KU. SONIA BHATIA

v.

STATE OF U.P. & ORS.

March 17, 1981

[S. MURTAZA FAZAL ALI, A. VARADARAJAN AND V. BALAKRISHNA ERADI, JJ.]

U.P. Imposition of Ceiling on Land Holdings Act 1960—Section 5(6)—Scope of—Gift of property for love and affection—If could be said to be a transfer for consideration.

Words and phrases—"Consideration."—"Adequate"—"Gift"—"Transfer"—Meaning of.

Interpretation—Words of everyday use—How interpreted.

Sub-section 6 of section 5 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 as it stood at the relevant time provided that in determining the ceiling area any transfer of land made after January, 24, 1971 should be ignored and not taken into account. Clause (b) of the proviso to sub-section 6 which carves out an exception states that the sub-section shall not apply to a *transfer proved to the satisfaction of the Prescribed Authority* to be in good faith and for *adequate consideration* under an irrevocable instrument. Explanation II to this proviso places the burden of proof that a case fell within clause (b) of the proviso is on the *party claming its benefit.*

On January 28, 1972 the donor gifted away certain lands in favour of his grand-daughter, the appellant, daughter of a pre-deceased son.

The gift having been made after the prescribed date, the Prescribed Authority ignored the gift for purposes of section 5 (6) of the Act.

On appeal, the District Judge gave a finding in favour of the appellant holding that the gift was *bona fide* having regard to the circumstances in which it was made and that it could not be held invalid merely because it was executed after the due date of January 24, 1971.

Purporting to follow one of its earlier decisions, the High Court held that a gift not being a transfer for consideration, had to be ignored under the provisions of the Act and that a gift being a gratuitous transfer made out of love and affection fell outside the purview of clause (b) of the proviso.

On behalf of the appellant it was contended that a gift could not be said to be a transfer without consideration because even love and affection may

A provide sufficient consideration and hence the condition regarding adequate consideration would not apply to a gift.

Dismissing the appeal

HELD : It is a well settled rule of construction of statutes that where the definition of a word has not been given in an enactment it must be construed in
B its popular sense if it is a word of every day use, that is, the sense in which people conversant with the subject-matter with which it deals would attribute to it. Similarly if the language used is clear and explicit, the provision cannot be reduced to a nullity by reading into it a meaning which it does not carry. [246B]

In the instant case therefore, the word "transfer" being a term of well-known legal significance with well ascertained incidents the legislature did not
C consider it necessary to define it separately. It is used in the sense in which it is used in the Transfer of Property Act. [245 G]

C.I.T., Andhra Pradesh v. *M/s. Taj Mahal Hotel, Secunderabad* [1972] 1 S.C.R. 168 and *Union of India* v. *Sankal Chand Himatlal Sheth and Anr.* [1978] 1 S.C.R. 423 applied.

D *Keats* v. *Lewis* [1911] A.C. 641 referred to.

A conspectus of the meaning of the term "gift" is that it is a transfer which does not contain an element of consideration in any shape or form. Where in respect of a gift there is a benefit measurable in terms of money the transaction ceases to be a gift and assumes a different colour. Yet another salient feature of a gift is that love, affection and many other factors may
E constitute the motive for the gift and may enter into the intention of the donor making a gift, but none of these can be held to be legal consideration, as undestood by law. [251 G-H; 252F]

"Consideration" means a reasonable equivalent or other valuable benefit passed on by the promisor to the promisee or by the transferor to the transferee. When the term consideration is qualified by the word "adequate" it makes it
F sufficient and valuable having regard to the facts, circumstances and necessities of the case. [251 F]

The word "transfer for adequate consideration" used in clause (b) of the proviso excludes a transaction, which is in the nature of a gift and which is without consideration. [252 E]

G The argument that if the legislature intended to exclude gifts clause (b) of the proviso would have expressly said so and by not excluding it must be deemed to have included a gift is without force particularly in the face of the clear and unambiguous language of the proviso. Every legislature has its own technical device to express its intendment. Express exclusion is not the only method of conveying the legislative intent there may be other methods or devices by
H which a legislature expresses its intent; namely, by using expressions, which would exclude a particular transaction by necessary intendment. This is what is done in enacting clause (b) of the proviso. [252 G-H]

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The legislature has made its intention clear that a gift is excluded by qualifying the word "consideration" with the adjective "adequate". [252 H]

By using the word "adequate" to qualify the word "consideration" the legislature has ruled out gifts from the ambit of clause (b) of the proviso. [253 C]

