

Bhupendra Singh

Vs

State of U. P. and Others

Civil Appeal No. 2909 of 1980

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

15.12.1980

JUDGMENT

SARKARIA, J. -

1. Special leave to appeal granted.

2. This is an appeal by special against a judgment, dated May, 23, 1978, of the High Court of Allahabad, whereby Civil Miscellaneous Writ Petition 4499 of 1977 arising out of Revenue Appeal 253 of 1977 was dismissed.

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 of 1973) issued notice to the appellant to show cause why 25.93 acres of land be not declared as surplus with him. In response to this notice, the appellant filed objections stating, inter alia, (i) that the entire land was unirrigated and it had been wrongly shown in the notice as irrigated land (ii) that he had sold 40 acres of his land) 20 acres to Puspek Singh and 20 acres to Raghubir Singh Sondhi) on July 23, 1971 and August 9, 1971 by registered sale deeds, for adequate consideration and in good faith and (iii) that the sales were effected to raise funds for constructing a residential house in Delhi. He further stated that he had delivered possession to the vendees. The Prescribed Authority rejected the objecting of the appellant and ignored these sales and declared 25.93 acres of land as surplus with the appellant.

4. Against that order of the Prescribed Authority, the appellant carried an appeal to the Appellate Authority (District Judge, Rampur), who, by his order dated December 8, 1977, partly allowed the appeal and held that the whole of the land held by the appellant was unirrigated land. With regard to the aforesaid two sales made by the appellant, the Appellate authority held that the sales were genuine, but the same could not be upheld because "no compelling necessity had been brought on record to show that the sales were not made to avoid nay ceiling law".

5. The appellant's contention was that since he was in the Army Service, he had made these sales after obtaining permission from the Army Authorities in order to raise funds for building a residential house for himself in Delhi. The Appellant Authority did not hold that the sales were not for adequate consideration or were fictitious or benami : On the contrary, he found them to be genuine, but ignored the same simply because in his opinion, raising funds for building a residential house in Delhi, was not a valid compelling necessity for the sales.

6. We have by our judgment in Brijendra Singh v. State of U. P., allowed the appeal of Brijendra Singh, in which the facts found by the Appellate Authority were almost identical. The sales in that

case were also made to raise funds to meet the expenses of constructing a residential house in Delhi. In that case, also, the sales were found to be genuine and for adequate consideration, but were ignored merely on the ground that no impelling necessity for the sales had been established and that the purpose of raising funds for building a residential house at Delhi was not such a necessity. We have held in that case that : (SCC p. 603, para 20)

Once it is established by the transferring transferring tenure holder that the transfer in question was effected in the course of ordinary management of his affairs, was made for adequate consideration and he had genuinely, absolutely and irrevocably divested himself of all right, title and interest (including cultivator possession) in the land in favour of the transfer, the onus under Explanation II (to proviso (b) of Section 5(6), in the absence of any circumstances suggestive of collusion, or an intention or design to defraud or circumvent the Ceiling Act, on the tenure holders 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.

This rule laid down in Brijendra Singh case squarely applies to the sales in question in the instant case. The sales were held to be genuine and or adequate consideration in favour of persons who were not alleged to be related to the appellant in any way. They were not benami sales; the tenure holder did not reserve any immediate or deferred benefit for himself or the other members of his family under these sales which were made under an irrevocable registered instrument. They were made in the course of ordinary management of his affairs by the transferor viz., to raise funds for building a house at Delhi. All the facts and conditions necessary to claim the protection of Section 5(6) proviso (b) were satisfied in this case.

7. We, therefore, allow this appeal, set aside the orders of the High Court and the Appellant Authority and the Prescribed Authority and send the case back to the prescribed Authority with the direction that it shall not ignore these who transfers, and after taking these transfers 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.

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

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