Jagmal Singh

Vs

State of U.P. and Others

Civil Appeal No. 659 of 1978

(P.B. Sawant, Smt. M.S. Fathima Beevi JJ)

04.12.1990

ORDER

1. In this appeal the short question that arises for consideration is whether the sale of the land effected by the appellant on May 12, 1976 was covered by sub-clause (b) of the proviso to sub-section (6) of Section 5 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to us the Act).

2. The admitted facts are :

> An amendment to the Act was introduced with effect from June 8, 1973 lowering the ceiling on holdings, under the Act. It was given retrospective effect from January 24, 1971. In the meanwhile, the appellant had sold 34 bighas from his holding for a consideration of Rs 73,000 on May 12, 1972 by a registered sale deed, and the possession of the land was also given to the vendee. It is only after the amendment of 1973, when a fresh notice was issued to show cause as to why the property sold should not be included in his landholding, that the dispute with regard to the inclusion or exclusion of the property in the total land holding of the appellant for the purposes of the Act, arose. The Prescribed Authority held that the sale deed in question was executed to evade the provisions of the Act and, therefore, ignored the sale deed and included the land in the appellant's holding and calculated the surplus land in his possession, accordingly.

3. In appeal, the District Judge confirmed the finding and dismissed the appellant's appeal. The High Court in writ petition treated the finding of the District Judge as a finding of fact and did not think it necessary to interfere with it. Aggrieved by these orders the present appeal is filed.

4. Mr Goyal, the learned counsel appearing on behalf of the appellant brought to our notice two decisions of this Court in Brijendra Singh v. State of U.P. [(1981) 1 SCC 597 : AIR 1981 SC 636] and in Bhupendra Singh v. State of U.P. [(1981) 2 SCC 670 : AIR 1981 SC 1157] which were delivered after the impugned decision of the High Court which is of July 13, 1977. The ratio of these decisions is that once the landholder/tenureholder proves that he had transferred the land in good faith and for valid necessity and had not done it benami or kept any interest in the transferred land in his favour either in present or in future, it is not further incumbent upon him to prove that the transaction was effected for a compelling necessity. If the transfer of the land was made in the course of ordinary management of his affairs, it may be held that it is done in good faith and without an intention to evade the provisions of the Act. In the present case, the admitted facts are that on the date the land was transferred, there was a loan of Rs 29,000 and odd outstanding and

payable by the appellant to the government. There was also another loan of Rs 5,000 outstanding and payable by him to a cooperative society. It is also not disputed that the appellant who is an agriculturist purchased a tractor for Rs 12,500 after the said transaction of sale. He has, of course, also pleaded that being a patient of tuberculosis, he had to spend a sizeable amount for his treatment which he did out of the monies which he secured by transfer of the land. This has also not been disputed on behalf of the authorities. It is not disputed that the appellant did pay to the government the outstanding loan of Rs 29,000 and odd on May 24, 1972. He also paid a sum of Rs 5,000 towards the loan of the society and purchased the tractor valued at Rs 12,500 after the transfer of the land. Even if we ignore the amount spent by him on his medical treatment since it is not specified, in all he spent about Rs 46,500 after the transaction in dispute. The learned District Judge who is the final fact finding authority under the Act without disputing the correctness of these payments has merely observed that since the appellant had transferred two other plots, one in 1964 and another in 1970 for a total consideration of Rs 35,000 and odd, when the loans to the government as well as to the society were outstanding, he could as well have paid the loan amounts out of the monies that he had received from the said two sales. As far as the purchase of tractor is concerned, he has observed that there was no necessity for selling the old tractor and purchasing a new one. It is on these grounds, that he held that there was no need to sell the land in question on May 12, 1972. The High Court has not interfered with his decision, as stated earlier on the ground that it was a finding of fact.

5. We are afraid that the learned District Judge has misguided himself. As has been observed by this Court in the two decisions (supra), one is entitled to manage one's affairs according to his own best calculations. The loans which were taken from the government and the society were not loans free of interest but carried interest on them. The appellant was, therefore, entitled to make his own calculations as to when he would pay them. There is further nothing on record to show as to for what precise purpose the two plots were sold by the appellant in 1964 and 1970. There are innumerable reasons why an agriculturist like the appellant is required to dispose of his property from time to time. The very fact that although the loans were outstanding at that time, the appellant chose to continue to pay interest on them and raised an additional amount of Rs 25,000 and odd by selling the two plots shows that it must have been for some valid necessity which arose at that time. So is the case with the purchase of the tractor. The need felt by the appellant to purchase a new tractor by disposing of the old cannot be a matter of judicial adjudication. What the learned District Judge was required to find out was whether in fact the payments in question were required to be made and were accordingly made.

6. Since the factum of the payment of loan and purchase of the tractor in particular has not been disputed, it cannot be said that there was no valid necessity and that the land in question was not sold in good faith. There is no dispute further that it was not sold benami and that no interest in the land has been kept either in the present or for the future in favour of the appellant as stated earlier. As has been pointed out by this Court, it is not further necessary under the provisions of the said proviso (b) that the landholder/tenureholder should prove a compelling necessity for the transfer of the land.

7. We were trying to find out from Mr Prithvi Raj, learned counsel appearing for the respondent-State, the sanctity of the cut-off date, namely, of January 24, 1971, the transfers after which were to be ignored by the ceiling authorities. The query was necessitated to find out whether when the amendment was brought on June 8, 1973 with retrospective effect from that date, namely, January 24, 1971, it can be said that the said transaction which was effected on May 12, 1972 particularly in the circumstances aforesaid, could be said to have been effected to evade the provisions of the

Ceiling Act. There was no material in that respect on record, and for want of it, Mr Prithvi Raj could not assist in that behalf. However, he contended firstly that the finding that the land in question was sold to evade the provisions of the Act was a finding of fact. Secondly, he emphasised that there was no compelling necessity to effect the sales and he also urged that as pointed out by the learned District Judge the liabilities of the appellant could have been discharged by him in 1964 and 1970 when two plots were sold earlier.

8. We have already discussed the latter two aspects of Mr Prithvi Raj's arguments. As regards the contention that the finding recorded by the District Judge is a finding of fact, it may be pointed out that since even on the said finding the law is in favour of the appellant, the appellant is entitled to succeed. Not to be unfair both to the learned District Judge as well as to the High Court it must be added that what precise findings had to be recorded in matters such as this was made clear by this Court only after the two decisions of the this Court (supra). If the said position of law was before them, their decisions might have been different.

9. In the circumstances, we are of the view that the appellant is entitled to succeed. We, therefore, allow the appeal and set aside the decisions of the courts below. In the circumstances, we make no order as to costs.

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