agrawal

Vs.

Rampadarath Singh

C.A.Nos.1244 to 1246 of 1968

(J. M. Shelat and K. S. Hegde, JJ.)

15.07.1968

JUDGEMENT

SHELAT, J.:-

1. These three appeals, by special leave, raise common questions and are, therefore, disposed of by a common judgment. The facts in Civil Appeal No. 1244 of 1968 being typical, we need set out them only so that the rival contentions of the parties on those questions may be properly appreciated.

2. By a deed of sale dated October 9, 1984, one Prembati Devi sold 2.62 acres of land to respondent 1 for Rupees 2,000. The said deed was thereafter presented to the Sub-Registrar for registration. On October 14, 1964, the appellant applied for a certified copy of the said sale deed and on its being furnished to him he filed an application dated November 26, 1964 under Section 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, XII of 1962 before the Collector. He annexed to his application the said copy of the sale deed and a copy of the challan evidencing his having deposited the sale price of Rs. 2,000 and an additional sum of 10 per cent thereof as required by the proviso to Section 16 (3) (i) and Rule 19 of the Bihar Land Reforms

(Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963. On November 30, 1964, the Registrar completed registration by endorsing his certificate on the said sale deed under Section 60 (1) and copying out the endorsement and the certificate in the relevant register under Section 61 (1) of the Registration Act, 1908. The appellant had in his said application claimed to be entitled as a co-sharer to the right of re-conveyance of the said land under Section 16 (3) of the Act. On November 30, 1964, the Collector, on being satisfied that the application was proper, ordered possession to be given to the appellant under Section 16 (3) (ii) pending its disposal.

3. It is not in dispute that registration was completed on November 30, 1964, i. e., four days after the appellant had handed over his application and that though the certified copy furnished by him was not that of the registered deed, it was a correct copy of the sale deed presented for registration. On October 16, 1964, the Collector passed his order holding that the appellant was the cosharer of the vendor and was entitled to the right of reconveyance. He, therefore, directed the transferee, respondent 1, to reconvey the said land in appellant's favour. No objection was taken before the Collector that the said application was not maintainable as registration was not completed when the appellant filed it or on the ground that only a certified copy of the sale deed and not of the registered deed had been annexed to it. This contention was raised for the first time in appeal before the Commissioner who rejected it holding that in view of the admitted fact that registration was completed on November 30, 1964 the said proceedings before the Collector and his said order were not invalidated. The Commissioner consequently upheld the said order. In appeal before the Board of Revenue, the Board held that when the appellant presented his application on November 26, 1964, the transfer as contemplated by Section 16 was not completed and, therefore, its presentation by the appellant was not valid inasmuch as it was not in accordance with Rule 19 (2) of the said Rules. The reason given by the Board was that the rule required a copy of the registered deed and not a mere copy of the sale deed. On this ground the Board set aside the Collector's order and dismissed the appellants application.

4. The appellant thereupon filed a writ petition in the High Court for a writ of certiorari for quashing the Board's said order. The High Court, relying on its previous decision in Rajkishore Singh v. Bhubneshwari Singh, 1968 BLJR 33, held that Section 16 (3) was a piece of beneficent legislation intended to prevent fragmentation of holdings and to facilitate consolidation with a view to utilisation of land in the most advantageous manner, and that to attain these objects when a transfer of land was made, a co-sharer of the transferor or a raiyat of the adjacent land was given the right to have the land reconveyed to him by the transferee through the Collector. The High Court, however, held that the said right depended on two conditions, viz., (a) the transferee was entitled to the full purchase price and an additional 10 per cent thereof as solatium and (b) the applicant made an application in the prescribed manner. The prescribed manner means the manner laid down by Rule 19 under which an application is to be made in Form L. C. 13 which requires the applicant to annex to his application a challan evidencing the deposit of the requisite amount in the relevant treasury, a copy of the registered sale deed and a statement to that effect in the application. The High Court observed that Section 16 (3) (ii) confers on the Collector the extra-ordinary power, without having to hold a preliminary enquiry, to dispossess the transferee and deliver to the applicant possession of the land in question pending the disposal of the application. It further observed that the exercise of this power was dependent on the condition that deposit has been made and that there has been a completed transfer, that is, a transfer evidenced by a copy of the registered