B

The words "adequate consideration" clearly postulate that consideration must be capable of being measured in terms of money, having regard to the market price of the property, the value that it may fetch if sold, the value of similar lands situate in the vicinity and so on. [253 B]

C

The argument that since in the case of a gift there is no question of consideration, the words for "adequate consideration" in the 3rd part of clause (b) of the proviso are inapplicable and should, therefore, be ignored is opposed to the well known rule of interpretation that Courts, while interpreting statutes, must not legislate. A legislature does not use words without any intention and every word used by the legislature must be given its due import. The intention of the legislature in using the words "adequate consideration" is to exclude any transaction which is not for adequate consideration. Even if a sale is *bona fide* if to but consideration is inadequate, the transaction would fall beyond the protection of clause (b) of the proviso. [253 E-F]

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Debi Saran Koiri and Anr. v. *Nandlal Chaubey and Ors.* A.I.R. 1929 Patna 591 and *Kulasekaraperumal* v. *Pathakutty Thalevanar and Ors.* A.I.R. 1961 Madras 405 approved,

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The words "adequate consideration" carry a well-known legal significance and, therefore, convey the same meaning and import in whichever statute they are used unless a contrary intention appears from the language employed by the legislature in a particular Act. [256 E-F]

Tulsidas Kilachand v. *The Commissioner of Income-tax Bombay City I*, [1961] 3 S.C.R. 351, referred to

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Fateh Mohammed v. *District Judge* [Civil Writ Petition No. 915 of 1975, decided on 10-7-78] overruled.

An explanation merely widens the scope of the main section and is not meant to carve out a particular exception to the main section. The words admission, acknowledgment, relinquishment or declaration used in Explanation I, do not absolve the party concerned from proving that the transfer should be executed in good faith and for adequate consideration. [256 E-F]

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However laudable the object of the donor in gifting the property to his grand-daughter (particularly in the circumstances of this case) may be and whatever hardship might ensue to the donee by applying the provision, the gift fails if it does not fulfil the other essential requirements of the section. The act was enacted to implement one of the Directives contained in Part IV of the Constitution and if in this process a few individuals suffer that cannot be helped, for, individual interests must yield to the larger interests of the community. [258 D-F]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 775 of 1981.

Appeal by Special Leave from the Judgment and Order dated 21.12.78 of the High Court of Allahabad in C.M.W.P. No. 12602/77.

S. N. Kacker and *Prem Malhotra* for the Appellant.

O. P. Rana and *S. Dikshit* for the Respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J. This appeal by special leave is directed against a judgment dated December 21, 1978 of the Allahabad High Court allowing the writ petition filed by the State of U.P. before the Court.

The case arose out of an order passed by the Prescribed Authority under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the 'Act'), as amended uptodate, by which the said Authority rejected the claim of the petitioners on the basis of a gift which had been executed by her grandfather by a registered document dated January 28, 1972. The Act was passed as far back as 1960 but by virtue of an amendment, being U.P. Act No. 18 of 1973, section 5 was introduced which placed a ceiling on any tenure holder to hold land in excess of the ceiling area fixed under the Act. Section 5 contained various sub-sections but in the instant case we are concerned only with sub-section (6) as also clause (b) of the proviso to the said sub-section. By another amendment, being U.P. Act No. 2 of 1975, which was given retrospeetive operation with effect from 8.6.1973 Explanation I, alongwith its sub-clauses, was added to sub-section (6) of section 5.

The decision in the present case turns upon the interpretation of sub-section (6) of s. 5 and the proviso therein in order to determine the validity of the deed of gift said to have been executed by Chunni Lal Bhatiya, the grandfather of the petitioner Sonia and respondent No. 4 before the District Judge.

To begin with, we might like to state here that the facts of the case undoubtedly reveal that if the provisions of the said sub-section (6) were to apply it would work serious hardship to the petitioner but as we are concerned with interpretation of an important statute the mere fact that a correct interpretation may lead to hardship would not be a valid consideration for distorting the language of the statutory provisions.

Before we proceed to examine the relevant provisions, it may be necessary to give a resume of the facts of the case. Chunni Lal Bhatiya had two sons, Sudesh and Mahesh and a daughter Smt. Sarla, On 14.9.1969 Chunni Lal executed a registered deed of gift in respect of 110 bighas in favour of his son, Sudesh. A month later, another deed of gift was executed in favour of his son, Sudhir. So far as these two gifts are concerned, as they were made before the amendment of the Ceiling Act, their validity was beyond question and they are not the subject-matter of any dispute in the present case. On January 28, 1972 Chunni Lal executed a gift in respeet of 80 bighas in favour of his grand-daughter, Sonia (daughter of Mahesh.) It appears that a serious misfortune had befallen Chunni Lal in that he lost his two sons, Sudesh and Mahesh, who were serving in the Air Force and died in two different air crashes. As Chunni Lal wanted to make sufficient provision for his grandsons and grand-daughter, he executed the three gifts.

