SUPREME COURT OF INDIA

Nawab Syed Murtaza Ali Khan

Vs.

Prescribed Authority, Rampur

(Shivaraj V. Patil and D.M. Dharmadhikari JJ.)

18.08.2003

JUDGMENT

SHIVARAJ V. PATIL, J.

Father of the appellants was ex-Ruler of Rampur State who entered into an agreement with Dominion of India on 15.5.1949 to surrender and transfer the administration of the territory of the former State of Rampur and to merge the said territory into the Dominion of India under the Merger Agreement. Article 4 of the said Agreement, to the extent relevant, reads:- "Article 4 – The Nawab shall be entitled to FULL OWNERSHIP, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of this agreement." On the same day, Ministry of States, Government of India wrote a letter to him which was to be treated as part of the Merger Agreement. Clause (xviii) reads:- "(Xviii) - No land or building being your Highness's private property shall be requisitioned or acquired without your consent and without paying full compensation." On 15.5.1949 itself, the Ministry of States, Government of India, wrote a letter to the Nawab containing a list of moveable and immoveable properties which would be the private properties of the Ruler for the purpose of Article 4 of the Merger Agreement. Item 6 in the list pertained to agricultural lands covering an area of 1073 acres stated to have been transferred by the State to the Ruler for farming purposes free of rent.

Under Section 4(i) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, State

Government issued a notification on 30.6.1952 vesting all the estates in the State which did not include estates in Rampur State. On 30.6.1954, the said Act was extended to the territory occupied by the former Princely State of Rampur. Thereafter on 1.7.1954, State Government of Uttar Pradesh issued a notification under Section 4(i) of the Uttar Pradesh Zamindari Abolition & Land Reforms Act vesting all lands (estates) situated in the territory occupied by the former princely State of Rampur except the private lands belonging to the ex-Ruler of Rampur.

The State Legislature of Uttar Pradesh passed the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (for short `the Act'). The said Act was amended from time to time.

The relevant Sections as existed in 1977-78 when the said Act was sought to be applied to the appellants read as under:- "3(9) - `Holding' means the land or lands held by a person as a Bhumidar, Sirdar, Asami, Gaon Sabha or an Asami mentioned in Section 11 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, or, as a tenant under the U.P. Tenancy Act, 1939, other than a sub- tenant, or as a Government lessee, or, as a sub-lessee of a Government lessee, where the period of the sub-lease is co-extensive with the period of the lease." "3(16) - "Surplus land" means land held by a TENURE HOLDER in exercise of the Ceiling area applicable to him, and includes any buildings, well and trees existing thereon." "3(17) - "Tenure-holder" means a person who is the holder of a holding, but except in Chapter III does not include:- (a) a woman whose husband is a tenure-holder;

(b) a minor child whose father or mother is a tenure-holder." "3(21) - The words and expressions not defined in this Act but used in Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, shall have the meanings assigned to them in that Act." "Section 5. Imposition of ceiling – (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 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 – If on or before January 24, 1971, any land was held by a person who continues to be in its actual cultivatory possession and the name of any other person is entered in the annual register after the said date either in addition to or to the exclusion of the former and whether on the basis of a deed of transfer or licence or on the basis of a decree, it shall be presumed, unless the contrary is proved to the satisfaction of the Prescribed Authority, that the first mentioned person continues to hold the land and that it is so held by him ostensibly in the name of the second mentioned person." "Section 6 - Exemption of certain land from the imposition of ceiling – (1) Notwithstanding anything contained in this Act, land falling in any of the categories mentioned

below shall not be taken into consideration for the purposes of determining the ceiling area applicable to, and the surplus land of, tenure-holder namely; - (a) land used for an industrial purpose (that is to say, for purposes of manufacture, preservation, shortage or processing of goods), and in respect of which a declaration under Section 143 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, subsists;

(b) land occupied by a residential house;

(c) land used as a cremation ground or as a grave-yard, but excluding cultivated land;

(d) land used for tea, coffee or rubber plantations, and to the extent prescribed, land required for purposes ancillary thereto and for development of such plantations;

(e) land held from before January 24, 1971 for purposes of a stud farm to the extent prescribed;

(f) land held from before the first day of May, 1959, by or under a public, religious or charitable waqf, trust, endowment, or institution the income from which is wholly utilized for religious or charitable purposes, and not being a waqf, trust or endowment of which the beneficiaries wholly or partly are settlers or members of his family or his descendants;

(g) land held from before June 8, 1973, by a Goshala of a public nature, registered under the Uttar Pradesh Goshala Adhiniyam, 1964, to the extent prescribed;

(h) [Omitted] Explanation - Nothing in clause (f) of sub- section

(1) shall apply in relation to a Goshala referred to in clause (g) of that sub- section." Section 6 prior to the amendment reads:- "6. Exemption of certain land from the imposition of ceiling – Notwithstanding anything contained in this Act, land falling in any of the categories mentioned below shall not be taken into consideration for the purposes of determining the ceiling area applicable to, and the surplus land of, a tenure holder – (i) to

(xiii).....

