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(1977) 08 BOM CK 0014

In the Bombay High Court

Case No : Special Civil Application No. 5126 of 1976

Achutrao Mokashi APPELLANT

Vs

The State of Maharashtra and Another RESPONDENT

Date of Decision : 20-08-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, Order 41 Rule 33(3)
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 33(1A)

Citation : AIR 1978 Bom 246 : (1977) 79 BOMLR 714 : (1978) MhLj 782

Hon'ble Judges : Chandurkar, J

Bench : Single Bench

Advocate : S.J. Deshpande and R.G. Bhadekar, for the Appellant; M.F. Saldhana, Asstt. Govt. Pleader, for the Respondent

Judgement

Chandurkar, J.—The petitioner having been aggrieved by an order of the Surplus Land Determination Tribunal delimiting 9 acres 8 1/4 gunthas of surplus land from survey No. 119 filed an appeal before the Maharashtra Revenue Tribunal challenging that part of the order. The impugned order of the Maharashtra Revenue Tribunal notices the fact that the only contention of the petitioner is that the surplus land has not been delimited as per the choice. It, however, appears that when the appeal was heard before the Maharashtra Revenue Tribunal, the officer appearing on behalf of the State challenged the correctness of a finding given by the Lands Tribunal that the petitioner''s son Jagdish was a major and his share of 21 acres 2 gunthas was to be left out of consideration. The Tribunal took the view that it was not proved that the entry from the birth certificate related to the petitioner''s son and even the horoscope was not proved. Purporting to act in exercise of powers under Order 41 Rule 33 of the Civil Procedure Code, the Revenue Tribunal set aside the order of the Lands Tribunal and remanded the case to it for an enquiry regarding the age of the petitioner''s son Jagdish. Similarly the finding given by the Lands Tribunal that an area of 4 acres 12 gunthas which was acquired for Jayakwadi canal and Khamgaon-Chapadgaon Road was liable to be excluded from the petitioner''s holding was set aside. In this petition the main argument on behalf of the petitioner is that the findings in favour of the petitioner could not have been disturbed by the Tribunal inasmuch as it is not disputed that the State Government had not filed any cross-objection as contemplated by Section 33(1A) of the Maharashtra Agricultural Lands(Ceiling on Holdings) Act (hereinafter referred to as the "Ceiling Act.").

2. Section 33(1A) of the Ceiling Act reads as follows:

"Any respondent, though he may not have appealed from any part of the decision, order, declaration or award, may not only support the decision, order, declaration or award, as the case may be, on any of the grounds decided against him, but take cross-objection to the decision, order, declaration or award which he could have taken by way of an appeal'' Provided........"

Sub-section (3) of the same section provides:

"In deciding such appeal, the Maharashtra Revenue Tribunal shall exercise all the powers which a court has, and follow the same procedure which a court follows, in deciding appeals from the decree or order of an original court, under the Code of Civil Procedure, 1908".

Now, it is apparent that by enacting Sub-section (1A) of Section 33 of the Ceiling Act, though the legislature provided that the respondent could support the decision of the Surplus Land Determination Tribunal on any of the grounds decided against the respondent which normally is the State, the legislature further provided that the opposite party in an appeal filed by one of the parties could file a cross-objection challenging that part of the decision which was against such party. This, however, meant that if an adverse finding had to be challenged so as to affect the ultimate decision, that could be done only by filing a cross-objection, the findings against the State could not be set aside in view of the express provision with regard to cross-objection by purporting to act in exercise of the powers provided for in Section 33(3) of the Ceiling Act. Sub-section (3) of Section 33 has been the same before and after the Ceiling Act was amended. The insertion of Sub-section (1A) of Section 33, in my view, has not in any way affected the view which I had taken in Maroti Sonba v. State of Maharashtra, 1973 Mh LJ 509, in which I held that in an appeal filed by a surplus holder, the Revenue Tribunal cannot pass an order adverse to him while dismissing his appeal in the absence of any appeal filed by the State as the general rule is that on an appeal by an aggrieved party, the appellate Court can reverse or vary the decree or order appealed against only in favour of the party appealing. The only change in the position now will be that the objections which the State should have raised by filing an appeal against the order of the Lands Tribunal can now be raised by filing a cross-objection under the provisions of Sub-section (1-A). It is, however, clear that unless such a cross-objection is filed by the State, the findings in favour of the landholder cannot be disturbed by the Maharashtra Revenue Tribunal so as to modify the decision appealed against adversely to the landholder. Admittedly in the instant case, no cross-objection was filed by the State and the Tribunal was, therefore, in error in interfering with the findings recorded by the Lands Tribunal after appreciation of evidence. The order of the Maharashtra Revenue Tribunal holding that the remand was necessary in order to ascertain afresh the age of the petitioner''s son Jagdish is, therefore, liable to be quashed,

3. It appears, however, that the grievance of the petitioner with regard to choice still subsists. The Lands Tribunal had delimited surplus land from survey No. 119 which, as it appears from the order of the Lands Tribunal, stands in the name of the petitioner''s son. The landholder now wants an opportunity to indicate what land to the extent of 9 acres 8 1/4 gunthas he would like to be delimited as surplus. The matter is, therefore, remanded back to the Lands Tribunal for the limited purpose of affording an opportunity to the landholder for exercising his choice, it is, however, directed that the land which he will now indicate for being delimited as surplus land would be the land which stands in the name of the landholder himself and not in the name of his daughter or his son.

4. Petition is thus partly allowed. There will be no order as to costs.

5. Petition partly allowed.

