

Brijendra Singh

Vs

State of U. P. and Others

Civil Appeal No. 2726 of 1980

(R. S. Sarkaria, E. S. Venkataramian JJ)

25.11.1980

JUDGMENT

R. S. SARKARIA, J. –

1. Special leave to appeal granted.

2. This is an appeal by special leave against an appellate judgment dated May 23, 1978 of the High Court of Allahabad. The material facts giving rise to this appeal are as under :

3. The Prescribed Authority under Section 10 (2) of the U. P. Imposition of Ceiling on Land Holdings Act, 1960 (U. P. Act 1 of 1961) (as amended by U.P. Act 18 of 1973) issued notice to the appellant to show cause why 25.96 acres out of 44 acres of irrigated land from his holding be not declared surplus. In response to this notice, the appellant filed objections stating, inter alia, (i) that the entire land was unirrigated; (ii) that there was no source of irrigation in fields 1373, 79 and 80; (iii) that the appellant had made two sales of 12.50 acres each, 25 acres in all, for a valid necessity, namely, to raise funds for acquiring a site and constructing a residential house in New Delhi : (a) The appellant being in Army Officer in the rank of Brigadier, had after obtaining permission on January 2, 1971 from the Army Headquarters, sold 12.50 acres of the land for a consideration of Rs. 25,000 to one Inderjit Singh by a registered deed, dated August 9, 1971, and handed over the possession to the vendee; (b) Similarly, after obtaining the permission of the Army Headquarters on January 2, 1971, he sold 12.50 acres of land for Rs. 25,000 to one Gurjeet Singh by another registered sale deed and handed over the possession to the vendee. Since the money raised by the sales was insufficient to purchase a building site and constructing a house thereon, the appellant also raised a loan of Rs. 50,000 from the government for that purpose.

4. The Prescribed Authority by its order dated June 26, 1977, rejected the objections of the appellant and declared 25.96 acres of the land as surplus.

5. Aggrieved by the order of the Prescribed Authority, the appellant went in appeal before the Appellate Authority (District Judge, Rampur), who, by his order dated December 8, 1977, partly allowed the appeal, holding that the entire land was unirrigated and accordingly declared 16.94 acres of unirrigated land as surplus. The District Judge has not held that the aforesaid sales made in favour of Inderjit Singh and Gurjeet Singh by two sale deeds of 12.50 acres each were fictitious or benami, nor has he found that the vendee were not in possession of the sold land. The District Judge seems to have denied the protection of proviso (b) of sub-section (6) of Section (5) of the Ceiling Act to the said two sales, merely for the reason that "the appellant had failed to prove any impelling necessity for building a house and that he could not do without a house in New Delhi", and

therefore, "it could not be held that the sales in question were not effected to avoid the Ceiling Law".

6. To impugn this decision of the District Judge, insofar as he did not uphold the aforesaid sales relating to 25 acres of land, the appellant filed a writ petition under Article 226 of the Constitution in the High Court, which dismissed the same in limine by its order, dated May 23, 1978. Hence this appeal by special leave.

7. The question of law that has been mooted before us is, whether a sale made by a tenure holder on a date between January 24, 1971 and June 8, 1973 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, can be held to be not in 'good faith' within the contemplation of proviso (b) to sub-section (6) of Section 5 of the Ceiling Act, merely because the tenure holder had failed to prove to the satisfaction of the Prescribed Authority or the Appellate Authority that the purpose for which the sale was made, did not constitute an impelling necessity for the sale.

8. Answer to this question turns on a correct interpretation of the expression "good faith" used in the aforesaid proviso (b).

9. Learned counsel for the appellant vehemently contends that the District Judge had committed an error of law inasmuch as he held that in order to get the protection of the aforesaid proviso (b), it is essential for the tenure holder to prove that the sale was made for some pressing valid necessity. It is emphasised that this is not the requirement of that provision; that the expression "good faith" only means that it should not be a benami or fraudulent transaction in which the transferor continues to be the beneficial owner or right-holder of the land on the crucial date, viz. June 8, 1973.

10. It is emphasised that in the instant case, it was not disputed that the sales were made to raise funds for purchasing a building site and constructing a house thereon in New Delhi; that the authenticity of the documentary evidence produced by the appellant to establish that fact was not doubted by the Appellate Authority; nor the adequacy of the sale considerations, nor the fact that the appellant had parted with possession of the sold lands; that in this situation, by no stretch of reasoning, it could be said that the sale was not bona fide or in good faith.

11. On the other hand, Shri O. P. Rana, stoutly defends the finding of the Appellate Authority (District Judge), which has been upheld by the High Court, that the sale could not be said to be in 'good faith' merely because no impelling necessity for making it had been established.

12. Before dealing with these contentions, let us have a look at the material part of sub-section (1) of Section 5, which reads thus :

(1) On and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no tenure holder shall be entitled to hold in the aggregate throughout Uttar Pradesh, any land in excess of the ceiling area applicable to him.

Explanation I. - In determining the ceiling area applicable to a tenure holder, all land held by him in his own right, whether in his own name, or ostensibly in the name of any other person, shall be taken into account.

Explanation II is not material for our present purpose.