(xiv) land held by the Ruler of an erstwhile merged State which because of the conditions of the Merger Agreement between him and the Government of India or the collateral letters appended

thereto cannot be acquired by the State Government without his concurrence.

(xv) to (xix) ....." In the year 1977, proceedings under the Act by the Prescribed Authority were initiated by issuing notice under Section 10 of the Act ostensibly on the ground that the exemption clause under Section 6(xiv) of the Act had been repealed and so the ceiling Act had become applicable to the lands held by the father of the appellants. Objections were filed before the Prescribed Authority contending that the Act was not applicable and the proceedings should be dropped. The Prescribed Authority by its order dated 21.10.1978 rejected the objections. The learned District Judge dismissed the appeal on 21.5.1980 filed by the father of the appellants challenging the order of the Prescribed Authority. A writ petition was filed before the High Court challenging the validity and correctness of the order passed by the learned District Judge in appeal affirming the order passed by the Prescribed Authority. During the pendency of the writ petition, father of the appellants died. Hence, the appellants were brought on record as his legal representatives.

The High Court dismissed the writ petition on 30.4.1996 taking a view that the only provision in the Act which could prevent its applicability to the lands of former Rulers of Princely States in Uttar Pradesh was the exemption clause contained in Section 6(xiv) of the Act. Since Section 6(xiv) of the Act had been repealed by U.P. Amending Act No. XVIII of 1973, the appellants were not entitled to claim exemption of the provisions of the Act. Under the circumstances, the appellants are in appeal before this Court calling in question the validity and correctness of the order passed by the High Court.

The learned counsel for the appellants urged that the lands in question were private properties of ex-Ruler of Rampur State as is evident from Merger Agreement coupled with collateral letters and the notification issued under the Zamindari Abolition Act; the father of the appellants was not a tenure holder as the lands were private properties of the Ruler and he was absolute owner of the agricultural lands; having regard to the definitions contained in Section 3 of the Act of "holding', "tenure holder" and "surplus land", Section 5 of the Act is not applicable to the lands held by the appellants and merely because exemption under clause 6(xiv) was repealed, Section 5 of the Act cannot be applied to the case of the appellants. The learned counsel made a grievance that the High Court did not consider important questions of law that arose for consideration in the light of the provisions of the different Acts having bearing on the decision in the case. According to him, Prescribed Authority as well as the Appellate Authority focused the attention on the exemption clause without considering the applicability or otherwise of the main Section 5 in regard to ceiling on holding.

Opposing the submissions made on behalf of the appellants, the learned counsel for the respondents made submissions supporting the impugned order. He urged that relevant definitions given in Section 3 must be understood and interpreted in the context of the scheme of the Act; when the exemption given earlier by Section 6(xiv) was repealed and Section 6 as it stood on the relevant date

did not give any exemption to the private properties of the ex-Ruler, it must be understood that the legislature consciously took away the exemption given earlier;

if the private properties of the Ruler were not covered by the Act, there was no reason as to why originally exemption was given under Section 6(xiv) of the Act.

We have carefully considered the submissions made by the learned counsel for the parties.

As per Article 4 of the Merger Agreement Nawab of Rampur was entitled to full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of the agreement, i.e., 15.5.1949. Clause XVIII of the letter annexed to the said agreement of the same date (Annexure B) states that no land or building being the private property of ex-Ruler shall be requisitioned or acquired without his consent and without paying full compensation. On 15.5.1949 itself one more letter (Annexure C) was written to Nawab from Ministry of States referring to Article 4 of the Merger Agreement stating that the Government of India agreed that the moveable and immoveable properties mentioned in the list attached shall be the private property of ex-Ruler. In the list attached item No. 6 relates to agricultural lands covering an area of 1073 acres, which were stated to have been transferred by the State to the Ruler for farming purposes; that was free of rent. Under Section 4(i) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 State Government issued a notification on 30.6.1952 vesting of the estates in the State, which notification did not include estates in Rampur State. On 30.6.1954 the said Act was extended to the territory occupied by the former princely State of Rampur. Further on 1.7.1954 State Government of Uttar Pradesh issued one more notification under Section 4(i) of the same Act vesting of the lands (estates) situated in the territory of former princely State of Rampur except the private lands belonging to the Ruler of Rampur. Thus, it is clear that the lands in question were the private properties of the ex-Ruler.

