VINOD KUMAR

v.

THE COMMISSIONER AND ORS.

APRIL 27, 2004

[K.G. BALAKRISHNAN AND P.V. REDDI, JJ.]

UP Imposition of Ceiling on Land Holdings Act, 1960—Sections 3(9), 5, 29 and 30—Re-determination of ceiling area—Relevant date—Land holders not in possession of land, claiming right over the property—By virtue of the judgment of Supreme Court, land holders got title coupled with right to get possession—Land holders became tenure holders of land only on and from the date of the judgment—Further, till such time, all authorities including High Court held that land holders not entitled to any right over the property—Hence, the decision can be construed as a decree or order by which tenure-holders acquired right over this property.

Predecessor-in-interest of respondent Nos. 3, 4 and 5 executed a lease deed in favour of a Company in respect of the entire 375 bighas of land in 1936. The Company claimed 'Adhiwasi' right over the land whereas the predecessor-in-interest of the respondents claimed 'Bhumidari' right over the land. After prolonged litigation, High Court held that the predecesors-in-interest of the respondents had Bhumidari right over 142-17-2½ bighas of land and for the rest of the land the Company was declared to have 'Adhiwasi' and 'Sirdar' rights. Respondent Nos. 3, 4 and 5 challenged the order. Meanwhile the U.P. Imposition of Ceiling on Land Holdings Act, 1960, was enacted and the land covered by the lease deed was declared as surplus land in the hands of Company. This Court on 23.11.1989 directed 64 bighas of land to be put in possession of respondent 3, 4 and 5 — successors-in-interest of the original land owners and also directed for re-determination of the surplus land of respondents. Prescribed Authority held 14 bighas of land to be treated as surplus land in the hands of respondent Nos. 3, 4 and 5. However, Appellate Authority held 2-2-10. 1/3 bighas of land as surplus land; and that 23.11.1989 is the relevant date for the determination of the ceiling limit. Government took over the surplus land and allotted to the Meerut Development Authority and others. The new allotees, Meerut Development Authority and State, filed writ petitions challenging the order of Appellate Authority.

A Division Bench disposed of the writ petitions upholding the finding of the Appellate Authority. Hence the present appeals.

State of U.P, Meerut Development Authority and appellants in Civil Appeal No. 422-23/1997 contended that the determination of the ceiling should have been made with reference to the date of the commencement of the Act; B that the finding of Appellate Authority and High Court that 23.11.1989 — date of Judgment of this Court is the relevant date for determination of the ceiling of the respondents is faulty and erroneous; and that the determination of the ceiling limit in respect of the respondents was an ongoing process and there was no applicability of Section 29 of the Ceiling Act.

C Respondent Nos. 3, 4 and 5 contended that they were not holding the land in question and their rights in respect of this land were finally crystallized by the decision of this Court on 23.11.989 and by that judgment alone, this Court directed the authorities to hand over the possession of the land to these respondents and from that date onwards, 64 bighas of land could be treated as D lands having been in the account of the respondents.

Dismissing the appeals, the Court

HELD: 1.1. Appellants pleaded that right from the beginning, the respondents were claiming right over the property of 64 bighas of land and E as such they were holding this land. Admittedly, the respondents were not in possession of this land. They were claiming right over the property but the State was opposing their plea. Respondent Nos. 3, 4 and 5 got title coupled with right over the property by virtue of the Judgment dated 23.11.1989. Therefore, the decision of this Court dated 23.11.1989 could be construed as a decree or order by which respondent Nos. 3, 4 and 5 acquired right over F this property. Land-holders became tenure-holders of the land of 64 bighas only on and from 23.11.1989. Till such time, all authorities including High Court held that respondent Nos. 3, 4 and 5 were not entitled to have any right over this property. Therefore, applying Section 29 of U.P. Imposition of Ceiling on Land Holdings Act, 1960, the re-determination of the ceiling area is to be G done with reference to the date of the judgment of this Court i.e. 23.11.1989 and the decision of the Division Bench is correct in this regard. [789-B-D]

Bhudan Singh and Anr. v. *Nabi Bux and Anr.*, [1969] 2 SCC 481 and *State of U.P.* v. *District Judge and Ors.*, [1997] 1 SCC 496, referred to.