The gift executed in favour of Sonia is the subject-matter of the dispute in the instant case. The Prescribed Authority held that as the gift was made after the due date, i.e. 24.1.1971, as prescribed by sub-section (6) of s. 5, the transfer would have to be ignored. Against the decision of the Prescribed Authority, the appellant filed an appeal before the District Judge being the Appellate Authority, and assailed the finding of the Prescribed Authority. The District Judge, after hearing the parties, came to a clear finding that the gift was a bona fide one having regard to the circumstances in which the transfer was made and merely because it was executed after the due date (24.1.1971) it could not be held to be invalid. Thereafter, the State of U.P. filed a writ petition in the High Court which was allowed following a Division Bench decision of its Court in *Fateh Mohammad* v. *District Judge*[1] which had held that a deed of gift not being a transfer for consideration had to be ignored under the provisions of the Act. Hence, this appeal before us.

The finding of the District Judge that the gift was a bona fide one has not been challenged by Mr. Rana, appearing for the respondent, who however argued that the said gift itself was not covered by the Explanations laid down in the proviso to the said sub-section (6) of s. 5 of the Act. Thus the only question for determination in the instant case is the legal effect of the prohibition contained in sub-section (6) and clause (b) of its proviso. In order to

(1) Civil Writ Petition No. 915 of 1975 (deeided on 10.7.78)

understand the scope and ambit of sub-section (6) and its proviso, it may be necessary to extract the relevant portions of sub-section (6) and Explanations concerned :—

> "6. In determining the ceiling area applicable to a 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 approved 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 of his family.
>
> Explanation I—For the purposes of this sub-section, the expression transfer of land made after the twenty fourth day of January, 1971, includes :—
>
> (a) a declaration of a person as a co-tenure made after the twenty-fourth day of January, 1971 in a suit or proceeding irrespective of whether such suit or proceeding was pending on or was instituted after the twenty-fourth day of January, 1971;
>
> (b) any admission, acknowledgement, relinquishment or declaration in favour of a person to the like effect, made in any other deed or instrument or in any other manner."
>
> "Explanation II—The burden of proving that a case falls within clause (b) of the proviso shall rest with the party claiming its benefit."

The substantive provision which is contained in sub-section (6) clearly provides that any transfer after the 24th of January 1971 would have to be ignored and not taken into account in determining the surplus area. Clause (b) of the proviso to sub-section (6) (hereinafter referred to as 'clause (b) of the proviso') however, carves out an exception to the general rule contained in sub-section (6) and

Explanation II places the burden of proving the fact, that the case A
falls within the protection of clause (b) of the proviso, on the party
relying on the transfer and claiming its benefit. A careful analysis
of clause (b) of the proviso would reveal that it requires the follow-
ing conditions to be fulfilled before a transfer can seek its protection:

(1) that the transfer must be in good faith, B

(2) that it must be proved to be in good faith to the satisfac-
tion of the Prescribed Authority,

(3) that it should be for adequate consideration and under an
irrevocable instrument, and C

(4) that it should not be in the nature of a benami transaction
for immediate or deferred benefit of the tenure holder or
other members of his family.

It is manifest that if these conditions are satisfied and proved D
to the satisfaction of the Prescribed Authority then the burden which
lies on the claimant under Explanation II would have been discharged
and the transfer would not be ignored but would fall under the
protective umbrella contained in clause (b) of the proviso. It may
be noticed that the legislature in its wisdom has neither defined the
word 'transfer' in any of the definitions of the Act nor has clarified E
it. The primary object of the Act is to prevent the tenure holders
from evading the Law of Ceiling by making fictitious transfers even
by registered documents either before or after the due date so as to
evade the provisions of the Act and thus frustrate the very object
and the social purpose for which the Act had been passed. In these
circumstances, therefore, the word 'transfer' has obviously been used F
by the legislature in the general sense of the term as defined in the
Transfer of Property Act, which is the statute that governs all trans-
fers of movable or immovable properties. In other words, the word
'transfer' being a term of well-known legal significance having well
ascertained incidents, the legislature did not think it necessary to
define the term 'transfer' separately. Similarly, the word 'consider- G
ation' also being a term commonly used to denote contracts, sales
and transactions, has been used in the same sense, that is to say, as
defined by s. 2(d) of the Contract Act.

