RAGHUBAR DAYAL (DEAD) A

v.

STATE OF U.P. AND ORS.

MAY 2, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.] B

Government Grants Act, 1895 :

Section 3—Land—Grand for cultivation—Computation of ceiling area—Grant held in substance of lease for agriculture—Grantee held holder and not outside the purview of U.P. Imposition of Ceiling on Land Holdings Act, 1960. C

U.P. Imposition of Ceiling on Land Holdings Act, 1960 : Section 3(9)—'Holding'—Meaning of—Grantee of Government land for cultivation held holder. D

Sections 6(h) and 9—Exemption clause—Deletion of—Amendment coming into force before determination of ceiling of land—Held no fresh notice was necessary under Section 9.

U.P. Zamindari Abolition of Land Reforms Act, 1950: Section 133-A Applicability of. E

The appellant was granted certain parcels of land on July 11, 1956 under the Government Grants Act, 1895 for cultivation. Under the terms of the grant the grantee was to pay annual lease amount and was to personally cultivate the land within the prescribed period; the land was to be used for cultivation only and purposes incidental thereto; the grantee was not to part with his possession. Later by a notice dated 20th October 1974 issued under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act 1960 the prescribed authority determined the surplus land calling upon the appellant to surrender the excess land. The appellant filed appeals before the appellant authority and the Civil Judge which were dismissed. The High Court also confirmed the orders of the authorities under the Act. F G

In appeals to this Court it was contended for the appellants that (i) the computation of surplus land was illegal because the land covered under the Grants Act was to be excluded from the operation of the 1960 Act; (ii) H

A notice determining surplus land was without jurisdiction as no fresh notice was issued to the appellant under section 9 of 1960 Act after the deletion of the exemption clause 6(h) by Amendment Act on January 14, 1975; and (iii) the Government Grant is not a lease and therefore section 3(9) of 1960 Act was inapplicable.

B Dismissing the appeals, this Court

HELD : 1. The preamble to the grant clearly mentioned that the land was granted for cultivation to make the improved methods of cultivation within the meaning of section 3(8) of the U.P. Tenancy Act XVII of 1939. Thus it could be seen that though it is a grant made under the Government C Grants Act, it is in substance a lease of agricultural land granted by the Government to the appellant for cultivation subject to the covenants contained thereunder. During the period of the subsistance of the lease it is terminable on notice by either side. Accordingly, the appellant is a holder of agricultural lands within the meaning of section 3(9) of the 1960 Act. D [1096-G, 1097-D, F]

2. Even otherwise the Government Grants Act itself prescribed the applicability of the Act to the lands covered by the grant. The proviso to sub-section (3) of section 3 was inserted with retrospective effect. By operation of the said proviso the Act clearly applied for the purpose of computa- E tion of the ceiling area of the agricultural lands. Thus it would appear that the Government Grants Act intended that even the grantee under that Act shall not be in excess of the ceiling area prescribed under the Act. Thereby, the lessee of the Government land, though had a grant under the Government Grants Act, cannot claim to have been outside the purview of the Act. F Therefore, the view taken by the authorities below and the High Court is perfectly right and legal. [1097-G-H, 1098-B-C]

3. Section 6(h) of the 1960 Act was deleted by way of an Amendment made in January 1975 but it was made effective from 1973. Notice under section 10(2) was issued to the appellant by the Prescribed Authority on G October 20, 1974 and, as such, after the Amendment Act had become effective. By the date of the determination of the ceiling land, the amendment had come into force. Therefore, the exemption granted under section 6(h) stood deleted. In consequence, the acts done by the authorities in determining the ceiling area and declaration of surplus land was within H their power and jurisdiction. [1098-H, 1099-A-B]

4. Since the lease itself was granted by the Government under the Government Grants Act, Section 133-A of the U.P. Zamindari Abolition & Land Reforms Act, 1950 has no application. [1099-G] A

Malkhan Singh & Ors. v. *The State of U.P. & Ors.*, **[1976] 2 S.C.C. 268;** *Byramjee Jeejeephoy (P) Ltd.* v. *State of Maharashtra*, **[1964] 2 SCR 737;** *State of U.P.* v. *Zahoor Ahmad*, **[1974] 1 S.C.R. 344 and** *Bihari Lal Express Newspapers (P) Ltd.* v. *Union of India*, **[1986] 1 S.C.C. 132, held inapplicable.** B

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3012-14 of 1979. C

From the Judgment and Order dated 4.7.79 of the Allahabad High Court in W.P. No. 3763 of 1976.

S.N. Singh for the Appellant.