H 1.2. The Meerut Development Authority had been allotted this land by

the State. As the land comes within the ceiling area, the same will have to be returned to the respondent Nos. 3, 4 and 5. High Court has passed appropriate orders and as such there is no reason to interfere with the same. The appeals filed by the allottees of land are also without any merits. They were not entitled to get allotment of these lands and the same was cancelled for various reasons. [789-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 422-23/1997.

From the Judgment and Order dated 13.10.95 and 2.2.96 of the Allahabad High Court in Civil Misc. Writ Petition No.12900/81 and in Review Petition No. 62561-B of 1995 respectively.

WITH

Civil Appeal Nos. 424-426/1997 and Civil Appeal Nos. 427-429/1997.

Subodh Markandeya, Mukesh K. Giri, Smt. Chitra Markandeya and Kamiendra Mishra for the Appellant.

Ranjit Kumar and Subodh Markandeya, S. Janani, Anis Suhrawardy, Mrs. Chitra Markandeya, Ms. Rashmi Singh and Kamlendra Mishra for the Respondents.

The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, J. These appeals arise out of a common Judgment passed by the Division Bench of the High Court of Allahabad. By the impugned Judgment, the Division Bench disposed of 10 Writ Petitions filed against the order passed by the Appellate Authority under U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as "Ceiling Act"). The matter relates to the fixation of ceiling under the provisions of the Ceiling Act.

Predecessors-in-interest of Yashvir Singh (Respondent No. 3), Satvir Singh (Respondent No. 4) and Jagdishpal Singh (Respondent No. 5) in Civil Appeal Nos. 424-429 of 1997 had executed a lease in 1936 in favour of Delhi Cloth & General Mills (hereinafter referred to as "D.C.M."). The lease was for a period of 25 years in respect of 375 bighas of land. When U.P. Zamindari Abolition & Land Reforms Act, 1950 (hereinafter referred to as "Z.A. Act") came into force, a compensation statement was prepared under Chapter IXA of Z.A. Act and DCM was held to be 'Adhiwasi' of this land. The original

land owners, namely, predecessors-in-interest of R3, R4 and R5 filed objection to this and claimed 'Bhumidari' right over the entire land. Their plea was initially accepted but the Compensation Officer vide his order dated 3.1.1957 allowed the appeal filed by DCM and against that appellate Order, the land owners went in appeal before the Board of Revenue, but their claim was rejected.

After the commencement of the Ceiling Act, the land covered by the lease deed was sought to be declared as surplus land in the hands of DCM. The land-owners claimed 'Bhumidari' right over the said land. Their claim was rejected by the Prescribed Authority. They went in appeal and the Appellate Authority held that DCM had only 'Asami' right. These orders were challenged before the High Court in Writ petitions and the matter was remitted to the lower Appellate Court. The writ petitions were again filed against the order passed by the Lower Appellate Court and the matter was decided by the High Court on 28.11.1969. Against that Judgment, special appeals were filed and it was held by the Division Bench of the High Court that the predecessors-in-interest of Respondent No. 3 , 4 and 5 had got 'Bhumidari' right over 142 Bighas out of total land which was given on lease to DCM. Their claim regarding the rest of the land was rejected. The land owners thereafter filed Special Leave Petition before this Court and this Court remitted the matter to the High Court for fresh decision. On 23.9.1987, the matter was decided afresh holding that the predecessors-in-interest of Respondent Nos. 3, 4 and 5 had 'Bhumidari' right over 142-17-2$^{1/2}$ Bighas of land and for the rest of the land the DCM was declared to have 'Adhiwasi' and 'Sirdar' rights. Against that decision, the matter was again taken up in appeal before this Court by Special leave and all the parties to that proceedings ultimately accepted the position that the Respondent nos. 3, 4 and 5 herein who are the successors-in-interest of the original land owners are entitled to have rights over 72.50 bighas of disputed land. An extent of 8-7-0 bighas of land was excluded and 64 bighas of land was directed to be put in possession of Respondent Nos. 3, 4 and 5 and Prescribed Authority was directed to determine the surplus land of these respondents. The operative portion of the Judgment of this Court is as follows :-

> "The assertion of the State of Uttar Pradesh that most of the lands in dispute have been taken over by the State as ceiling surplus land is not disputed. On account of the fact that ceiling surplus had been determined in the hands of the respondent-company and our present order holding that the appellants have interest in regard to about 64

bighas of land out of the land in dispute, a fresh determination of the surplus has to be done. The appellant should be entitled to be put into possession of the land out of 64 bighas which would be within the ceiling limit. We, therefore, direct that the competent authority shall proceed to determine the ceiling surplus under the U.P. Imposition of Ceiling on Land Holdings Act, 1960, within three months from today and once that is done, the appellants shall be entitled to restoration of possession of the area coming within the ceiling limit and the balance shall vest in the Uttar Pradesh Government. The competent authority shall forward a copy of his determination within two weeks after three months to the Registry of this court."