It is well settled that whenever the the legislature uses certain H
terms or expressions of well-known legal significance or connotation
the courts must interpret them as used or understood in the popular

sense. In the case of *C.I T. Andhra Pradesh* v. *M/s. Taj Mahal Hotel, Secundrabad*(1) this Court while laying down guidelines for holding how a particular expression has been defined, observed as follows :—

> "Now it is well settled that where the definition of a word has not been given, it must be construed in its popular sense if it is a word of every day use. Popular sense means "that sense which people conversant with the subject matter with which the statute is dealing, would attribute to it".

Lord Atkinson in *Keats* v. *Lewis*(2) observed as follows :

> "In the construction of a statute it is, of course, at all times and under all circumstances permissible to have regard to the state of things existing at the time the statute was passed, and to the evils, which as appears from its provisions, it was designed to remedy. If the words are capable of one meaning alone then it must be adopted, but if they are susceptible of wider import, we have to pay regard to what the statute or the particular piece of legislation had in view."

These observations are fully applicable to the present Act which has for its object remedying the evil of evading the ceiling law by the large landholders by executing saledeeds or other instruments so as to escape the consequences of the law. In *Union of India* v. *Sankal Chand Himatlal Sheth & Anr.*(3) Chandrachud, J., as he then was, observed as follows :—

> "The normal rule of interpretation is that the words used by the legislature are generally a safe guide to its intention. Lord Reid in *Westminster Bank Ltd.* v. *Zang* [1966 A.C. 182] observed that "no principle of interpretation of statutes is more firmly settled than the rule that the Court must deduce the intention of Parliament from the words used in the Act." Applying such a rule, this Court observed in *S. Narayanaswami* v. *G. Panneerselvam* (AIR

(2) [1972] 1 S.C.R. 168
(1) [1911] A.C. 641.
(3) [1978] 1 S.C.R. 423.

1972 SC 2284 at 2290) that "where the statute's meaning is clear and explicit, words cannot be interpolated."

... ...

"But, if the provision is clear and explicit, it cannot be reduced to a nullity by reading into it a meaning which it does not carry."

Against this background we have now to consider the real intention of the words "transfer for adequate consideration" as used in clause (b) of the proviso. The High Court has held that although the deed of gift is a transfer but as it is a transfer without any consideration, therefore such a transfer does not fulfil one of the essential ingredients mentioned in clause (b) of the proviso, namely, that it should be for consideration. The High Court has further held that its view is reinforced by the word 'adequate' which qualifies the word 'consideration' which completely rules out a transfer in the nature of a gift. The High Court was of the view that a transfer of property by way of a gift being a purely gratuitous transfer made out of love and affection or for the spiritual benefit of the donor, falls completely beyond the ambit of clause (b) of the proviso and, therefore, has to be ignored under the provisions of the said sub-section (6) of s. 5 of the Act.

Mr. Kacker, appearing for the appellant, assailed the view taken by the High Court on the ground that the High Court has given a very restricted meaning to the term 'transfer for adequate consideration' by limiting the import of the word 'consideration'. He argued in the first place that a gift cannot be said to be a transfer without consideration because even love and affection, spiritual benefit or other factors of similar nature may provide sufficient consideration for the gift. Secondly, it was argued that even if a gift was a transfer without consideration and was intended to be excluded by clause (b) of the proviso, then there should have been an express indication of the same in the provisions of clause (b) of the proviso by expressly excluding gifts. Another facet of this argument advanced before us by Mr. Kacker was that as gift has not been expressly excluded by clause (b) of the proviso, we should be persuaded to hold that the conditions regarding adequate consideration would not apply to a gift as a gift, was a transfer without consideration and if other conditions were satisfied a gift would also fall within the purview of clause (b) of the proviso. We have given our anxious consideration to the arguments put forward

A by Mr. Kacker and although the arguments are extremely attractive yet we find ourselves unable to agree with the same.

To begin with, it may be necessary to dwell on the concept of gift as contemplated by the Transfer of Property Act and as defined in various legal dictionaries and books. To start with, Black's Law
B Dictionary (Fourth Edition) defines gift thus :—

> "A voluntary transfer of personal property without consideration. A parting by owner with property without pecuniary consideration. A voluntary conveyance of land, or transfer of goods, from one person to another made
> C gratuitously, and not upon any consideration of blood or money."

A similar definition has been given in Webster's Third New International Dictionary (Unabridged) where the auther defines gift thus :

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> "Something that is voluntarily transferred by one person to another *without compensation*; a voluntary transfer of real or personal property *without any consideration* or without a valuable consideration—distinguished from sale."

