

State of Maharashtra

Vs

Keshav Wamanrao Joshi and Others

Civil Appeal No. 1679 of 1984

(Dr. T. K. Thommen, Kuldip Singh, Smt. M. S. Fathima Beevi JJ)

11.07.1990

ORDER

1. This appeal by the State arises from the judgment of the Bombay High Court in Special Civil Application No. 4981 of 1976. The High Court found that the document of sale in question, which was registered subsequent to September 26, 1970 effected a valid transfer of land which was consequently liable to be excluded on computing the ceiling area of the respondent. In coming to this conclusion the High Court held "there is nothing on record to indicate that the transaction was not of a bona fide nature." The basis of the conclusion of the High Court was based on an assumption which is not warranted by law.

2. Section 10 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 provides :

"10. all transfers made after the 26th day of September, 1970 but before the commencement date, shall be deemed (unless the contrary is proved) to have been made in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972."

This shows that any transfer made after September 26, 1970 (which it is in the present case) is deemed to have been made with a view to defeating the object of the legislation unless the contrary is proved. The burden is, therefore, upon the owner to prove that the transfer, though made after September 26, 1970, was bona fide and was not with a view to defeating the object of the legislation. This is a question of evidence, but the burden of proof is squarely placed upon the person asserting the bona fide and correctness of the transfer so as to derive the benefit of the statutory provision.

3. The High Court has wrongly placed the burden upon the State by stating that there was nothing to indicate that the transaction was not of a bona fide nature. It has lost sight of the true meaning and significance of the section. In the circumstances, we set aside the judgment of the High Court, but we are of the view that the respondent should be given another opportunity to discharge the statutory burden of proof. Accordingly, we remand this case to the competent Surplus Land Determination Tribunal, Maharashtra for fresh consideration of the matter after affording the parties a reasonable opportunity of being heard. It will be open to them to adduce further evidence in the matter, if they so desire. The appeal is disposed of accordingly. No costs.

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