A.F.R.
Reserved on 05.03.2024
Delivered on 10.05.2024

Court No.- 43

Case :- MATTERS UNDER ARTICLE 227 No. - 8279 of 2022
Petitioner :- Pramila Tiwari
Respondent :- Anil Kumar Mishra And 4 Others
Counsel for Petitioner :- Anand Kumar Singh,Dinesh Kumar Singh,Rahul Sahai,Vinod Kr Pandey
Counsel for Respondent :- Rituvendra Singh Nagvanshi,Uday Bhan Mishra

Hon'ble Siddhartha Varma,J.
Hon'ble Ajit Kumar,J.

1. These proceedings are in pursuance to the reference order of Hon'ble the Chief Justice dated 25.04.2023 to answer the reference framed by Hon'ble Vivek Chaudhary, J. on 14.10.2022 which is as under:

> *"whether the provision of compulsory registration of will, as introduced in the form of Section 169(3) of U.P.Z.A. & L.R. Act, 1950 by the Amendment Act namely U.P. Act No. 26 of 2004, is prospective or retrospective in nature ?"*

2. The learned Single Judge was faced with two contradictory views taken by two Co-ordinate Benches of this Court: one in the matter of ***Sobnath Dube, In the Matter of: Late Kashinath Dube; reported in 2015 (0) SCC (All) 674*** wherein it was held that with the amendment of UP Zamindari Abolition & Land Reforms (U.P.Z.A. & L.R.) Act, 1950 (hereinafter referred to as 'the Act of 1950') incorporating the new provisions as Section 169(3) in it by the State legislature, making registration of Will compulsory, will be prospective and Will executed prior to the date giving effect to

the amendment by the State Government will not require to be registered compulsorily, whereas in ***Jahan Singh v. State of UP & ors (Writ Petition No.1570 of 2017***), another Co-ordinate Bench in its judgment dated 18.05.2017 disagreed with the view taken in ***Sobnath Dube*** (*supra*) on the ground that unregistered Will taking effect after the date of amendment stands hit by amended provisions of 169(3) of the Act, 1950. In ***Sobnath Dube's*** case (*supra*) a view was taken, since a Will becomes effective only upon the death of the testator, every such Will which may come into effect after the amendment of Act of 2004, is required to be compulsorily registered.

3. At the initial stage, when we heard the matter, we re-framed the reference as under:

> *"whether a Will reduced into writing prior to 23.08.2004 is required to be compulsorily registered in the event the testator dies after the said date:"*

4. Thereafter, when we further examined the matter there arose an issue as to whether State legislature without President's assent could have made registration of Will compulsory by incorporating a provision to this effect in law, as Will, intestacy and succession under the Constitution fell as subject matter in the Concurrent List and Central Legislation was already there touching the subject of registration of Will under the Registration Act, 1908.

5. We further noticed that in the judgment of ***Jahan Singh*** (*supra*) while holding that those Wills which would take effect after 23.08.2004, were required compulsorily to be registered, had made an observation that *"the nuances of law for holding that unregistered Will was not hit by the provisions of Section 169(3) of the Act, have not been examined"* and this was taken as a reason to

disagree with the view taken in the judgment of ***Sobnath Dube*** (*supra*). We in our order dated 31.11.2023 had even invited arguments on the above points.

6. Two questions are thus posed to us for an effective decision on the reference framed as above:

(1) Whether the State legislature was competent in amending the Act of 1950 in the matter of wills, intestacy and successions *qua* agricultural holdings in the face of the fact that the Registration Act, 1908 makes registration of will only optional at the end of the testator and even provides a registration posthumously. Whether then to that extent the U.P. Amendment Act, having not received the presidential assent was an incompetent piece of legislation.

2) What nuances of law, relating to the rights in agricultural holdings and incidental issues, can be said to be in favour of agricultural holdings when the occupied field of registration governed by a Central Legislation, was being undone by the Amendment Act of Uttar Pradesh by Act No.27 of 2004 making the registration of Wills compulsory.

7. Accordingly, we split up the reference in two parts as under:

A) Whether U.P.Z.A. & L.R. Amendment Act, 2004 to the extent of amending 169(3) of the Act, 1950 is void being repugnant to the Registration Act, 1908?;

B) Whether, if the Amendment Act of Uttar Pradesh i.e. Act No.27 of 2004 is upheld, a Will reduced into writing prior to 23.08.2004 is required to be compulsorily registered in the event the testator dies after the said date?