(Emphasis ours)

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Volume 18 of Words & Phrases (Permanent Edition) defines gift thus :

> "A 'gift' is a voluntary transfer of property *without compensation or any consideration.* A 'gift' means a volun-
> F tary transfer of property from one person to another without consideration or compensation."

(Emphasis ours)

In Halsbury's Laws of England (Third Edition-Volume 18) while detailing the nature and kinds of gift, the following statement is
G made :

> "A gift *inter vivos* (a) may be defined shortly as the transfer of any property from one person to another gratuitously. Gifts then, or grants, which are the eighth
> H method of transferring personal property, are thus to be distinguished from each other, that gifts are always gratuitous, grants are upon some consideration or equivalent."

A Thus, according to Lord Halsbury's statement the essential distinction between a gift and a grant is that whereas a gift is absolutely gratuitous, grant is based on some consideration or equivalent. Similarly in Volume 38 of Corpus Juris Secundum, it has been clearly stated that a gift is a transfer without consideration and in this connection while defining the nature and character of a gift the author states as follows : B

> "A gift is commonly defined as a voluntary transfer of property by one to another, without any consideration or compensation therefor. Any piece of property which is voluntarily transferred by one person to another without compensation or consideration. A gift is a gratuity, and an act of generosity, and not only does not require a consideration but there can be none; if there is a consideration for the transaction it is not a gift." C

It is, therefore, clear from the statement made in this book that the concept of gift is diametrically opposed to the presence of any consideration or compensation. A gift has aptly been described as a gratuity and an act of generosity and stress has been laid on the fact that if there is any consideration then the transaction ceases to be a gift. Before closing this aspect of the matter we might also refer to the definition of consideration given in various books. Black's Law Dictionary defines 'consideration' thus : D E

> "Consideration" is not to be confounded with motive. Consideration means something which is of value in the eye of the law, moving from the plaintiff, either of benefit to the plaintiff or of detriment to the defendant"."

This is the view expressed in 2 Q.B. 851. Similarly, at p.61 in the same volume, the words 'adequate consideration' have been defined thus:- F

> "*One which is equal, or reasonably proportioned, to the value of that for which it is given.* Fair and reasonable under circumstances."

(Emphasis ours) G

Webster's Third New International Dictionary (Unabridged) defines, ,consideration' thus:

> "Something that is legally regarded as the equivalent or return given or suffered by one for the act or promise of another'" H

And the word 'adequate' has been defined in the same volume at page 25 thus:

> "Legally sufficient: such as is lawfully and reasonably sufficient"

Similarly, in words and Phrases (Permanent Edition-volume 2) the word 'adequate' has been defined at p.545 thus:

> 'Adequate' means fully equal to requirments or occasions, commensurate, but in its primary and more popular significance nothing can be said to be 'adequate' which is not equal to what is required, suitable to the case or occasion, fully sufficient, proportionate, and satisfactory."

And when used to qualify consideration, it has been defined thus : in the same volume at p.545:

> "Fair consideration in money or money 's worth" is consideration which under all circumstances is *honest, reasonable, and free from suspicion*, whether or not strictly 'adequate' or 'full'."

(Emphasis supplied)

'Adequate Consideration' has been further defined as follows in the same volume at p. 553 :—

> "Adequate consideration" generally is one which is a *fair equivalent in value for benefit obtained......*
>
> 'Adequate consideration' required in action for specific performance merely means that *contract price must be substantially just and fair valuation* under all circumstances."

(Emphasis supplied)

In Volume 17 of Corpus Juris Secundum (p. 420-421 and 425) the import of 'consideration' has been described thus :—

> "Various definitions of consideration are to be found in the textbooks and judicial opinions. A sufficient one, as

stated in Corpus Juris and which has been quoted and cited with approval is, "a benefit to the party promising, or a loss or detriment to the party to whom the promise is made...... A

At common law every contract not under seal requires a consideration to support it, that is, as shown in the definition above, some benefit to the promisor, or some detriment to the promisee...... B

There is a sufficient consideration for a promise if there is any benefit to the promisor or any detriment to the promisee......It may be laid down as a general rule, in accordance with the definition given above, that there is a sufficient consideration for a promise if there is any benefit to the promisor or any loss or detriment to the promisee." C

The gist of the term 'consideration' and its legal significance has been clearly summed up in s. 2(d) of the Contract Act which defines 'consideration' thus : D

"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstrains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise." E

