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SANJAY KUMAR AND ANR.

v.

STATE OF U.P. AND ORS.

AUGUST 31, 1995

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[M.M. PUNCHHI AND FAIZAN UDDIN, JJ.]

U.P. Imposition of Ceiling on Land Holdings Act, 1961, as amended by U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 :

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Sections 5(1), 5(6) and 5(8)—Agricultural land—Ceiling area—Determination of—Involuntary transfer—Court sale—Effectuated after 24.1.1971 in execution of compromise decree—Ceiling authorities ignoring transfer as made neither in good faith nor for adequate consideration—Held, sales, voluntary or involuntary, are required to pass the test of being bona fide sales and for adequate consideration so as to be excluded from being computed in the surplus area of tenure holder—To be treated as void when taking place during continuance of surplus area proceedings.

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The original tenure holder was served with a notice under section 10(2) of the U.P. Imposition of Ceiling on Land holdings Act, 1960 on 10.10.1974. His objections were rejected. He made an option to effect a change in the lands proposed to be declared as surplus. During the pendency of the proceedings the original tenure holder died and the name of his heir was substituted in the Revenue records in 1984. The prescribed authority, by his order dated 22.7.1984 declared 82.49 acres of land of the original tenure holder as surplus. Meanwhile, father of the appellants, in certain money suits obtained compromise decrees against the original tenure holder. In order to recover the decretal amount, 75.51 acres of land of the judgment debtor, the original tenure holder, was put to auction on 17.10.1975. In the meantime, the decree holder also died and his heirs, the appellants, purchased the said land in auction sale for Rs. 10,000. Thereafter the appellants moved the prescribed authority for setting aside the determination of the surplus area of the decree holder, the original tenure holder. The prescribed authority ignored the transfer. The appeal was also dismissed. The appellants filed a writ petition before the High Court on the ground that they were bona fide purchasers under a court sale which was an involuntary transfer and as such they were entitled to the protec-

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tion of law. The State resisted the claim on the ground that the auction sale having been made during the pendency of the ceiling proceedings between 10.1.1974 and 22.8.1984, were null and void, and could neither be termed as *bonafide* transaction nor was it for adequate consideration. The High Court, accepting the stand of the State, dismissed the writ petition. A

Dismissing the appeal, this Court B

HELD : 1. The auction-sale having taken place at a time when the proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 were pending, the transfer was void. The auction-sale cannot be validated merely because it was conducted on orders of the Civil Court especially when such sale if allowed to stand, would tend to defeat the provisions of the Ceiling Act. The Act would stand as a clear bar to the claim of decree holder in respect of the lands which were involved in the surplus area proceedings. [194-B-C] C

2.1. The sales, voluntary or involuntary, are required to pass the test of being *bonafide* sales and for adequate consideration so as to be excluded from being computed in the surplus area of the tenure holder and are to be treated as void when taking place during continuance of surplus area proceedings. [194-D-E] D

2.2. In view of section 5(1) of the Act, the ceiling area is to be computed as the holdings stood on 24.1.1971. All transfers effected thereafter, would have to be ignored and not taken into account except as provided in the proviso and the Explanations. A transfer proved 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 is excepted from the purview under sub-section(6) of section 5. Then again, as per the non-obstante clause of sub-section (8) of section 5, no tenure holder shall transfer any land held by him during the continuance of proceedings for determination of surplus land in relation to such tenure-holder and every transfer made in contravention of this sub-section shall be void. This being the scheme of the Act, principally it would not make any difference whether the sale is voluntary or involuntary, for in either way the surplus area would get diminished and susceptible to the adoption of devices so as to diminish the extent of surplus area, expected to be reaped in the measure of agrarian reforms. [193-B-F] E F G H

A 2.3. The High Court, in the circumstances, was right and quite just in holding that in the absence of full particulars regarding the auction-sale, it was difficult to assume that the auction sale happened to be bona fide and for adequate consideration or otherwise valid. The appellants themselves have produced the copies of the judgments/decrees of the Civil Court. They are, for paltry sums of money and basically on compromise or consent. Those amounts were not such which judgment-debtor could not pay off and had to let auction take place of such a large chunk of land of 75.51 acres to be purchased by the decree-holders themselves for paltry sum of Rs.10,000 only, even if the tenure holder were to be believed that the area was unirrigated, though not holding so. [193-G-H; 194-A]

C 3. The Ceiling Act came as a measure to further promote agrarian reforms and to curtail the size of the land holdings to 7.5 hectares per family. The provisions of Ceiling Act enjoy the protection of 9th Schedule of the Constitution. In reaching the provisions thereof-one has to attune oneself with the purposes of the Act. As it is, section 5 imposes a ceiling on land holdings and has taken care to plug all escape routes by which the measure of the holding could, by patent or latent devices, be diminished. The Courts and especially officers in the hierarchy, have to have the necessary insight to see that the purposes of the ceiling Act are not frustrated. The view of the courts would necessarily have to bear that slant in giving full effect to the provisions of the Act. [192-G-H; 193-A]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 112 of 1995.