8. The scheme of legislative relations under the Constitution has an inbuilt tone of supremacy of union legislature even in respect of the areas/subjects where it has exceeded its legislative territorial limits [vide Article 245(2)] or where it does make enactments concerning the State subject matters so reserved, in national interest (vide Article 249). The Union legislature has also exclusive power to make enactments in the areas not covered in any of the lists provided under the Constitution. It has also exclusive right to legislate for giving effect to international agreements and treaties (vide Article 253) and also to make laws concerning the State with the consent of two or more States to make them applicable to those very states (vide Article 252).

9. Within the scheme of legislative relations, the Constitution underlines its federal feature by prescribing for separation of powers in legislative fields reserved for Union and States and also areas/subjects where both Union and State can exercise legislative functions. These three lists, namely the Union List, State List and the Concurrent List as conceived and contemplated under the Constitution (vide Article 246), are provided under its 7th Schedule. These lists contain a number of subjects upon which (and the areas connected therewith) the competent legislature can make laws. While the Union List and the State List reserve subjects exclusively for Union and the State respectively, the concurrent list provides for subjects where both Union and State can legislate but supremacy vests with the Union legislature if already occupying a field. Of-course a Central Act in its operation and application to the State can be modified/amended with the assent of the President of India (vide Article 254). Still further, a State law being found contrary to the

law made by Union would be void to the extent of such repugnancy, if any (vide Article 251 & 254).

10. Looking to the above scheme of legislative relations under the Constitution, we now proceed to examine the relevant provision of UP Zamindari Abolition of Land Reforms Act, 1950 (Act of 1950) and competence of the State legislature to legislate in that regard. The object with which Act of 1950 was enacted has been to remove intermediaries between the tiller of the land and the State. The zamindars who were intermediaries were chiefly responsible for the oppression of farmers whose status got reduced to bonded labours, with the passage of time,even in respect of their own land holdings and private money lending resulted in enriching the money lenders by occupying the land of the farmers bit by bit. Several provisions of the Act of 1950 are aimed at revolutionary agricultural reforms to ensure that poor farmers be no further defrauded at the end of the rich private money lenders and so also provisions were made relating to transfer of land by sale, succession and devolution of rights in agricultural holdings.

11. On 08.08.1946, when United Provinces Legislative Assembly passed a resolution for removal of zamindari in the State, the Government of India Act, 1935 was in force. List-I under the said Act included taxes on income other than the agricultural income (vide Entry-54), taxes on capital value of assets to the exclusion of agricultural land of the individuals and companies (vide Entry-55) and succession to property other than agricultural land (Vide Entry-56), whereas List-II contained subject matters relating to agriculture and its allied and related fields, and research and development including the field of veterinary science and also cattle trespass etc (vide Entry-20). Entry-21 of the State list exclusively provided for

rights relating to agricultural land including by way of devolution. Entry-21 ran as under:

> *"21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove."*

12. Further Entry-27 of the State List provided for trade and commerce within the Province; markets and fairs; money lending and money lenders. Entry-41 provided for taxes on agriculture income, Entry- 43 provided for duties in respect of succession to agriculture list. Entry-43(A) provided for estate duty in respect of agricultural land.

13. List-III of the Government of India Act, 1935 (in short, 'the Act, 1935') provided for marriage and divorce, infants and minors, adoption (Vide Entry-6); Wills, intestacy and succession, save as regards agricultural land (Vide Entry-7); and transfer of property other than agricultural land, registration of deeds and documents (Vide Entry-8).

14. From the above referred and quoted entries as contained in three different lists of the Act, 1935, it is clear that devolution of agricultural land fell in the subjects of the State List but Wills, intestacy and succession in general fell in List-III (save agricultural land). This shows that agriculture and its related subjects like succession, transfer, devolution were earlier exclusively assigned to the provincial legislature to exercise its power.

15. The Indian Registration Act, 1908 was enacted by the then British Imperial Government and stands saved and was saved both

under the Government of India Act, 1935 and also saved by Article 244 (1) of the Constitution of India.

16. The Registration Act did not enlist the document of Will in the list of documents (vide Section 17) that are required to be registered and instead, made its registration optional at the discretion of the testator and even made provisions for registration of Wills posthumously by virtue of Section 40 of the said Act. This was the only enactment in force for the purposes of registration of deeds and documents and was applicable to the then united provinces and no provincial act provided a document of Will to be registered compulsorily by exercising power vide Entry-7 of the Act, 1935.