deed of sale. Section 16 (2) (iii) provides that a transfer can only be made by a registered sale deed. The object of this clause and Rule 19 is that the Collector who is required to direct possession from the transferee to the applicant can satisfy himself that the land is transferred and that the deposit made is full and this he can do only if the application is accompanied by a copy of the registered deed. The High Court agreed that Section 16 was unlike the law of pre-emption under the Mahomadan law in that it gets rid of the procedural matters thereunder and provides not the right of substitution of the applicant in place of the transferee but a right of reconveyance of land in question. But it held that the right of reconveyance arises only on the transfer of the land to the transferee, that such transfer is completed only when the deed is registered and that though by reason of Section 47 of that Act the transfer takes effect from the date of execution once registration is completed, the transfer was not complete on November 28, 1964 when the Collector accepted the said application. Therefore, the right of reconveyance had not accrued to the appellant on that day, the transfer not having been yet completed and the Collector consequently had no jurisdiction to entertain the application. The High Court further held that the provisions of Rule 19 were mandatory and agreed with the Board that the appellant not having annexed a copy of the registered deed, his application was not only premature but was also not maintainable. These conclusions are challenged in these appeals.

5. Before we proceed further, it is necessary first to consider some of the relevant provisions of the Act and Rules. The long title of the Act shows that its object is inter alia to provide for fixation of ceiling area and acquisition of surplus land by the State Government. Chapter 2 deals with fixation of ceiling of land and Sections 4 and 5 therein lay down ceiling areas for different types of land and the rule that it shall not be lawful for any person to hold except, as provided under the Act land in excess of the ceiling area. Chapter 3 contains provisions connected with resumption of land by a raiyat from his sub-raiyat and Chapter 4 deals with acquisition of surplus land by the State Government. Chapter 5 which contains Section 16, deals with restrictions on future acquisition of land. Section 16 (1) lays down that no person shall acquire land which together with the land held by him exceeds in the aggregate the ceiling area. Clause (i) of sub-section (2) provides that no document of acquisition or possession of any land shall be registered unless the transferee declares before the registering authority the total area held by him. Clause (ii) prohibits registration of the document, if, from the said declaration it appears that the transaction is in contravention of sub-section (1), that is to say, the acquisition would make the total area held by the transferee in excess of the ceiling area. Clause (iii) provides that no transfer, exchange, lease, mortgage, bequest or gift can be made without the document therefor duly registered. Sub-section (3) (i) provides that if any transfer is made to a person other than a co-sharer or a raiyat of an adjoining land, such a co-sharer or a raiyat shall be entitled within three months from the date of the registration to apply before the Collector in the prescribed manner for transfer of the land to him on terms and conditions in the said deed provided that no such application shall be entertained by the Collector unless the purchase money together with 10 per cent thereof is deposited in the prescribed manner within the said period. Clause (ii) provides that on such deposit being made the co-sharer or the raiyat shall be entitled to be put in possession of the land even though his application is pending. Under Clause (iii) of subsection (3), if the application is allowed, the Collector has to direct the transferee to convey the land in favour of the applicant by executing and registering a document of transfer.

6. The object of Section 16 is twofold: (i) to ensure that no one holds land in excess of the ceiling

area and (ii) to confer on a co-sharer or a raiyat of the adjoining area the right of reconveyance from the transferee. To subserve this object sub-section (2) lays down certain restrictions: (a) that there can be no registration of a deed of transfer without a declaration by the transferee that the total area which would be held by him including the area under transfer does not exceed the ceiling area; (b) prohibition against registering a document if such a declaration shows that the transfer would have the effect of exceeding the ceiling area; and (c) that no such transfer would be complete without the deed of transfer being registered. The object of sub-s. (3) is to secure consolidation by giving the right of re-conveyance to a co-sharer or a raiyat of an adjoining area so that the land in question can be used in the most advantageous manner and also to prevent fragmentation of the land.