R.B. Misra for the Respondents. D

The following Order of the Court was delivered :

Substitution allowed.

These three appeals are disposed of by a common judgment since E they arise from the common judgment delivered by the High Court of Allahabad in W.P. No. 3763/79 and batch dated July 4, 1979. The facts in C.A. No. 3012/79 are sufficient for disposal of the appeals. On July 11, 1956, the Government had granted to the appellant certain parcels of land for settling down colonies there on and to cultivate the land on improved F methods of cultivation, subject to the terms and conditions contained in the grant made under the Government Grants Act, 1895. Under s.10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (for short 'the Act') , notice was issued on October 20, 1974 by the prescribed authority calling upon him to submit the return for determination of the ceiling area. The appellant's objections raised on December 4, 1975 were rejected by G the Prescribed Authority by proceedings dated February 28, 1975 holding that the appellant held 94 Bighas 16 Biswas of surplus land and was called upon to surrender the same. The appellant carried the matter in appeal to the appellant authority and the Civil Judge by judgment dated June 2, 1976 dismissed the appeal. In the writ petitions, as stated earlier, the High Court H

A confirmed the orders of the authorities under the Act.

Shri Raj Kumar Gupta, learned counsel for the appellant, contended that when the grant was made under the Government Grants Act, by operation of s.2 and s.3 thereof, the lands covered under the Grant Act stood excluded from the operation of the Act. The competent Authority
B under the Act has, therefore, no jurisdiction or power to issue the notice and also determining the surplus land calling upon the appellant to surrender the excess land. Alternatively, it is contended that the appellant is required to file the return under s.9. Section 6(h) was deleted by Amendment Act on January 14, 1975. Therefore, the notice issued in October 1974
C is without jurisdiction and a nullity. No fresh notice was issued to the appellant under s.9 after the deletion of the exemption clause referred to therein. The computation of the surplus land is, therefore, illegal. In support thereof, he placed reliance on the judgment of this Court in *Malkhan Singh & Ors.* v. *The State of U.P. & Ors.*, 1976 (2) SCC 268.

D

The first question is whether the lands held by he appellant are excluded from the purview of the Act. Section 3(d) of the Act defines holding meaning the land or lands held by a person as a bhuimdhar, Sirdar, Asami Gaon Samaj or an asami mentioned in s.11 of the Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 or as a tenant under the
E U.P. Tenancy Act, 1939, other than a sub-tenant, *or as a Government lessee,* or as a sub-lessee of a Government lessee, where the period of the sub-lease is co-extensive with the period of the lease. A reading of its clearly indicates that the land held as a tenant under the U.P. Tenancy Act, other than the lands as a sub-tenant, or as a Government lessee or as a
F sub-lessee of a Government lessee where the period of the sub-lease is co-extensive with the period of the lease is covered by the Act. The contention of the appellant is that the Government grant is not a lease and that, therefore, s.3(d) is inapplicable.

We find no force in the contention. The preamble to the grant clearly
G mentioned that the land was granted for cultivation to make the improved methods of cultivation within the meaning of s.3(8) of the U.P. Tenancy Act XVII of 1939. The grant was subject to the terms and conditions mentioned therein. The conditions, inter alia, were that the appellant has to pay annual lease amount and has to personally cultivate the land as
H enumerated in Clause (1)(a). The grantee shall commence the cultivation

within the prescribed period mentioned in Clause (b) and he shall permanently reside in the colonies as mentioned in Clause (c). Clause (2) mentions that the grantee shall use the land for the purpose of cultivation only and purposes incidental thereto and for no other purposes. The grantee shall not part with the possession of the land. In other words, he is prohibited to sub-lease the land. Clause (4) mentions its impartibility. Clause (5) prohibits subletting, transfer or otherwise alienate the land. Clause (5) says that the lessee shall pay the rent and if he fails, the defaulted amount would be treated as arrears of land revenue and recoverable from him. Clause (6) mentions that he shall be at liberty at any time to surrender the land to the Government. Clause (7) gives power to the Government to determine the lease in which case the lessee shall not be entitled to any compensation for any improvements as he might have made for the benefit of the land, for any building, or structures erected by him thereon.

Thus it could be seen that though it is a grant made under the Government Grants Act, it is in substance a lease of agricultural land granted by the Government to the appellant for cultivation subject to the covenants contained thereunder, some of which have been mentioned hereinbefore. Section 105 of the Transfer of Property Act defines lease as transfer of right to enjoy immovable property made for a certain time, express or implied or in perpetuity, in consideration of a price paid or promised or of money etc. to the transferor by the transferee who accepts the transfer on such terms. The grant is in substance, therefore, is a lease of the agricultural land for personal cultivation on improved methods of cultivation during the period of the substance of the lease for consideration, terminable on notice by either side. Accordingly, the appellant is a holder of agricultural lands within the meaning of s.3(d) of the Act.