13. The Amendment Act, 1972 (U.P. Act 18 of 1973) (for short called 'the Ceiling Act') came into force with effect from June 8, 1973. It is clear that the crucial date on or from which no tenure holder is entitled to hold land in excess of the ceiling area is June 8, 1973. Keeping this in view, Let us now examine sub-section (6), the relevant part of which reads as under :

(6) In determining the ceiling area applicable to tenure holder, any transfer of land made after the twenty-fourth day of January, 1971, 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 -

(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 or his family.

Explanation II. - The burden of proving that a case falls within clause (b) of the proviso shall rest with the party of claiming its benefit.

14. It will be seen that when sub-section (6) of Section 5 provides that in determining the ceiling area and surplus area, any transfer of land which but for the transfer would have been declared surplus land under the Act, shall be ignored, it proceeds on the presumption that the tenure holders being aware of the resolution or manifesto adopted by the ruling All India Congress Party on January 24, 1971, and of the consensus at the Chief Ministers Conference held in July, 1972, to take measures to lower the ceiling on agricultural holdings, might make attempts to defraud, defeat and evade the ceiling law, then in offing, by making fictitious transfers of land in favour of other persons. The presumption which underlies the main provision in Section 5 (6) can be displaced, as the legislature has itself indicated, on proof of the conditions set out in proviso (b). Although the strength of the aforesaid presumption and the nature and quantum required to satisfy the conditions of proviso (b) may vary according to the circumstances of the particular case, yet it can be said as a general proposition that in the case of transfers made prior to the decision of the Chief Ministers Conference in July 1972 to lower the ceiling, the burden under Explanation II on the tenure holder to establish the facts bringing his case within clause (b) of the proviso, would be lighter than the one in the case of a transfer made after the aforesaid decision in July 1972.

15. In order to bring his case within the purview of proviso (b), the tenure holder has to show -

(i) that the transfer has been made in 'good faith';

(ii) that it is a transfer for adequate consideration;

(iii) that it has been made under an irrevocable instrument; and

(iv) that it is not a benami transaction or for immediate or deferred benefit of the tenure holder or other members of his family.

16. There is no dispute in regard to the connotation, construction and existence of ingredients (ii),

(iii) and (iv) of the instant case. Controversy, however centres round the true meaning and scope of the expression 'good faith' within the contemplation of clause (b) of the proviso. In the instant case, the Appellate Authority appears to have taken the view - a view which has been upheld by the High Court - that a transfer cannot be said to have been made in 'good faith' merely because it has honestly or genuinely made and satisfies the aforesaid conditions (ii), (iii) and (iv), unless it is proved further that it was made for a valid pressing necessity.

17. The thrust of the arguments of the learned counsel for the appellant is that the expression 'good faith' within the contemplation of proviso (b) only means that the transfer is honestly and genuinely made, and is not designed to circumvent the Ceiling Act or defeat its object, and that this expression cannot be legitimately stretched so as to import into proviso (b), as a requirement of law, an additional obligation to prove that the transfer was made for a pressing necessity, or valid personal need of the transferor. The argument is not devoid of merit.

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 AND PHRASES, Permanent Edition, Vol. 18-A, 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 or fraudulent design, is a constant element of its connotation. Even so, the quality and quantity of the honest 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 sub-section (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 sub-section (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 (U.P. Act 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).

21. In the instant case, the two sales in question have not only been found to be genuine and for adequate consideration, but it has been further accepted that the sales were made by the tenure holder to meet an ordinary need of every householders i.e. for raising funds for constructing a residential house in New Delhi. The sales have been held by the Appellate Authority to be not in 'good faith' merely on the ground that the construction of a residential house in New Delhi by the tenure holder could not, in the opinion of the Authority, be said to be an 'impending (impelling ?)

necessity. This approach and finding is manifestly erroneous.

22. As discussed above, in order to get the protection of proviso (b) to Section 5(6), it is not legally necessary to prove, in addition to the conditions set out in the proviso (b), that the sales were for valid pressing necessity. Even so, in the instant case, it has been shown that the sales were made to raise funds for building a residential house in New Delhi which was obviously a valid necessity. The necessity and its urgency was to be judged from the tenure holder's point of view. The tenure holder at the material time was serving in the Army in the rank of Brigadier which implies that he was nearing the age of retirement from Army service. It is not shown that he had any other house where he could live. He had, in fact, borrowed part of the cost of construction from the government. There was therefore nothing sinister in his intention if he arranged to sell his lands to other cultivators to raise funds to acquire a site and build a residential house in New Delhi where he would live in reasonable comfort after retirement from Army service.

23. For all the foregoing reasons, we allow this appeal, set aside the orders of the High Court and of the Appellate Authority and the Prescribed Authority insofar as they relate to these two sales in question of 12.5 acres each, and hold that both these sales were entitled to the exemption of proviso (b) to Section 5(6) of the Ceiling Act. The Prescribed Authority is, therefore, directed not to ignore these two transfers, but after taking them into account determine afresh the ceiling area of the appellant. We make it clear that the Prescribed Authority shall determine the ceiling area and surplus area of the appellant on the basis that the whole of the land held by the tenure holder (appellant) on the crucial date was unirrigated land, as the decision of the Appellate Authority (which was upheld by the High Court) on that issue has become *res judicata*.

24. In the circumstances of the case, there will be no order as to costs of this appeal.

25. These, then, are the reasons for our Order dated November 13, 1980, whereby we had allowed this appeal.

</html