17. Intestacy refers to a condition of any person dying without executing a Will and thus leaving his/her estate to devolve upon legitimate heirs as per the hierarchy set by a law enacted, whereas Wills are such legal documents that outline a person's wish as to the distribution of his/her estates after his/her death. This right to provide for distribution would be an exception to the general rule of succession and so Wills may devolve property of the testator as per his/her wish upon any individual, body or trust to the exclusion of natural and legal heirs.

18. Thus, a document of Will, acquires importance for devolution of estate but the law never required it to be registered whether the property was an agricultural land or whether it was a property or an estate other than agriculture. When people of India adopted the Constitution, the Constitutional provisions made a departure in assigning subjects of rights *qua* agricultural land by deleting words

and expressions "devolution of agricultural land" in Entry-18 of the State List. Entry-18 runs as under:

> *"18. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer of alienation of agricultural land; land improvement and agricultural loans; colonization."*

19. Interestingly, Wills and Intestacy continued to be subject in the concurrent list vide Entry-5 that corresponds to Entry-6 & 7 of the List III of the Act, 1935 but words and expressions "save as regards agricultural land" were deleted. Entry-5 of the concurrent list under Schedule-7 of the Constitution runs as under:

> *"5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law."*

20. Will denotes devolution of property by the testator as per his/ her desire. Indian Registration Act continues to occupy the field *qua* subject matter of registration i.e. deeds and documents provided under Entry-8 of the List III of the Act, 1935 with the corresponding Entry-6 of the Concurrent List under the Constitution of India. The enactment stands, thus, saved under Article 254(2) of the Constitution. This Article in its entirety is reproduced hereinunder:

> *"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States*
>
> *(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or*

after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

(emphasis added)

21. The Act of 1950 was enacted and was reserved for consideration of President and was assented to and came into operation w.e.f. 26.01.1951. The Act of 1950 having presidential nod, shall have overriding effect over and above all State laws and Central laws touching the subject matters provided under the Act of 1950, by virtue of provisions contained under Article 254 (*supra*).

22. The newly amended provision of 169(3) vide amending Act No.27 of 2004 makes registration of Will compulsory. While the original provision under sub-section (3) of Section 169 of the Act of 1950 provided for a Will to "be in writing and attested by two persons" the words and expressions "and registered" were further added. Thus, new sub-section (3) of Section 169 runs as under:

"169. Bequest by a Bhumidhar-

(1) [* *]*

(2) [* *]*

(3) Every will made under provisions of sub section (1) shall, not withstanding anything contained in any law, custom or usage, [be in writing, attested by two persons ***and registered****]?"*

(emphasis added)

23. Law relating to registration of documents and deeds being provided under the Registration Act, 1908 vide its Section 17 refers to "certain documents" to be registered. So, in the first instance, it is this act that required amendment by the State to make its modified application in the State for getting document of registration of Will enlisted under Section 17 as there exists no pre-existing State law touching the subject matter. Accordingly, the provisions as incorporated under the ZA Act vide 169(3) of the Act of 1950 after its amendment in 2004 became contrary to the pre-existing Central Act. In other words, the provisions contained under Section 169(3) of the Act of 1950 and Section 17 read with Section 40 come in conflict with each other. This makes the State Act provision to be repugnant to the pre-existing Central Act and State Amendment Act, 2004 having no presidential assent is liable to be rendered void.

24. One of the arguments was that instead of striking down the concerned provision of law we could read it down and bring it to the vicinities of the provisions of Section 17 and Section 40 of the Registration Act that make registration of Will optional and that it would be even registered posthumously. But looking to the objects and nuances of law that have guided the learned Single Judge in ***Jahan Singh***'s case (*supra*) to hold that every Will becoming

effective after 2004 Amendment would be void if not registered, makes it mandatory for us to navigate these nuances through socio-economic background of the citizenry of the State of Uttar Pradesh.

25. The object with which 2004 Amendment had been introduced was to avoid proliferation of forged wills. Law reforms are always aimed at ensuring access to justice and promoting economic stability and enhancing rule of law. What laws may be helpful to people, must always be seen in the background of ground realities of life of common man. Enactments regarding agriculture reforms are particularly seen in the background of socio-economic conditions of villagers living largely in remote areas.

26. India's NITI Ayog's report released just two and a half years ago in November, 2021 states 38% of total population in U.P. is multidimensionally poor, meaning thereby people lack good health, education and standard of living. We sitting in Kaval towns and metropolis with multiplexes, Star hotels and high rise buildings, cannot even imagine in what condition majority of State population lives in small towns and villages. We have in fact no idea as to the magnitude of monetary poverty and the lack of basic education and health infrastructure in our rural areas.