7. Rule 18 of the said Rules provides that the declaration to be made by a transferee under S. 16 (2) (i) before the registering authority shall be in Form L.C. 12. That form inter alia requires the transferee to declare that the land held by him and the land acquired by him under the document to be registered would not exceed the ceiling area. R.19 deals with the application by a co-sharer or a raiyat of the adjoining land under S. 16 (3). It provides that such an application is to be made in form L.C. 13, and the applicant has to deposit the purchase money together with 10 per cent thereof in the treasury or sub-treasury of the district within which the land is situate. Cl. (2) of the rules provides that a copy of the challan showing the deposit together with a copy of the registered deed shall be filed with the application in which a statement to this effect shall also be made. Cl. (3) of the rule provides that a copy of the said application shall also be sent by the applicant to the transferor and the transferee by registered post with acknowledgment due. Cl. (4) provides that the Collector shall issue a notice to the transferor, the transferee and the applicant to appear before him at a date to be specified in the notice and after giving the parties a reasonable opportunity of showing cause and of being heard shall either allow the application or reject it. Form L.C. 13 requires the applicant (a) to state that the transfer of the land has been made through a document registered on the date to be specified therein, (b) to enclose a copy of the challan in token of the deposit of the purchase money plus 10 per cent solatium, and (c) to encase a copy of the registered deed by which the land has been transferred.

8. From the contents of Rr. 18 and 19 and Forms L.C. 12 and 13, it is clear that the object of these rules, firstly, is to enable the registering authority to see that the transferee does not by the transfer acquire land in excess of the ceiling area and, secondly, to enable the Collector to know that a transfer of the land has been made and that such transfer is completed by registration, the price paid for it and that the deposit made by the applicant is of a sum equivalent to the purchase price and 10 per cent thereof. It is manifest that the purpose for requiring the applicant to file a copy of the challan and of the registered deed is to enable the Collector to ascertain therefrom the aforesaid facts and to proceed further on being satisfied about them.

9. It is necessary at this stage to be clear about certain dates. The sale deed was executed by the transferor and the transferee on October 9, 1964. On November 14, 1964, the appellant obtained from the registering authority a certified copy of the sale deed tendered for registration. The appellant filed his application in the Collector's office on November 26, 1964. It is true that the Board of Revenue has stated at one place that the Collector "admitted" the application on November

28, 1964 and at another place that he "took cognizance of' it on that date. If by the words "admitted" and "took cognizance of" the Board meant that the Collector took cognizance of the application in its technical sense, the Board would appear to be factually incorrect. The record of the case shows that some one in the Collector's office received the application on November 28, 1964 and made an endorsement thereon that it should be put up before the Collector on November 30, 1964. As already stated, on the said application having been placed before him on November 30, 1964, the Collector passed his interim order under S. 16 (3) (ii) directing the transferee to deliver possession of the land in question to the appellant. Admittedly, registration was also completed on that date.

10. Two contentions were urged by counsel for the respondents. Proceeding on the basis that the appellant presented the application on November 26, 1964, Mr. Nambiar contended (1) that the application was premature as registration of the sale deed was not then completed and, therefore, there was not yet a completed transfer and (2) that, therefore, the Collector had no jurisdiction to entertain such an application, his jurisdiction being dependent on a transfer having taken place. The argument was that under S. 16 (1) there can be no transfer to a person who together with the land already held by him acquires land by transfer which in the aggregate makes the area in excess of the ceiling area; that under S. 16 (2) no registering authority can register such a deed of sale and there can be no valid transfer unless the sale deed is registered. Therefore, as the said sale deed was not registered until November 30, 1964, there was no transfer till then, that no right of reconveyance accrued to the appellant and the Collector, therefore, could not entertain an application without such a right having a ready accrued to the applicant. The second contention was that the right conferred under S. 16 (3) being a statutory right and it being inconsistent with the right of a citizen to hold and dispose of his property it must be exercised in strict conformity with the terms and conditions laid down in the Act and the Rules, that the language of R. 19 is mandatory, that the power of the Collector under S. 16 (3) (ii) is extraordinary in the sense that without holding any preliminary enquiry he can direct the transferee to hand over possession of the land to the applicant. Therefore, he argued, the requirements of R. 19 must be held to be mandatory and that if they are not strictly complied with, the Collector would have no jurisdiction to entertain an application. Therefore, the appellant having failed to annex a copy of the registered deed of sale as required by R. 19 and Form L. C. 13 and having annexed only the certified copy of the unregistered deed of sale, his application was not in conformity with R. 19 and the Collector could not entertain it, much less act on it.

