(1981) 10 BOM CK 0027

In the Bombay High Court

Case No : Special Civil Application No. 3763 of 1976 (Nagpur)

Anusuyabai Patil APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 03-10-1981

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 8

Citation : (1983) 85 BOMLR 84

Hon'ble Judges : Padhye, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Padhye, J.—Smt. Anusuyabai, the petitioner, representing the family unit of herself and one minor son and three minor daughters, challenges a decision dated March 6, 1976 given by the Surplus Land Determination Tribunal (hereinafter referred to as the S.L.D.T.), Block, tahsil Kolapur, district Yeotmal finding that the family unit was in possession of 54 acres and 11 gs. of agricultural land as surplus land, within the meaning of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, hereinafter referred to as the Ceiling Act, as confirmed by the Maharashtra Revenue Tribunal at Nagpur in Ceiling Appeal No. AI c-A-1664/76 dated July 8, 1976.

2. Smt. Anusuyabai''s husband Madhukar Patil expired on July 25, 1973. Prior to his death, he sold and agreed to sell the following fields:

1. S. No. 4/1 of Nagzari measuring 13.30 acres sold for Rs, 7,000 on December 12, 1972.

2. S. No. 19 of Marathwakdi measuring 30.31 acres sold on September 2, 1972 for Rs. 20,000.

3. S. No. 4/2 of Nagzari admeasuring 15 acres was agreed to be sold in favour of Ranganna by agreement of sale dated April 18, 1972 after having received

earnest money, the possession having been delivered to Ranganna on the same date.

3. Since the sale-deed of S. No. 4/2 of Nagzari was not executed by Ranganna, the petitioner included the area of this field i.e. 15 acres, in the total holding of the family unit as shown in the return filed u/s 12 of the Ceiling Act. According to the S.L.D.T., the area of the said holding was 64.30 acres and not 63.18 acres. Adding an area of 44.21 acres, that being the area of two fields sold by deceased Madhukar, the S.L.D.T. came to a conclusion that the total holding of the family unit represented by Anusuya was 109.11 acres and on that basis declared that the family unit held 56.11 acres as surplus land. According to the S.L.D.T., the two transfers by sale and one transfer by-agreement of sale were covered by the provisions of Section 10 of the Ceiling Act and presumption was available for holding that the two transfers by way of sale-deed and the third by way of agreement of sale were made in. anticipation of or in order to avoid or defeat the object of the Amending Act, 1972 (Act No. XXI of 1975).

4. In the return filed by the petitioner Anusuyabai, it was contended that even apart from the fact that the two sales were justified, the provisions of Section 10 of the Ceiling Act could not be applied to the two sales in question, because the said sales were not effected by a person, or a member of the family unit, who was required to file a return u/s 12 of the Ceiling Act, as amended by Act No. XXI of 1975. Neither of the Ceiling authorities thought it necessary to examine this question and proceeded to draw a presumption u/s 10 of the Ceiling Act, by rejecting the justification for the sales adduced on behalf of the petitioner Anusuya.

5. On a close scrutiny of the provisions of the Ceiling Act, I have come to a conclusion, that the provisions of Section 10 of the Ceiling Act are not available in cases of those transfers which are effected by persons other than a person or a member of family unit, which is required to file a return on October 2, 1975 under the provisions of the Ceiling Act as amended in 1975, and, therefore, I do not propose to enter into the question of the alleged justification for transfer of two fields by sale and transfer of possession of one field by agreement of sale by deceased Madhukar.

6. Section 10 of the Ceiling Act contemplates two types of transfers of land. Sub-section (a) contemplates transfer by any person or a member of a family unit between September 26, 1970 and October 2. 1975 and provides that if such transfer is effected by any such person or a member of a family unit, then in calculating the ceiling area which "that person, or as the case may be, the family unit is entitled to hold" the land so transferred, were also to be taken into account. This is so, because of the presumption raised that such transfers were in anticipation of or in order to avoid or defeat the object of the amending Act, 1972, unless circumstances negativing such a presumption could be established. Sub-section (b) of Section 10(1) of the Ceiling Act contemplates transfers of land in contravention of Section 8 of the Ceiling Act. Section 8 restricts transfers after