27. Our state has largely an agrarian economy and all farmers are not literate. There are areas in remote villages in Uttar Pradesh without motorable roads and people are not aware of the outside world. Whatever material is necessary to have healthy crops at least twice a year does not reach to them and resources of irrigation are not catering the need of every farmer. Many farmers in the State still depend upon rain water and are barely getting two square meals. They are still oppressed by rich money lenders and if their

children leave villages to study in cities, the poor farmers very often not only borrow money but even on getting ill are not properly getting good health care.

28. It is quite possible that a poor farmer having *bhumidhari* rights may be an illiterate person who can be easily fooled or mislead. A marginal farmer owing to his pity condition may get so circumstanced to be easily mislead by unscrupulous elements of the village to execute a Will in favour of a third party to the exclusion of natural heirs. It was, therefore, considered appropriate to devise a mechanism to minimize this fraud. It was thought that forgery would be minimised and, therefore, the law was brought in for compulsory registration of Wills. However, one cannot ignore the flip-side of this as there can equally be a case where a registered document is executed in suspicious circumstances, which if proved, would ultimately render the registered document void. The observations made by the Supreme Court in ***Rani Purnima Devi & anr v. Kumar Khagendra Narayan Dev & anr; AIR 1962 567*** is worth mentioning hereinunder:

> "*There is no doubt that 'if a will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a will disposing of his property and thereafter he admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the will. But if the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the will did not read it over to the testator or did not bring home to him that he was admitting the*

execution of a will or did not satisfy himself in some other way (as, for example, by seeing the testator reading the will) that the testator knew that it was a will the execution of which he was admitting, the fact that the will Was registered would not be of much value. It is not unknown that registration may take place without the executant really knowing what he was registering. ***Law reports are full of cases in which registered wills have not been acted upon..... Therefore, the mere fact of registration may not by itself be enough to dispel all suspicion that may attach to the execution and attestation of a will; though the fact that there has been registration would be an important circumstance in favour of the will being genuine if the evidence as to registration establishes that the testator admitted the execution of the will after knowing that it was a will the execution of which he was admitting."***

(emphasis added)

29. Thus, a poor farmer may be compelled to knock the door of Courts of law and undergo the agony of a long drawn litigation where rich may have an upper hand. This is not only there for villagers but equally may be seen in well developed townships and cities where rich are eyeing at nicely located properties.

30. There could equally be a case where a person in his last days of life may change his mind and may decide a different distribution of his assets and properties from what he had decided sometime ago. A Will or wish that operated last in the mind of the testator is definitely to prevail and that is why the rule is that the last Will prevails. So in the event non registration of Will is rendered void then a person executing a 'Will' will be denied of his right to have his/her "wish" or desire changed. His will to subject his property to be succeeded as per his wish would be denied to him. We can take an instance, though hypothetical, where a person gets a Will registered and this fact gets disclosed to the beneficiaries under the Will. They may get possession of the document by force or

otherwise and then start ignoring the testator by leaving him in a condition where he may not be able to survive for want of proper care and medicines. Such lust for property at the end of beneficiaries cannot be ruled out. To deny a person the right to change his Will by an unregistered document in his last days would not only be inhuman but would be an arbitrary denial of his fundamental right to create a Will of his assets and properties. There could be a condition where a person wishes in the last days of his/her life to distribute his/her property as per his last desire or wish which might be very different from the last registered Will. This, according to us, would never be the intention of the legislation.

31. In so far as judgment in ***Jahan Singh*** (*supra*) applies the rule of interpretation to justify the Amending Act providing for compulsory registration of Will even without the assent of the President, we proceed to test the *ratio* of the judgment as under.

32. Interpretation of a provision and applying the legal principles, as the learned Single Judge had in mind, within specific legislative areas so as to hold that State Legislature had competence, in our considered view, amounts to stretching of principle of purposive interpretation too far and reading more than the concept of legislative relationship as is conceived of under Chapter-11 of the Constitution to justify a provision of law. There is no quarrel to the principle that exercise of power entails the grant of that power in every possible way, but the question remains where to draw that laxman rekha/line to render exercise of power by State vis-a-vis the powers of the Union. It should be in consonance with the principles enshrined under the relevant provisions of the

constitution providing for separation of powers under the Scheme of Constitution.