Pursuant to the direction of this Court, the prescribed authority passed an order on 11.10.1990 and held that 14 bighas out of 64 bighas of land are to be treated as surplus land in the hands of Respondent Nos. 3, 4 and 5. An appeal was filed against the order of the Prescribed Authority and the Appellate Authority held that only an extent of 2-2-10. 1/3 bighas of land could be treated as surplus land in the hands of Jagdishpal Singh (R5).

Against this Order, the State of Uttar Pradesh filed three writ petitions. Two other persons, namely, Omvati and Shastri Sankari Avas Samiti Ltd. had also filed two separate writ petitions. The surplus lands taken over by the Government were allotted to some persons. They too filed writ petitions challenging the order of the Appellate Authority. Certain lands were given to Meerut Development Authority. As the Appellate Authority had modified the order of the Prescribed Authority by reducing surplus area of the land, the Meerut Development Authority also filed three writ petitions and by the impugned Judgment, all these writ petitions were disposed of holding that the finding of the Appellate Authority was correct. That decision is challenged before us.

We heard Shri Subodh Markandeya, learned senior Counsel, for the appellant and Shri Ranjit Kumar, learned senior Counsel, for the Meerut Development Authority and also Counsel, for the appellant in Civil Appeal Nos. 422-423/1997. The learned Counsel for the State of U.P. contended that the Appellate Authority seriously erred in fixing the ceiling area of Respondent Nos. 3, 4 and 5. According to the learned Counsel, the Ceiling Act came into force on 8.6.1973 and the determination of the ceiling should have been made with reference to the date of the commencement of the Act. It was argued that the finding of Appellate Authority and the High Court that 23.11.1989, i.e., the

A date of Judgment of this Court is the relevant date for determination of the ceiling of these respondents is faulty and erroneous. It was contended that the determination of the ceiling limit in respect of these respondents was an ongoing process and there was no applicability of Section 29 of the Ceiling Act. The gist of the argument of the learned Counsel for the State was that all determinations of ceiling have to be done only with reference to 8.6.1973, B i.e., the commencement of the Ceiling Act and not any other date. This argument was supported by the Counsel who appeared for the Meerut Development Authority and also the appellants in Civil Appeal Nos. 422-23/ 1997.

C The Counsel for the Respondent Nos. 3, 4 and 5, on the other hand, contended that these respondents were not holding the land in question and their rights in respect of this land were finally crystallized by the decision of this Court on 23.11.1989 and by that Judgment alone, this Court directed the authorities to hand over the possession of the land to these respondents and from that date onwards, 64 bighas of land could be treated as lands having D been in the account of these respondents. Therefore, the determination of the ceiling of land applicable to these respondents was rightly done with reference to the date 23.11.1989.

Some of the provisions contained in the U.P. Imposition of Ceiling and Land Holdings Act, 1960, are relevant to be noted. Under Section 3(9) of the E Ceiling Act, 'holding' is defined as follows :-

> " 'holding' means the land or lands held by a person as a bhumidar, sirdar, asami of 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- F 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".

Section 5 (1) and the Explanations I and II are also relevant :-

G 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 the ceiling area applicable to him.

H [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 29 and Section 30 are as follows:

29. *Subsequent declaration of further land as surplus land.* — Where after the date of enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, —

(a) Any land has come to be held by a tenure-holder under a decree or order of any court, or as a result of succession or transfer, or by prescription in consequence of adverse possession, and such land together with the land already held by him exceeds the ceiling area applicable to him; or

(b) any unirrigated land becomes irrigated land as a result of irrigation from a State irrigation work or any grove-land loses its character as grove-land or any land exempted under this Act ceases to fall under any of the categories exempted,

the ceiling area shall be liable to be redetermined and accordingly the provisions of this Act, except Section 16, shall *mutatis mutandis* apply.