From a conspectus, therefore, of the definitions contained in the dictionaries and the books regarding a gift or an adequate consideration, the inescapable conclusion that follows is that 'consideration' means a reasonable equivalent or other valuable benefit passed on by the promisor to the promisee or by the transferor to the transferee. F Similarly, when the word 'consideration' is qualified by the word 'adequate', it makes consideration stronger so as to make it sufficient and valuable having regard to the facts, circumstances and necessities of the case. It has also been seen from the discussions of the various authorities mentioned above that a gift is undoubtedly a transfer which does not contain any element of G consideration in any shape or form. In fact, where there is any equivalent or benefit measured in terms of money in respect of a gift the transaction ceases to be a gift and assumes a different colour. It has been rightly pointed out in one of the books referred to above that we should not try to confuse the motive or the purpose H of making a gift with the consideration which is the subject matter of the gift. Love, affection, spiritual benefit and many other factors may enter in the intention of the donor to make a gift but these filial considerations cannot be called or held to be legal considerations as understood by law. It is manifest, therefore, that the passing of monetary consideration is completely foreign to the concept of a gift having regard to the nature, character and the circumstances under which such a transfer takes place. Furthermore, when the legislature has used the word 'transfer' it at once invokes the provisions of the Transfer of Property Act. Under section 122 of the Transfer of Property Act, gift is defined thus :

> " 'Gift' is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.
>
> Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.
>
> If the donee dies before acceptance, the gift is void."

Thus, s. 122 of the Transfer of Property Act clearly postulates that a gift must have two essential characteristics—(1) that it must be made voluntarily, and (2) that it should be without consideration. This is apart from the other ingredients like acceptance, etc. Against the background of these facts and the undisputed position of law, the words, 'transfer for adequate consideration' used in clause (b) of the proviso clearly and expressly exclude a transaction which is in the nature of a gift and which is without consideration. Love and affection, etc., may be motive for making a gift but is not a consideration in the legal sense of the term. As regards the argument of Mr. Kacker that if the legislature intended to exclude gifts, clause (b) of the proviso should have expressly said so; the answer is very simple. Every legislature has its own technical or legal device to express its intendment. Some legislatures may have chosen to expressly exclude gift as Mr. Kacker says but that is not the only method of conveying the legislative intent. There may be other methods or devices by which the legislative intent can be expressed, namely, by using such expressions which would expressly or by necessary intendment exclude a particular transaction. This method seems to have been adopted by the legislature in enacting clause (b) of the proviso. In fact, the legislature has made its intention clear that gift is excluded by qualifying the word 'consideration' by the adjective 'adequate'. Assuming that love and affec-

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tion, spiritual benefit or similar other factors may amount to a consideration for the gift, the word 'adequate' is wholly inapplicable to and inconsistent with the concept of a gift because it is impossible to measure love and affection, the sentiments or feelings of the donor by any standard yardstick or barometer. The words 'adequate consideration' clearly postulate that consideration must be capable of being measured in terms of money value having regard to the market price of the property, the value that it may fetch if sold, the value of similar lands situated in the vicinity, so on and so forth. In the instant case, therefore, in our opinion, the legislature by using the word 'adequate' to qualify the word 'consideration' has completely ruled out and excluded gift from the ambit of clause (b) of the proviso. In these circumstances, therefore, the argument of Mr. Kacker that by not expressly excluding gift, clause (b) of the proviso includes gift cannot be accepted particularly in the face of the clear and unambiguous language used by clause (b) of the proviso in describing the nature of the transaction as one for adequate consideration.

We now deal with the second limb of the argument of Mr. Kacker that as in the case of a gift there is no question of a consideration, we should hold that the 3rd part of clause (b) of the proviso which contains the words 'for adequate consideration' is inapplicable and ignore the same. This argument is diametrically opposed to the well-known rule of interpretation that courts in interpreting statutes must not interpolate or legislate. It is well settled that a legislature does not waste words without any intention, and every word that is used by the legislature must be given its due import and significance. In the instant case, the words 'adequate consideration' have undoubtedly a well recognised concept and, as indicated above, the intention was to exclude any transaction which is not for adequate consideration. Not to speak of a gift but even if a sale is found to be bona fide but the consideration is inadequate, for instance, where the property has been sold for a nominal price or below the market value, the transaction would fall beyond the protection given by clause (b) of the proviso. Our attention has been drawn by Mr. Kacker to a single Bench decision by Banerji, J, in *Fateh Singh* v. *State of Uttar Pradesh & Ors*(1) where the learned Judge had taken the view that the definition of a transfer given in clause (b) of the proviso included a gift because a gift also could not be said to be a transfer without consideration even though

(1) [1977] 3 All. L.R. 690.