From the Judgment and Order dated 17.4.87 of the Allahabad High Court in C.M.W.P. No. 16418 of 1985.

Satish Chandra and N.K. Aggarwala for the Appellants.

K.S. Chauhan and Ashok K. Srivastava for the Respondents.

G The following Order of the Court was delivered :

H The question that arises for determination in this appeal is whether involuntary transfers such as a court sale, is a transaction valid under the provisions of sub-sections 6 and 8 of Section 5 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (for short 'the Ceiling Act'), and to be reckoned in decreasing the surplus area?

One Jagdish Chander was a tenure-holder in village Bijeser Bijoria, Distt. Shahjahanpur in the State of U.P. He had a large holding being over 100 acres of land. On 10-1-1974, he was served with a notice containing the necessary statement of his holding under the provisions of Section 10(2) of the Ceiling Act. A proposal was appended therewith as to which of his area was proposed to be declared 'surplus'. The tenure-holder thereafter filed certain objections. His objections mainly were that his entire holding was unirrigated and had wrongly been termed as 'irrigated' and for this twist, he gave various reasons. He also raised the plea that he had one major unmarried daughter and therefore was entitled to get two additional hectares of land for her. He did not mentioned about his son. Perhaps he was a minor on the crucial date. Lastly, he made an option to effect a change in the lands proposed to be declared surplus. These facts are crystal clear from the narration given in the order of the Additional District and Sessions Judge, Shahjahanpur, appended as Annexure 'A' to the special leave petition.

During the pendency of the proceedings, Jagdish Chander died and his heir Ajai Verma was substituted in the year 1984. On 22-8-1984, 82.49 acres of land of the tenure-holder was declared 'surplus'. The matter rested there so far as Jagdish Chander and his family members were concerned. The matter for them became closed.

The appellants before us were the writ petitioners in the High Court. They are sons of one Dharmendra Nath. This Dharmendra Nath, apparently, had certain money claims on the basis of pronotes against the aforesaid Jagdish Chander. He filed four suits in the civil court for the recovery thereof. The sums involved were small. The suit were decreed basically on consent or compromise. All of them were instituted and decided in the year 1972. Purporting to recover those decretal amounts, auction of land on the judgment-debtor was suggested in execution and the executing court in order to recover the decretal sums, put to auction 75.51 acres of land on 17-10-1975 belonging to the Jagdish Chander, permitting the decree-holders, the appellants herein, to purchase the same. The sale was confirmed and sales certificates were issued. It is in these circumstances that the appellants moved the Prescribed Authority for setting aside the determination of the surplus area of the decree-holder vide order dated 20-8-1984. Their objection was dismissed by the Prescribed Authority. Their appeal, too, was dismissed by the Additional District Judge on 12-9-1985.

- A This gave an occasion to them to approach the High Court in proceedings under Article 226 of the Constitution. The appellants, however, raised a number of pleas to contend that their claim had wrongly been negatived being bona fide purchasers of surplus area measuring 75.51 acres by an auction sale and, hence they, were entitled to the protection of law. (In fact, it was their father who was the auction-purchaser but on his demise they had been projecting his case as his legal representatives).
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The State, on the other hand, questioned the auction sale terming it as neither being a *bona-fide* transaction nor for adequate consideration, giving justification to the Ceiling Authorities to ignore the same. It was

- C highlighted that since the proceedings for determination of surplus area were pending from 10-10-1974 till 22-8-1984, the auction-sale effected within that period had to be treated as 'void' conferring no right on the appellants.

- D Section 5 of the Ceiling Act, insofar as it is relevant for our purposes, provides:

"5.(1) 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 the ceiling area applicable to him.

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- F 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.

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- H 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.)

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(4) xxxxxxxx

(5) xxxxxxxx

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(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 :

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PROVIDED that nothing in this sub-section shall apply to -

(a) a transfer in favour of any person (including Government) referred to in sub-section (2) ;

(b) a transfer proved 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.

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EXPLANATION I - For the purposes of this sub-section, the expression transfer of land made after the twenty-fourth day of January, 1971 includes -

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(a) a declaration of a person as a co-tenure-holder made after 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;

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(b) any admission, acknowledgment, relinquishment or declaration in favour of a person to the like effect, made in any other deed or instrument or in any other manner.

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EXPLANATION II- The burden of proving that a case falls within clause (b) of the proviso shall rest with the party claiming its benefit.

(7) xxxxxxxx

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A (8) Notwithstanding anything contained in sub-sections (6) and (7), no tenure-holder shall transfer any land held by him during the continuance of proceedings for determination of surplus land in relation to such tenure-holder and every transfer made in contravention of this sub-section shall be void.