30. *Determination of surplus land regarding future acquisition.* —

(1) Where any land has become liable to be treated as surplus land under Section 29, the tenure-holder shall within such period as may be prescribed submit, a statement to the Prescribed Authority

A in the form and in the manner laid down under Section 9 indicating in the statement the plot or plots which he would like to retain as a part of his ceiling area.

2(a) Where the statement submitted under sub-section (1) is accepted by the Prescribed Authority, it shall proceed to determine the B surplus land accordingly.

(b) Where a tenure-holder fails to submit a statement required to be submitted under sub-section (1) or submits an incomplete or incorrect statement, the Prescribed Authority shall proceed in the manner laid down under Section 10.

C (c) The provisions of this Act in respect of declaration, acquisition, disposal and settlement of surplus land, shall *mutatis mutandis,* apply to surplus land covered by this section.

The Ceiling Act came into force on 8.6.1973. As per the scheme of the Act, the ceiling area is to be determined with reference to the date of the D commencement of the Act. In determining the ceiling area of a person, this date is relevant and no tenure-holder shall be entitled to hold the aggregate land in excess of the ceiling area prescribed under the Act. Tenure-holder is defined under Section 3(17) of the Act to mean "a person who is the holder of a holding, but (except in Chapter III) does not include....

E (a) a woman whose husband is a tenure-holder;

(b) a minor child whose father or mother is a tenure-holder."

Provision has been made in the Act for re-determination of the ceiling area in case there is any future acquisition by the tenure-holder. The future F acquisition can be in different forms and Section 29 of the Ceiling Act further provides that if any land has come to be held by a tenure-holder pursuant to a decree or order of any Court, or as a result of succession or transfer, or by prescription in consequences of adverse possession, the tenure-holder has to file a further declaration if the aggregate land held by him exceeds the ceiling area applicable to him. So also, if there is any change in the character G of the land, such as, if any unirrigated land becomes irrigated land, then also he has to file fresh declaration as it would affect the aggregate ceiling area prescribed under the law. The Act envisages that no tenure-holder shall be allowed to be in possession of land in excess of the ceiling area at any point of time. If there is any further acquisition, inclusive of that acquisition, the H total area shall not exceed the maximum ceiling area prescribed under the Act.

The definition of 'holding' given under Section 3(9) of the Act says that the 'holding' means the land or lands held by a person as a bhumidar, sirdar, asami of gaon Sabha or asami mentioned in Section 11 of the Zamindari Abolition and Land Reforms Act, 1950, or as a tenant under the U.P. Tenancy Act but it does not include a sub-tenant or a Government lessee, or a sub-lessee of a Government lessee, where the period of sub-lease is co-extensive with the period of the lease. A B

The question of interpretation of the term 'holding' under the Z.A. Act came up for consideration before this Court in *Bhudan Singh and Anr.* v. *Nabi Bux and Anr.*, [1969] 2 SCC 481. In that case, the respondents were Ryots under the appellants and the father of the respondents had a small building in a property obtained from the appellants. After the death of the father of the respondents, they put up some buildings on that site for residential purposes. During the communal disturbances in 1947, the respondents left the village and came back in 1949 when the conditions improved. After coming back, they found that the appellants had occupied that suit property after putting up a cow-shed on the site in which their residential buildings stood. The appellants refused to deliver possession of the suit property and the respondents instituted a suit for possession of the same on January 9, 1951. On January 26, 1951, the U.P. Zamindari Abolition and Land Reforms Act, 1950 came into force wherein it was prescribed that, on the commencement of the Act, all Estates shall vest in the State. The respondents contended that they were lawfully holding the building and the site till 1947 and they never gave up the possession of the buildings voluntarily and that in law they continued to be in possession of the building. The appellants' entry in the suit was an unlawful act. While interpretating the word 'hold', it was held that the scheme of the Act is to abolish all estates and vest the property in the State, but at the same time certain rights were conferred on persons in possession of lands or buildings. It is reasonable to assume that the persons who were within the contemplation of the Act, are those who were in possession of lands or buildings on the basis of some legal title. It was further held : "Bearing in mind the purpose with which the legislation was enacted, the scheme of the Act and the language in Section 9, we are of the opinion that the world 'held' in Section 9 means "lawfully held". C D E F G