33. Subject matter in issue being of Concurrent List, it was open for the State to get the pre-existing Central Act amended before its application to the State and that too by getting such an act the assent of the President. The Wills, intestacy, succession and transfer being in the Concurrent List, without drawing any exception to the agricultural land, the Act of 1950 was rightly reserved for consideration of the President and it also had the presidential assent. But now by the Amending Act of 27 of 2004, the State of Uttar Pradesh was seeking an amendment in the U.P.Z.A.L.R. Act, which in effect was amending the Registration Act, 1908. Such an Act by which the amendment was being sought definitely required a presidential assent.

34. Every legislation must ensure certainty as to its application and exercise of power under it. So to ensure this, when subject matter falls within competence of both the Union and the State Legislatures, the provision of Article 251 will come into play.

35. Our above view also finds support in the judgment of Supreme Court in the case of ***Babu Ram v. Santokh Singh (deceased); 2019 (14) SCC 162.*** Paragraphs 18, 19 & 20 relevant for the case in hand are being reproduced hereinunder:

> *"18. We now turn to the next stage of discussion. Even if it be accepted that the provisions of Section 22 would apply in respect of succession to agricultural lands, the question still remains whether the preferential right could be enjoyed by one or more the heirs. Would that part also be within the competence of the Parliament? The "right in or over land, land tenures ...." are within the exclusive competence of the State legislatures under Entry 18 of List II of the Constitution.*

Pre-emption laws enacted by Staet legislatures are examples where preferential rights have been conferred upon certain categories and classes of holders in cases of certain transfers of agricultural lands. Whether conferring a preferential right by Section 22 would be consistent with the basic idea and principles is the question.

19. We may consider the matter with following three illustrations:

a) Three persons, unrelated to each other, had jointly purchased an agricultural holding, whereafter one of them wished to dispose of his interest. The normal principle of pre-emption may apply in the matter and any of the other joint holders could pre-empt the sale in accordance with rights conferred in that behalf by appropriate State legislation.

b) If those three persons were real brothers or sisters and had jointly purchased an agricultural holding, investing their own funds, again like the above scenario, the right of pre-emption will have to be purely in accordance with the relevant provisions of the State legislation.

c) But, if, the very same three persons in illustration b) had inherited an agricultural holding and one of the them was desirous of disposing of his or her interest in the holding, the principles of Section 22 of the Act would step in.

The reason is clear. The source of title or interest of any of the heirs in the third illustration, is purely through the succession which is recognized in terms of the provisions of the Act. Since the right or interest itself is conferred by the provisions of the Act, the manner in which said right can be exercised has also been specified in the very same legislation.

Therefore, the content of preferential right cannot be disassociated in the present case from the principles of succession. They are both part of the same concept.

20. When the Parliament thought of conferring the rights of succession in respect of various properties including agricultural holdings, it put a qualification on the right to transfer to an outsider and gave preferential rights to the other heirs with a designed object. Under the Shastrik Law, the interest of a coparcener would devolve by principles of

survivorship to which an exception was made by virtue of Section 6 of the Act. If the conditions stipulated in Section 6 were satisfied, the devolution of such interest of the deceased would not go by survivorship but in accordance with the provisions of Act. Since the right itself in certain cases was created for the first time by the provisions of the Act, it was though fit to put a qualification so that the properties belonging to the family would be held within the family, to the extent possible and no outsider would easily be planted in the family properties. In our view, it is with this objective that a preferential right was conferred upon the remaining heirs, in case any of the heirs was desirous of transferring his interest in the property that he received by way of succession under the Act."

36. In view of the above exposition of law and in view of what we have discussed above in this judgment, we hold sub-Section (3) of Section 169 of Act of 1950, in so far as it requires a Will to be compulsorily registered, to be repugnant to Section 17 read with Section 40 of the Indian Registration Act, 1908 and hence we hold the amendment of Section 169(3) of the U.P.Z.A.L.R. Act to that extent void. The said part of the provision under Section 169(3) of the Act of 1950 is, accordingly, hereby struck down.

37. Thus, our answer, to the question framed, is that sub-Section (3) of Section 169 having been declared as void to the extent it provides for registration of Will, the Wills in State of Uttar Pradesh are not required to be registered and a Will for its non registration will not be void whether before or after the U.P. Amendment Act, 2004.

38. Let petition be laid before the Bench concerned for decision on merits of the case, accordingly.

Order Date :- 10.05.2024
P Kesari

(Ajit Kumar,J.) (Siddhartha Varma,J.)