B EXPLANATION - For the purposes of this sub-section, proceedings for determination of surplus land shall be deemed to have commenced on the date of publication of notice under sub-section (2) of Section 9 and shall be deemed to have concluded on the date when an order in relation to such tenure-holder is passed under sub-section (1) of Section 11 or under sub-section (1) of Section 12, or as the case may be, under Section 13.

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The High Court in its judgment under appeal, on applying the abovesaid provisions, arrived at a decision that the appellants had no case since they had purchased the area in an auction-sale in the year 1975, sale of which was confirmed in 1977, after the date of the commencement of the Act, i.e., 8-6-1973, when the disputed area belonged to Jagdish Chander, the tenure holder. The High Court viewed that the Ceiling Authorities were fully justified in ignoring the auction sale and treating the auctioned area as holding of the tenure-holder while determining his surplus area. Notice was found to have been given to the son of the tenure-holder, even though residing in Sweden at that time. The High Court also opined the sale would be 'void' in the facts and circumstances, even though involuntary and being an auction-sale. Besides, the High Court was also of the view that the appellants had failed to produce relevant documents to demonstrate that valid decrees had been passed in good faith against the tenure-holder and that the auction-sale was held in good faith and was valid and legal, removing the suspicion of a large area of 75.51 acres being sold for just a sum of Rs. 10,000 only. The transaction, as such, was viewed by the High Court as not bona fide or for adequate consideration.

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The Ceiling Act came as a measure to further promote agrarian reforms and to curtail the size of the land holdings to 7.5 hectares per family. The provisions of the ceiling Act enjoy the protection of the 9th Schedule to the Constitution. In reading the provisions thereof one has to attune oneself with the purposes of the Act. As it is, Section 5 imposes a

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ceiling on land holdings and has taken care to plug all escape routes by which the measure of the holding could, by patent or latent devices, be diminished. The courts, and especially the officers in the hierarchy, have to have the necessary insight to see that the purposes of the Ceiling Act are not frustrated. The view of the courts would necessarily have to bear that slant in giving full effect to the provisions of the Act. As reproduced above, Section 5 lays down the method of determination of the ceiling area. It is to be computed as the holding stood on 24.1.71. All transfers effected thereafter, would have to be ignored & not taken into account. Exceptions thereto are provided in the proviso and the explanations. A transfer proved 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 is excepted from the purview under sub-section 6. Then again sub-section 8 which starts with a non-obstante clause, *inter alia*, provides that "Notwithstanding anything contained in sub-section (6), no tenure-holder shall transfer any land held by him *during the continuance of proceedings for determination of surplus land* in relation to such tenure-holder and *every transfer made in contravention of this sub section shall be void*". The Explanation thereto gives the duration during which proceedings can be said to have continued for determination of surplus area. Undeniably, had the transfer of 75.51 acres been made by the tenure-holder himself, sub-sections (1), (6) & (8) of Section 5 would warrant ignoring thereof and not being taken into account. Further, if that transfer was within the time during the continuance of the proceedings for determination of surplus land then it would be void altogether. This being the scheme of the Act, principally it would not make any difference whether the sale is voluntary or involuntary, for in either way the surplus area would get diminished and susceptible to the adoption of devices so as to diminish the extent of surplus area, expected to be reaped in the measure of agrarian reforms. The High Court was, thus, not wrong in trying to discover and then finally determine that in the absence of full particulars regarding the auction-sale, it was difficult to hold that the auction-sale happened to be bona fide and for adequate consideration or otherwise valid. The appellants themselves have produced before us the copies of the judgments/decrees of the Civil Court. They are, as said before, for paltry sums of money & basically on compromise or consent. Significantly, they date back to the year 1972 when agrarian reforms throughout India w.e.f. 24.1.71

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- A was a talk of the times, in media, Press and policy statement of the government of the time. Those amounts were not such which the judgment-debtor could not pay off and had to let auction take place of such a large chunk of land of 75.51 acres to be purchased by the decree-holders themselves for a paltry sum of Rs. 10,000 only, even if the tenure-holder were to be believed that the area was unirrigated, though not holding so.
- B That the auction-sale took place at a time when the surplus area proceedings were pending, further goes to show that the transfer was void. The auction-sale cannot be validated merely because it was conducted under Orders of the Civil Court especially when such sale if allowed to stand would tend to defeat the provisions of the Ceiling Act. That Act would
- C stand as a clear bar to the claim of the decree-holder in respect of lands which were involved in the surplus area proceedings.

The view of the High Court thus, as it appears to us, was in consonance with the letter and spirit of the Act and quite just in the circumstances. We agree with that view. We, thus, conclude to say that the sales, voluntary or involuntary, are required to pass the test of being bona fide sales and for adequate consideration so as to be excluded from being

computed in the surplus area of the tenure-holder and are to be treated as void when taking place during continuance of surplus area proceedings.

- E For these reasons, we dismiss this appeal but without any order as to costs.

R.P.

Appeal dismissed.