

**Devendra Pratap Singh and anr. Vs. State of U.P. and ors.**

**Devendra Pratap Singh and anr. Vs. State of U.P. and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/485330](http://sooperkanoon.com/485330)

**Court :** Allahabad

**Decided On :** Nov-20-2003

**Reported in :** 2004(1)AWC444

**Judge :** R.P. Misra, J.

**Acts :** Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Sections 5(6) and 10(2)

**Appeal No. :** C.M.W.P. No. 17751 of 1985

**Appellant :** Devendra Pratap Singh and anr.

**Respondent :** State of U.P. and ors.

**Advocate for Def. :** Nageshwar Prasad Pandey, S.C.

**Advocate for Pet/Ap. :** V.K.S. Chaudhary, ;V.V. Misra and ;R.S. Maurya, Advs.

**Disposition :** Petition allowed

**Judgement :**

**R.P. Misra, J.**

1. Heard Sri V.K.S. Chaudhari, learned senior counsel appearing, on behalf of the petitioners and Sri Nagcshwar Prasad Pandey, learned standing counsel.

2. The father of the petitioners Yadunath Singh died on 22.9.1971. Separate notices under Section 10 (2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, were issued to the petitioners. Objections were filed on behalf of the petitioners. The prescribed authority by order dated 31.10.1974 declared an area of 27.89 acres and 24.81 acres in terms of irrigated land as surplus with petitioner Nos. 1 and 2 respectively. The prescribed authority has recorded a finding that the land sold through sale deeds after 24th January, 1971, should not be excluded from holdings of the petitioners. After coming into force of U.P. Act No. 20 of 1976, fresh notices were issued to the petitioners and prescribed authority by order dated 29.5.1976 held 55.20 acres and 43.76 acres respectively in terms of irrigated land as surplus with regard to petitioner Nos. 1 and 2. The petitioners filed appeals before the District Judge which were partly allowed by order dated 18.8.1977, holding that the area covered by the sale deeds executed by the father of the petitioners be excluded while computing the total tenure holdings of the petitioners but the sale deeds executed by the petitioners after 24.1.1971, should be treated as part and parcel of the holdings of the petitioners.

3. The petitioners approached this Court by means of Writ Petition No. 2640 of 1976 challenging the order dated 18.8.1977, passed by the District Judge so far as it was against the petitioners. This Court vide order dated 22.11.1979, allowed the writ petition and remanded the matter to the appellate authority. After remand the matter came up before the learned District Judge, who in turn remitted two issues to the prescribed authority. For ready reference the issues are being quoted herein below :

'(1) Whether the sale deed executed by the petitioner after 24.1.1971 are not genuine sale deeds?

(2) Whether the land covered by the sale deeds executed in the year 1970 is still with the appellants? If so, its effect?'

4. The prescribed authority by his order dated 11.2.1985, submitted its findings with regard to both the issues against the petitioners and found that the sale deeds executed were not in good faith, for adequate consideration and were benami transactions. The petitioners filed objection on 20.5.1985, against the findings of

the prescribed authority. The learned Additional District Judge by impugned order dated 25.9.1985 partly allowed the appeal of the petitioner No. 2 and held that 45.87 acres of irrigated land is found surplus with him. The appeal of petitioner No. 1 was dismissed.

5. Learned counsel for the petitioners has submitted that the sale deeds executed by the father of the petitioners, Yadunath Singh prior or after 24.1.1971 is wholly irrelevant in view of the provisions of Section 5 (6) of the Act, which is being quoted hereinbelow for ready reference :

'5 (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:

(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.'

6. In support of his contention learned counsel for the petitioners has placed reliance in the cases of Smt. Raj Kumari Gopika and Anr. v. State of U.P. and Ors., 1981 ALJ 855 and Satish Chand Mathur v. State of U.P. and Ors., 1996 (1) AWC 2.5 (NOC) : 1996 RD (Suppl) 305.

7. It has been further submitted by learned counsel for the petitioners that due to consolidation operation, the area held by the petitioners have been reduced and area reduced during the consolidation operation ought to have been excluded from holdings of the petitioners. In support of his contention, the learned counsel for the petitioners has relied upon decisions in the cases of State of U.P. v. Mathura Singh and Ors., 2003 RD 526 and Satyapal Singh v. State of U.P. and Ors., 1979

AWC 217. No other points were pressed by learned counsel for the petitioners, The submissions made by learned counsel for the petitioners have got force,

8. In view of the facts and circumstances, the writ petition is allowed. The order of the learned Additional District Judge dated 25.9.1985 in Ceiling Appeal No. 76 of 1976 and Ceiling Appeal No. 77 of 1976 (Annexures-8 and 8A) and that of the prescribed authority (respondent No. 3) dated 29.5.1976 in Case Nos. 7/71/20 and 7/54/16 (Annexures-1 and 1A) are set aside. The matter is remanded to the prescribed authority for redetermination of the ceiling area after giving benefit to the petitioners with regard to the sale deeds executed by the father of the petitioners and the area reduced during the consolidation operation. For the purpose of deciding the extent of area reduced during the consolidation operation, the petitioners will file detail objections before the prescribed authority within six weeks.

9. However, the parties shall bear their own costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**