In *State of U.P.* v. *District Judge and Ors.*, [1997] 1 SCC 496, a person executed an agreement for sale of certain properties. He contended that the property covered by this agreement for sale is to be excluded from his holding. According to him, he had already parted possession of the property H

A in favour of the person who executed this agreement. His plea was rejected by this Court and it was held that a conjoint reading of Sections 5(1), 3(17) and 3(9) clearly indicates that if a person holds the land as bhumidar, sirdar or asami, amongst others, as laid down by the said provision, then such land will be liable to be included in computing ceiling of his holding under Section 5(1). This Court observed thus:

B

> "It is difficult to appreciate how the term "holding held by a tenure-holder" should be confined only to such lands which are possessed by him as owner and would exclude such lands which are owned by him but which are not in his physical possession. Section 5(1) nowhere contemplates that the lands must also be physically possessed by him before he could be said to have held such lands even though he was the full owner thereof."

C

It was held in case of agreement of sale that no title passes from the transferor of possession to the transferee thereof and such an agreement itself creates no interest in land and unless there was a registered document of sale in favour of the proposed transferee, the title of the lands would not get divested from the vendor and would remain in his ownership and therefore, it formed part and parcel of his holding.

D

In the instant case, the predecessor-in-interests of R3, R4 and R5 had executed a lease deed in favour of DCM in respect of entire 375 bighas of land in 1936. DCM claimed 'Adhiwasi' right and the predecessor-in-interest of these respondents claimed 'Bhumidari' right over this property. After prolonged litigation, the High Court decided on 23.9.1987 that the predecessors-in-interest of R3, R4 and R5 had got 'Bhumidari' right over 142/17/2½ bighas of land and for the rest of the land, DCM was declared to have 'Adhiwasi' and 'Sirdar' rights. This decision of the High Court was challenged by Respondent Nos. 3, 4 and 5 and ultimately this Court held on 23.11.1989 that they were entitled to have further right over 72 bighas more of the disputed land. Excluding 8/7/0 bighas of land in possession of allottees, this Court directed that 64 bighas of land should be put in possession of Respondent Nos. 3, 4 and 5. This Court also directed for re-determination of the surplus land of these respondents. The rights of Respondent Nos. 3, 4 and 5 over 64 bighas of land were crystallized only after the decision of this Court. Till such time, these respondents had been claiming right over the property of 64 bighas of land but the State was opposing their plea. It is also pertinent to note that the State all along contended that this was the property having

E

F

G

H

'Adhiwasi' right for the DCM. It is also important to note that DCM was held to be holding this land including the 64 bighas of land and excess area was taken away from them under the provisions of the Ceiling Act. Only by virtue of the Judgment dated 23.11.1989, Respondent Nos. 3, 4 and 5 acquired right over this property. Therefore, the question for consideration is, whether the decision of this Court dated 23.11.1989 could be construed as a decree or order by which the tenure-holders, namely, Respondent Nos. 3, 4 and 5 acquired right over this property.

The plea of the appellants is that, right from the beginning, these respondents were claiming right over this property and therefore, it must be held that they were holding this land. Admittedly, these respondents were not in possession of this land. They got right to possession of this land by virtue of the Judgment of this Court dated 23.11.1989. It is only thereafter it can be said that the tenure-holder began to 'hold' the land. As pointed out by the High Court, the land-holders became tenure-holders of the land of 64 bighas only on and from 23.11.1989 on which date they got title coupled with the right to get possession by virtue of the order of this Court. Till such time, all authorities including High Court held that Respondent Nos. 3, 4 and 5 were not entitled to have any right over this property. Therefore, applying Section 29 of the Act, the re-determination of the ceiling area is to be done with reference to the date of the Judgment of this Court, i.e. 23.11.1989. We find no reason to disagree with the decision of the Division Bench in this regard. The appeal is without any merits and is liable to be dismissed. The other sets of appeals are filed by Meerut Development Authority who had been allotted this land by the State for development. As the land comes within the ceiling area, the same will have to be returned to the Respondent Nos. 3, 4 and 5. The High Court has passed appropriate orders and we do not find any reason to interfere with the same.

The appeals filed by the allottees of land are also without any merits. Their allotments were cancelled for various reasons. They were not entitled to get allotment of these lands and the reasons are elaborately given in the Judgment of the Division Bench. Some of the allottees were employed and they did not come within the preferential category.

All the appeals are without any merits and they are dismissed.

N.J. *Appeals dismissed.*