A consideration may not be weighed in terms of money. The learned Judge in taking this view had obviously fallen into error of confusing what was the motive or the reason for the gift as being a legal consideration of it. It has already been pointed out that in considering the nature of a gift one should not confuse the motive, which may be love and affection, or spiritual benefit, with valuable
B consideration which has to be either in the shape of a money compensation or equivalent of the same. It is true that in every gift the donor has a particular motive and objective or a reason to part with his property in favour of the donee, the reason being, in some cases, love and affection where the gift is in favour of a relation or friend, or spiritual benefit in other cases but this will be the
C immediate motive for making the gift and cannot be regarded as a consideration for the gift because the very concept of gift is based on a purely gratuitous consideration. The Division Bench of the Allahabad High Conrt in the case referred to above has rightly overruled the view of Banerji, J,, on this count. In fact the matter has been considered by other High Courts who have consistently
D taken the view that a gift is a transfer without consideration, love and affection being only the motive for making the transfer. In *Debi Saran Koiri & Anr.* v. *Nandalal Chaubey and Ors.*[1] while elucidating the nature and character of a gift Sahay, J. made the following observations :

> E "Now, S. 122, T.P. Act defines "gift" as a transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee."
>
> "To my mind consideration in S. 122, T.P. Act, means
> F valuable consideration and not consideration in the shape of conferring spiritual benefit to the donor. If valuable consideration be not the consideration referred to in S. 122, I fail to understand how any gift can be made without consideration at all. There must be some sort of consideration in every gift, for instance, a consideration of an expectation
> G of spiritual or moral benefit or consideration of love and affection. *Such considerations are not considerations contemplated in S. 122. The consideration there contemplated must be valuable consideration, that is consideration either of money or of money's worth.*"

H (Emphasis supplied)

(1) AIR 1929 Patna 591

In *Kulasekaraperumal* v. *Pathakutty Thalevanar & Ors.*[1] Jagadisan, J. made the classic observations which may be extracted thus :—

> "A gift is essentially a gratuitous transfer. Complete absence of consideration marks the transfer as a gift and differentiates it from a grant."

The learned Judge has rightly pointed out that complete absence of consideration is the main hallmark which distinguishes a gift from a grant or for that matter other transactions which may be for valuable or adequate consideration. We find ourselves in complete agreement with the observations made by Jagdisan, J. in *Kulasekaraperumal's case* (supra) and Sahay, J. in *Debi Saran's case* (supra) which correctly represent the character and nature of the gift as contemplated by law. Banerji, J. in *Fateh Singh's case* (supra) seems to have relied heavily on Explanation I of sub-section (6) of s. (5) of the Act which refers to a declaration of a tenure holder made in a suit or any admission, acknowledgement, relinquishment, etc., made in any other deed or instrument in order to reinforce his conclusion that clause (b) of the proviso did not exclude a gift. With due respect, here the learned Judge completely failed to appreciate the scope of clause (b) of the provisio and Explanation I. It is well settled that an Explanation merely widens the scope of the main section and is not meant to carve out a particular exception to the contents of the main section. Thus, even if the words 'relinquishment, admission or declaration' are used in Explanation I, the use of such words do not absolve the party concerned from proving the essential ingredients laid down in clause (b) of the proviso, namely, that the transfer should be executed in good faith and should be for adequate consideration. Whatever be the nature of the declaration, acknowledgement, relinquishment, adequacy of consideration has to be proved in any case. Thus, in our view, the Division Bench was fully justified in overruling the view of Banerji, J. in regard to the interpretation of the Explanation also.

Finally, we would like to mention that the matter is no longer *res integra* but is fully covered in principle by a decision of this Court in *Tulsidas Kilachand* v. *The Commissioner of Income-tax, Bombay City I*,[2] where Hidayatullah J, speaking for the Court observed as follows :—

> "It remains to consider whether there was a adequate consideration for the transfer. Reliance has been placed

(1) A.I.R. 1961 Madras 405.
(2) [1961] 3 S.C.R. 351.

> only upon love and affection. *The words "adequate consideration" denote consideration other than mere love and affection which, in the case of a wife, may* be presumed. When the law insists that there should be "adequate consideration" and not "good consideration", it excludes mere love and affection. They may be good consideration to support a contract, but adequate consideration to avoid tax is quite a different thing. To insist on the other meaning is really to say that consideration must only be looked for, when love and affection cease to exist."