October 2, 1975 until determination of surplus land in those cases in which a person or as the case may be, a family unit holds lands in excess of the ceiling area on or after October 2, 1975, It is obvious that a, transfer contemplated by Section 8 of the Ceiling Act can never be by a person who is not alive on October 2, 1975. Transfers contemplated by Section 10(1)(a) of the Ceiling Act between September 26, 1970 and October 2, 1975 are also transfers by a person or a member of family unit, whose ceiling area is to be calculated by ascertaining the entitlement to hold land as on October 2, 1975 and, therefore, the provisions cannot apply to transfer of land by a person who is not alive on October 2, 1975, or who is not a member of a family unit as on October 2, 1975.

7. Section 10 of the Ceiling Act contains a rule of evidence. In the case of transfer contemplated by the said section, it provides for a presumption that the transfers were made in anticipation of or in order to avoid or defeat the object of the amending Act, 1972, but this presumption is raised "unless contrary is proved." If the person who has effected transfers is no longer alive on October 2, 1975, it may not be possible to have the proof to the contrary in every case. In view of this position also, it appears that Section 10 will have to be interpreted as referring to a person who is alive on October 2, 1975 and who is required to submit a return or a member of a family unit, which is required to submit a return.

8. Shri Badar, the learned Counsel for the State, submitted that the provisions of Section 10 would be applicable even to such cases in which the head of the family transfers certain land between September 26, 1970 to October 2, 1975 and dies prior to October 2, 1975. This argument was based mainly on the view that as and when the said person was alive, he was a member of family unit, as contemplated by the Amending Act, 1972. Shri Khamberkar, the learned Counsel for the petitioner, pointed out that the concept of family unit cannot come into existence till October 2, 1975 and the above approach was obviously erroneous. He submitted that if in the present case Madhukar had died after affecting the transfers in question, leaving behind him only one heir viz, the minor son of a pre-deceased daughter and if such minor son of the pre-deceased daughter was required to file the return u/s 12 of the Ceiling Act, it could not be said that Madhukar, who transferred the lands, was a member of the family unit of such minor son of the pre-deceased daughter of Madhukar. Family unit can consist only of those members as contemplated by Section 4 of Ceiling Act as are alive on October 2, 1975 and, therefore, Madhukar who died before October 2, 1975, could not be held to have been a member of the family unit represented by petitioner.

9. Referring to Sub-section (2) of Section 3 and proviso to Section 12, we find that the amending Act of 1972 (Maharashtra Act No. XXI of 1975) did contemplate the cases of death of a person who was required to file return after October 2, 1975 and before declaration of surplus and made a provision, that in case of death of such a person, the ceiling enquiry will have to be proceeded as if

such a person was not dead. However, no provision has been made for cases in which a person being head of the family died prior to October 2, 1975 and it is, therefore, obvious that such death was never expected to his ignored, for the purpose of ascertainment of surplus land under the Ceiling Act, If after the death of such a person after September 26, 1970 and before October 2, 1975 the agricultural land held by him devolved upon the major sons or daughters, such land could not be taken into account for the family unit of his widow and minor sons and daughters. It is, therefore, clear that death of a person prior to October 2, 1975 has to be taken into account.

10. Since the provisions of Section 10 of the Ceiling Act are not applicable to the two transfers effected as referred to above by sale of 44.21 acres of land covered by those two transfers, those two transfers cannot be included in the holding of the family unit represented by Anusuya. The total holding besides the two sales referred to above has been found to be 64.30 acres by the S.L.D.T. and as pointed out earlier, this included 18 acres of land being Section No. 4/2 Nagzari. The possession of this land was transferred to Ranganna on April 18, 1972 by Madhukar under an agreement of sale and as such a transaction is included in the term ''transfers'' within the meaning of the Ceiling Act as held by this Court in Gulabrao v. State (1976) Mah. L.J. 727. Therefore, deducting these 15 acres of land from the holding of 64.30 acres as found by the S.L.D.T., no surplus land is left with the petitioner Anusuya.

11. The petition is allowed. The two impugned orders are quashed and set aside. It is declared that the family unit represented by petitioner was not holding any surplus land as on October 2, 1975. There will be no order as to costs.