11. When the appellant lodged his application in the Collector's office he had already deposited the requisite amount in the treasury and had annexed thereto the copy of the challan. So that that condition under S. 16 was complied with. The application was also filed within the time prescribed by the section. Under S. 16 (2) and (3), however, no transfer takes place unless the sale deed is registered. Registration is complete only when the certificate under S. 60 is given and the endorsement and copying out the said certificate under S. 61 of the Registration Act are made. But Mr. Desai argued that under S. 47 of that Act once registration is effected, the title under the sale deed relates back to the date of its execution and therefore though registration was completed on November 30, 1964, the transferee's title under the sale related back to the date of its execution, i. e., October 9, 1964, Assuming, therefore, that the application was presented on November 26, 1964, the transferee's title having related back to the date of the execution of the sale deed, the transfer must be deemed to be complete on that date and, therefore, it was not correct that the right of reconveyance had not accrued to the appellant on November 26, 1964 or that the Collector had no jurisdiction on that date to accept the said application. This contention, however, cannot be accepted in view of the decision in Ram Saran Lal v. Mst. Domini Kuer, 1962-2 SCR 474 = (AIR 1961. SC

1747) where this Court rejected an identical contention. Mr. Desai tried to distinguish that case on the ground that it was based on Mahomedan law which by custom applied to the parties there. But the decision is based not on any principle of Mahomedan law but on the effect of S. 47 of the Registration Act. The majority decision clearly laid down that the sale there was completed only when registration of the sale deed was complete as contemplated by S. 61 of the Registration Act and, therefore, the talab-i-mowasibat made before the date of completion of registration was premature and a suit based on such a demand of the right of pre-emption was premature and must, therefore, fail. Similarly, in Radhakishan L. Toshniwal v. Shridhar, 1961-1 SCR 248 = (AIR 1960 SC 1368) this court laid down that where a statute providing for the right of pre emption lays down that it accrues only when transfer of the property takes place and such transfer is not complete except through a registered deed, a suit filed before the sale deed is executed is premature as the right of pre-emption under the statute did not accrue till the transfer became effective through a registered deed. In Bishan Sing v. Khazan Singh, 1959 SCR 878 = (AIR 1958 SC 838) this Court laid down that in a suit for pre-emption the plaintiff must show that the right had accrued to him at the time when he exercised it.

12. But the question whether the right of reconveyance had accrued to the appellant or not on November 26, 1964 appears to be academic. As already stated, his application was placed for the first time before the Collector on November 30, 1964 when admittedly registration was completed and thereupon the transfer also had become complete. A mere presentation of the application in the sense of the appellant having handed it over to some subordinate in the Collector's office cannot mean its having been entertained by the Collector on that date. There is, therefore, no merit in the contention that the Collector had entertained the application either on the 26th when it was taken by the appellant to the Collector's office or on the 28th when some subordinate in the office made an endorsement on it that it should be placed before the Collector. The endorsement on the contrary shows that the Collector had not even seen it on that day, much less accepted it. The Collector took cognizance of it on November 30, 1964 only when it was placed before him and when on being satisfied that the conditions of S. 16 were satisfied he passed his order under sub-s. (3) (ii) for handing over possession from the transferee to the appellant. On these facts, Mr. Nambiar's first contention must fail.