Even otherwise, we find that the Government Grants Act itself prescribed the applicability of the Act to the lands covered by the grant. The proviso to sub-section (3) of s.3 reads thus :

> "Provided that nothing in this section shall prevent, or deemed ever to have prevented the effect of any enactment relating to the acquisition of property, land reforms or the imposition of ceiling on agricultural lands i.e. U.P. Act 13 of 1960."

That was inserted with retrospective effect. Thus, it could be seen

A even if the present is construed as a grant of the agricultural lands under the Government Grants Act, by operation of the proviso to sub-s. (3) of s.3 of the Act, the Act is clearly applied for the purpose of computation of the ceiling area of the agricultural lands. It would appear that the Government Grants Act intended that even the grantee under that Act shall not be in excess of the ceiling area prescribed under the Act. Thereby, B the lessee of the Government land, though had a grant under the Government Grants Act, cannot claim to have been outside the purview of the Act.

So, we hold that the view taken by the authorities below and the high C Court perfectly right and legal. The decisions cited by the learned counsel are inapplicable to the facts in this case. In *Byramjee Jeejeebhoy (P) Ltd.* v. *State of Maharashtra*, [1964] 2 SCR 737 this Court held at page 747 that the grant could not be regarded as a lease as it contemplated a demise or transfer of a right to enjoy the land for a term or in perpetuity in consideration of a price paid or promised or services or other things of value to be D rendered periodically or on specified occasions to the transferor. In that case, since the grant was without any of the covenants, it was held that it was not a any but a grant. But, as seen, the grant herein itself specifically enumerates the covenants noted above and a reading thereof clearly indicates that it was in substance a lease, though the grant was made under the E Government Grants Act.

The ratio in *State of U.P.* v. *Zahoor Ahmad*, [1974] 1 SCR 344 also has no application to the facts in this case. Therein, the provisions of the Transfer of Property Act was sought to be applied to the grant. By F operation of s.3 of the Government grants Act, the applicability of the provisions of the Transfer of Property Act stands excluded and, therefore, it was held that Act has no application to grant made under the Government Grants Act. Equally, the case of *Bihari Lal Express Newspapers (P) Ltd.* v. *Union of India*, ['1986] 1 SCC 132 has no application as its ratio was to the same effect.

G

With regard to the need to issue fresh notice as required under s.9, we are of the considered view that there is no force in the contention. It is true that s.6(h) was deleted by way of an Amendment Act made in January, 1975, but it was made effective from 1973. Notice under s.10(2) H was issued to the appellant by the Prescribed Authority on October 20,

1974 and, as such, after the Amendment Act had become effective. Further, on the facts in this case, the compliance is one of substance rather than from. The appellant voluntarily failed to file the return, so he was called upon to file the return under s.10(2) of the Act. Whether the return is voluntarily filed or not, makes little difference, when the authority has jurisdiction and determined the ceiling area. It is seen that by the date of the determination of the ceiling land, the amendment had come into force. Therefore, the exemption granted under s.6(h) stood deleted. In consequence, the acts done by the authorities in determining the ceiling area and declaration of surplus land was within their power and jurisdiction.

The ratio in *Malkhan Singh's*, [1976] 2 SCC 268, has no application to the facts in this case. In that case the facts were that the tenure holder having had excess land failed to submit the statement in respect of his holding under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 within the time prescribed. Consequently, the Prescribed Authority issued the notice determining the surplus land. In response, the tenure holder filed the objections. One of the pleas was that there 14 members in his family including his sons, grandsons and granddaughters and all of them were joint in home, hearth and estate, and that consequently, there was no surplus area with him. Therefore, second notice was necessary to enable to file a separate return claiming appropriate computation of holding. So the ratio is inapplicable to the facts in this case.

It is next contended that under S.133-A of the U.P. Zamindari Abolition & Land Reforms Act, 1950, the lease covered under the Act was treated to be Government lease and the appellants were entitled to hold the same in accordance with the terms and conditions of the lease relating thereto. It is contended that this Act was extended to Nainital after 1.7.1969 and, therefore, the notice issued is also illegal. We find no force in the contention. In this case, since the lease itself was granted by the Government under the Government Grants Act, s.133-A has no application.

The appeals are accordingly dismissed. But in the circumstances without costs.

T.N.A. Appeals are dismissed.