(Emphasis supplied)

It would thus, appear that this Court clearly held that the words 'adequate consideration' completely exclude the concept of love and affection and this decision appears to be on all fours with the facts of the present case. Realising this predicament Mr. Kacker submitted that the words 'adequate consideration' used in the Income Tax Act denote a different texture. Mr. Kacker argued that it is not permissible to interpret or use an expression in one Act as having the same meaning in another Act which is of a different kind. Of course, there can be no dispute with this proposition but then the Act as also the Income Tax Act have both used the words 'adequate consideration' which, as we have already held, are terms of well-known legal significance having a well recognised popular sense and hence they would convey the same meaning and import whenever used in other statutes unless a contrary intention appears from the language employed by the legislature in the statute. Moreover, the object of the Income Tax Act as also the present Act seems to be more or less identical. Whereas the object of the Income Tax Act in enacting s. 16(3)(b) which is extracted below, is to circumvent and prevent a growing tendency on the part of the assessees to avoid or reduce tax liability by means of settlements :

> "16(3)......
>
> (a)
>
> (b) so much of the income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or a minor child or both."

In the instant case also the avowed object of sub-seetion (6) of section 5 of the Act is to prevent the large landholders from evading the ceiling law by executing transfers, instruments or gifts so as to reduce their surplus area. Where the two statutes have a common and identical object then the legal terms used in one statute must be given the same meaning in the other. It cannot be said that the words 'adequate consideration' appearing in sub-section (6) of s. 5 of the Act do not take their colour from the context but are in conformity with the main object of the Act, to prevent evasion of the ceiling law by large tenure holders in anticipation of the passing of the Ceiling Law. For these reasons, therefore, the argument of Mr. Kacker on this score must be rejected. We, therefore, hold that in view of the interpretation placed by this Court on the words 'adequate consideration' which fully applies to the present case and to the same language employed in sub-section (6) of s. 5 of the Act, a gift is not only impliedly but expressly excluded by the Act.

In the Division Bench decision of the Allahabad High Court referred to above, after a consideration of a large number of authorities the following observations were made :

> "The Legislature while enacting the U.P. Imposition of Ceiling on Land Holdings Act, was alive to the provisions of the Transfer of Property Act dealing with the transfer of immovable property. The terms 'transfer', sale, 'mortgage' and 'lease' have not been defined in the Act. Therefore, these terms must have been used only in the sense in which they have been used in Transfer of Property Act. If the Legislature intended to use those terms in a different sense and with a different connotation, it would have defined those terms in the Act. But that has not been done...
>
> ... ...
>
> The legislature, however, thought that there may be genuine and *bona fide* transfers for consideration. To protect such tenure holders and other transfers, proviso (b) to sub-section (6) of section 5 of the Act was enacted. It saved transfers for adequate consideration. Gift is a gratuitous transfer and there is no consideration which obviously means valuable consideration. If transfer for love and affection is taken to be a transfer for consideration then the purpose of the Act would be

completely defeated as the tenure holders would transfer their land by gift after 24th January 1971."

We fully endorse the observations made by the Division Bench which lay down the correct law on the subject and we overrule the decision of Banerji, J. in *Fateh Singh's case* (supra).

Lastly, it was urged by Mr. Kacker that this is an extremely hard case where the grand-father of the donee wanted to make a beneficial provision for his grand-daughter after having lost his two sons in the prime of their life due to air crash accidents while serving in the Air Force. It is true that the District Judge has come to a clear finding that the gift in question is bona fide and has been executed in good faith but as the gift does not fulfil the other ingredients of the section, namely, that it is not for adequate consideration, we are afraid, however laudable the object of the donor may have been, the gift has to fail because the genuine attempt of the donor to benefit his granddaughter seems to have been thwarted by the intervention of sub-section (6) of s. 5 of the Act. This is undoubtedly a serious hardship but it cannot be helped. We must remember that the Act is a valuable piece of social legislation with the avowed object of ensuring equitable distribution of the land by taking away land from large tenure holders and distributing the same among landless tenants or using the same for public utility schemes which is in the larger interest of the community at large. The Act seems to implement one of the most important constitutional directives contained in Part IV of the Constitution of India. If in this process a few individuals suffer severe hardship that cannot be helped, for individual interests must yield to the larger interests of the community or the country as indeed every noble cause claims its martyr.

As this was the only point raised before us, we find no merit in the same.

For the reasons given above, we hold that the High Court was right in allowing the writ petition in respect of the gift in question. The appeal fails and is accordingly dismissed but without any order as to costs.

P.B.R. *Appeal dismissed.*