13. The contention next was that the right of pre-emption being a weak right as held in 1959 SCR 878 = (AIR 1958 SC 838) and the outcome thereof being to disturb a valid transaction by virtue of such a right having been created by statute, there are no equities in favour of a pre-emptor as held in 1961-1 SCR 248 = (AIR 1960 SC 1368) and, therefore, the person coming to the court for exercise of such a right must show that be has duly complied with all the conditions laid down by the law giving him that right. Mr. Nambiar submitted that that being the position, the conditions laid down in R. 19 must be held to be mandatory and unless they are complied with an application for enforcing such a right must fail. The question is whether non satisfaction of the condition that the application must be accompanied by a copy of the registered deed is fatal to the exercise of the right conferred under the Act.

14. Rule 19 does not lay down the consequence of non-compliance of its provisions. When a statute

requires that something shall be done or done in a particular manner or form without expressly declaring what shall be the consequence of non-compliance, the question often arises what intention is to be attributed by inference to the legislature, (see Maxwell on Interpretation of Statutes 11th edn. p. 362). It has been said that no rule can be laid down for determining whether the requirement is to be considered as a mere direction or instruction involving no invalid consequence for its disregard or as imperative with an implied nullification for disobedience beyond the rule that it depends on the scope and object of the enactment. A case nearest to the one before us is to be found in Bellamy v. Saull, (1863) 32 LJ QB 366. Section 34 of the Revenue (No. 2) Act, 1861 enacted that no copy of a bill of sale should be filed in any court unless the original was produced before the officer duly stamped. It was held that this provision did not invalidate the registration if the bill was not duly stamped when so produced for the object of the enactment was to protect the revenue and this was thought sufficiently attained if the deed was afterwards duly stamped without going to the extreme of holding the registration void. Similarly in King v. Lincolnshire Appeal Tribunal; Ex parte Stubbins, (1917) 1 KB 1. Regulation 19, Part 1 Section II of the Schedule to the Military Service.(Regulations) Order, 1916 was held to be directory. The Military Service Act, 1916 provided that any person aggrieved by the decision of a local tribunal and a person generally or specially authorised by the army council to appeal from the decision of that tribunal may appeal against the decision of a local tribunal to the appeal tribunal of the area. The regulation provided that any such person may appeal against the decision of the local tribunal by delivering to that tribunal, in the prescribed form in duplicate, notice of appeal not later than three clear days after its decision, and the local tribunal shall thereupon send to the other party to the application the duplicate notice of appeal. The local tribunal granted the applicant exemption from military service. The military representative immediately announced in the presence and hearing of the applicant that he would appeal stating also his grounds of appeal. The copies in the prescribed form of the notice of appeal not being available, the military representative handed over to the clerk of the local tribunal a list of the names of persons in respect of whom he intended to appeal including the applicant's name and some weeks before the appeal was heard the clerk discussed the matter with the applicant. The applicant raised an objection before the appeal tribunal that it had no jurisdiction to hear the appeal as the prescribed notice had not been given. The Appeal Court held that inasmuch as the applicant knew within the prescribed time that the appeal was pending, strict compliance by the military representative with the letter of regulation 19 by delivering to the local tribunal notice of appeal in the prescribed form in duplicate was not a condition precedent to the appeal tribunal having jurisdiction to hear and determine the appeal, that the provisions of regulation 19 as to procedure were directory only and not imperative and, therefore, noncompliance with them did not deprive the military representative of his right of appeal. The same rule of construction has also been laid down in Raza Buland Sugar Co. v. Municipal Board, Rampur, 1965-1 SCR 970 = AIR 1965 SC 895). The appellant company there challenged the validity of water tax levied by the municipal board on the found that the tax had not been imposed according to law inasmuch as the proposals and the draft rules had been published by the Board in an Urdu paper whereas according to S. 131 (3) read with S. 94 (3) of the U. P. Municipalities Act, 1918 they should have been published in a Hindi paper. The Court held that S. 131 (3) fell into two parts, the first providing that the proposal and draft rules for an intended tax should be published for inviting objections of the public and the second, laying down that such publication must be in the manner laid down in S. 94 (3). It held that considering the object of the provisions for publication, the first part was mandatory while the second was merely directory. What that part required was that the publication should be in Hindi in a local paper and if that was done there was sufficient compliance of S. 94 (3). The publication was made in Hindi in a local paper which had good circulation in Rampur; there was no regularly published local Hindi newspaper. There was in the circumstances substantial compliance