The learned District Judge took a view that since the agricultural lands covered by item No. 6 in the list referred to above were given "free of rent", the predecessor of the appellants was a "Government Lessee" within the meaning of Section 3 of the Act; therefore, he was a tenure holder under the Act. This Court in Rani Ratnaprova Devi and others vs. The State of Orissa and others [AIR 1964 SC 1195], in similar circumstances, observed: - "What the Act has purported to do is to authorize the levy of assessment in respect of lands which till then had been exempted from the said levy..... If the Orissa Legislature has imposed A TAX in the form of assessment of the PRIVATE LANDS OF THE RULERS, clearly it has not purported either to deprive the Rulers of their property or to acquire or requisition the said property; IT IS A SIMPLE MEASURE AUTHORISING THE LEVY OF A TAX IN RESPECT OF AGRICULTURAL LANDS and, as such, it is entirely outside the purview of Article 31." The High Court committed an error in stating that under Articles 4 to 9 of the Merger Agreement nowhere there was any mention of any agricultural lands. This was a clear misreading of the documents. As already stated above, from the letters written by the Ministry of States, Government of India, on the date of Merger Agreement itself, referring to the said

agreement, agricultural lands were clearly included in the list at item No.6. The High Court also took the view that since the lands were granted 'free of rent' it only meant that the Ruler was not obliged to pay rent; it meant that the rent was chargeable on the lands held for agricultural purposes but the Ruler got a permission of the State not to charge the rent from him. The High Court in the impugned order observed: - "The argument of the learned standing counsel is very strong that if the legislature did not intend to exclude the agricultural land of the erstwhile ruler the forum was available to challenge the amendment and get the same declared ultra vires. If that has not been done then the Ceiling Act has full force." It appears that the High Court was of the view that by the amendment brought to Section 6 exemption, which was available prior to the amendment under Section 6(xiv), was taken away; the said amendment having not been challenged as ultra vires the provisions of the Act applied to the lands of the ex-Ruler. The Prescribed Authority held that the lands of the ex-Ruler were not covered by any of the exemptions granted by Section 6 of the Act as amended and rejected the objections of the appellants that the provisions of the Act did not apply to the lands. The District Judge dismissed the appeal of the appellants on the ground that the lands were granted 'free of rent' to the ex-Ruler as he was a tenure holder. The High Court dismissed the writ petition by the impugned order since the exemption, which was available under Section 6(xiv) earlier, had been repealed, the provisions of the Act applied to the lands held by the ex-Ruler.

The High Court, in our view, did not consider the question that arose for consideration as to whether the provisions of the Act applied to the lands of the appellants. As already noticed above, a factual error was committed by the High Court in stating that the lands were not private properties of the ex-Ruler. It also committed an error in holding that the ex-Ruler was a tenure holder merely looking to the use of the words 'free of rent' mentioned in the item No. 6 of list of the letter annexed to the Merger Agreement. It failed to consider the use of the words 'free of rent' having regard to the contextual facts and in the light of the decision of this Court aforementioned.

Unfortunately, the High Court did not even consider the relevant provisions of the Act bearing on the controversy.

Section 5 of the Act deals with imposition of ceiling. It declares that 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 ceiling area applicable to him. Whether Section 5 of the Act could be applied in relation to the private lands in question held by the ex-Ruler should have been examined by the High Court in proper perspective having due regard to the definitions "holding", "tenure holder" and "surplus land" contained in Section 3 of the Act, provisions contained in Section 5, scope of Section 6 and other relevant provisions of the Act. The effect of Explanation I to Section 5 of the Act should have been also kept in view. The focus of the attention of the High court was confined to the exemptions granted under Section 6 of the Act without basically considering the main Section 5 dealing with the imposition of ceiling on the lands held by the ex-Ruler. Section 6 of the Act speaks of exemption of certain lands which shall not be taken into consideration for the purposes of determining the ceiling area applicable to, and the surplus land of the tenure holder. Mere omission of exemption of private properties of ex-Ruler in the categories of exemptions under Section 6 after amendment cannot take

away the effect and operation of Section 5 and the other provisions of the Act. There may be cases where an ex-Ruler might have possessed private lands as absolute owner as against tenure holder or may be holding lands partly as tenure holder or partly as absolute owner of the private property. Such cases are to be examined in the light of definitions contained in Section 3 and provisions contained in Section 5 read with Section 6.

Unfortunately, these aspects did not receive deeper and proper consideration at the hands of the High Court. As already observed above, the approach of the High Court was truncated when it considered only the effect of exemption under Section 6 of the Act on the lands held by the appellants and further the High Court also committed a factual error in holding that the lands in question were not at all private properties of the ex-Ruler as per the Merger Agreement.

In these circumstances, the impugned order cannot be sustained. Hence, this appeal is allowed, the impugned order is set aside and the matter is remitted to the High Court for fresh consideration and disposal of the writ petition in the light of what is stated above.

In the light of the order passed in Civil Appeal No. 1712 of 1997, no separate order is needed to be passed in Writ Petition No. 804 of 1996. Accordingly, it is disposed of. No costs.