with the provisions of S. 94 (3). At p. 975 (of SCR) = (at p. 899 of AIR) this Court observed that the question whether a particular provision of a statute which on the face of it appears mandatory inasmuch as it used the word 'shall' is merely directory cannot be resolved by laying down any general rule and depends upon the acts of each case and for that purpose the object of the statute in making the provision is the determining factor.

15. The object of R. 19 in prescribing that the application under S. 16 (3) must be accompanied by a copy of the registered deed is clearly to enable the Collector before he exercises his power thereunder to ascertain the purchase price, the terms and conditions of the sale, the readiness of the applicant to have the land in question reconveyed to him on the same terms and conditions as in the sale deed and the fact of the applicant having deposited the relevant amount in the treasury. The purpose of prescribing that a copy of the registered deed should accompany the application is that if such a copy is before the Collector there would be no scope for any controversy that the land is transferred to the purchaser, about its area and location, and the terms and conditions of the sale including the sale price. If this information is before the Collector and he is satisfied about it, does it still mean that it would be fatal to the application if the formality of annexing a copy of the registered deed is not complied with. Section 16 lays down that such an application must be made within three months from the date of the registration and if it is not done within that period, it would be time barred. Suppose for a while that an applicant does not know when registration under Ss. 60 and 61 of the Registration Act is completed and annexes to his application a certified copy of the sale deed furnished at his instance by the registering authority or where the registering authority is not able to furnish a copy of the registered deed of sale within time. Does it mean that an applicant is to be deprived of the right of reconveyance conferred by the statute? To hold that if the formality prescribed by R. 19 is not satisfied the application would be bad would be to nullify the object of the statute. That surely cannot be the intention of the draftsmen who framed R. 19 and Form L. C. 13.

16. Rule 19 (3) requires that a copy of the application be sent to the transferee and the transferor by registered post with acknowledgment due, Form L. C. 13 requires, the applicant to state that the is made by a registered deed on the date specified therein. If a copy of the application is delivered to the transferor or the transferee by hand delivery or by registered post but without acknowledgment due or if the applicant is not able to state the date of registration because he does not know it, does it mean that merely because Cl. (3) of R. 19 and the form use the word "shall" the omission to comply with the aforesaid requirements is fatal to the application? Surely these are directory instructions and if there is sufficient compliance thereof the application can be validly entertained by the Collector.

17. In our view, whereas the deposit in the relevant treasury, the applicant being either a co-sharer or a raiyat of the adjoining land, his readiness and willingness to have the land in question reconveyed to him on the same terms and conditions as in the sale deed and the transfer of the land to the transferee are conditions precedent to his acquiring the right of reconveyance and to the Collector's jurisdiction to try such an application, the prescription as to annexing a copy of the registered deed is only directory and is laid down to furnish necessary information to the Collector to enable him to

proceed with it. Annexing a certified copy of the sale deed where a copy of the registered deed is not yet available on account of the process of registration not having been completed would, in our view, be sufficient compliance of the directory prescription so long as it furnishes information necessary for the Collector to proceed with the application. The fact that a copy of the registered deed was not furnished along with the application was, therefore, not fatal to the application nor did such omission deprive the Collector of his jurisdiction to entertain it nor did it vitiate the proceedings before him or the order thereon made y him. The Board of Revenue and the High Court were not right in dismissing the appellants application. In the circumstances we allow the appeals, set aside the judgment and order of the High Court as also of the Board and restore the order passed by the Collector and confirmed by the Commissioner. The respondents will pay to the appellants the costs of these appeals as also their costs in the High Court. There will be only one hearing fee.

Appeals allowed.