

(1985) 01 BOM CK 0033

In the Bombay High Court

Case No : Spl. Civil Application No. 1309 of 1977

Arun Sanghai and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-01-1985

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1975 —
Section 4(1)

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 10(1)

Citation : AIR 1986 Bom 236

Hon'ble Judges : Dhabe, J

Bench : Single Bench

Advocate : J.N. Chandurakr, for the Appellant; M.P. Badar, Asstt. Govt. Pleader, for the Respondent

Judgement

1. The judgments in this writ petition and some other writ petitions were kept reserved to await the decision of the Division Bench of this Court on a reference made by the learned single Judge of this Court (Padhye J. as he then was) in Special Civil Application No. 1514 of 1977 in regard to the ration of the decision of another learned single Judge of this Court (V. S. Deshpande, J. as he then was) in Narayanibai v. State of Maharashtra, 1976 MahLJ 865. The Decision Bench has now answered the reference in the above special civil application by its judgment dt. 17-9-1984. I am, therefore, deferring the judgment in this case in the light of the aforesaid judgment of the Division Bench of this Court.

2. In this petition, the sole contention raised on behalf of the petitioners is about the applicability of section 10(1) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, (for short the Ceiling Act) in respect of transfers of lands made prior to 20-9-19756 by a member of a family unit, who held land separately below the ceiling limit prior to 26-9-1970. A decision of the learned single Judge (Puranik, J) of this court in Vithalrao v. State, 1983 MahLJ 952 is heavily relied upon on behalf of the petitioners to show that the above contention raised by them stands concluded by the said decision.

3. Briefly the facts are that the family unit in the instant case consisted of the petitioner No. 1, his wife Kantabai and his minor sons, the petitioners 2 and 3. The petitioner No. 1, in the return filed u/s 12 of the Ceiling Act on behalf of the family unit, disclosed 85.39 acres of land as belonging to his aforesaid family unit. However, he did not disclose the land admeasuring 19.12 acres from S.No. 436/1 of village Edwa, which had gone to the share of his wife Smt. Kantabai and which she had sold by the sale-deed dt. 19-11-1971 pursuant to the alleged agreement of sale arrived at on 19-5-1969.

4. The learned Surplus Land Determination Tribunal (for short the S.L.D.T.) held that even after 26-9-1970, the cultivating possession of the aforesaid field S. No. 436/1 was of the wife of the petitioner No. 1 Smt. Kantabai, which continued till the year 1974-75. The S.L.D.T. therefore held that the transaction of sale was not acted upon and the land continued in possession of Kantabai. It held that the petitioner No. 1 failed to prove that the field was sold due to the compelling necessity. Hence it held that the transaction of sale of S. No. 436/1 was hit by the provisions of section 10(1) of the Ceiling Act. The total holding of the family unit of the petitioner No. 1 was determined as 104.32 acres, out of which the surplus land belonging to the family unit of the petitioner No. 1 was declared as 44.17 acres. The petitioner No. 1 preferred an appeal before the Maharashtra Revenue Tribunal (for short M.R.T.) against the aforesaid Order of the learned S.L.D.T. The learned M.R.T. however, affirmed the order of the Learned S.L.D.T. by its order dt. 19-7-1977. Being aggrieved, the petitioners have preferred the instant writ petition in this Court.

5. The sole contention raised on behalf of the petitioners, as aforesaid, is about the applicability of S. 10(1) of the Ceiling Act to the transaction of transfer of S. No. 436/1 admeasuring 19.12 acres under the sale-deed dt. 19-11-1971. To appreciate the contention, it may be stated that the original Ceiling Act was extensively amended and in fact Chapters II and III of the old Ceiling Act were replaced by the Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and (Amendment) Act, 1972, defined in Section 2(3A) of the Ceiling Act as the "Amending Act 1972" hereinafter referred to also as the "Amending Act, 1972". Although the Bill for the Amending Act, 1972 was introduced in 1972 as Bill No. 56 of 1972, it remained pending for a long time and was passed as Act No. 21 of 1975, which was published in the Government Gazette on 7-8-1975 after having received the assent of the President. However, it did not come into force on 7-8-1975 immediately because by section 1(2) of the Amending Act 1972 it was necessary for the State Government to issue a Notification in official gazette to bring it into force. Accordingly, the state Government issued a notification of 19-9-1975 under S. 1(2) of the Amending Act, 1972 bringing it into force from the date. It is pertinent to notice that the Amending Act, 1972 was passed to lower the ceiling limit as per the decision of the Chief Ministers of all the States held in New Delhi on 26-9-1970. The Amending Act, 1972, also introduced the artificial concept of the family unit to plug the loopholes under the old Ceiling Act under which to save land from being declared as Surplus bogus or benami

transfers were effected in the name of the near relations such as other spouse or spouses or minor sons and minor-unmarried daughters.

6. The Amending Act, 1972 was, however, further amended by the Amending Act No. 47 of 1975 which was assented to by the President on 19-9-1975. This Amending Act No. 47 of 1975 also required the Notification by the State Government for being brought into force. The said notification was issued immediately on 20-9-1975 to bring the Amending Act No. 47 of 1975 into force from that date. From the point of view of this petition, it is important to notice that the proviso to section 4(1) of the Ceiling Act which was introduced by the Amending Act 1972 was deleted by the Amending Act No. 47 of 1975. In other words, the proviso to section 4(1) had its life for only one day. Section 4(1) with its proviso as it stood originally in the Amending Act, 1972, which is relevant to this petition, is reproduced below :

"4. Land held by family unit - (1) All land held by each member of a family unit whether jointly or separately shall for the purpose of determining the ceiling area of the family unit, be deemed to be held by the family unit :

Provided that, if any person, who is a member of a family unit holds land which is possessed separately before the 26th day of Sept. 1970, as a result of acquisition by testamentary disposition or devolution on death or by operation of law or is acquired as a result of a transfer or partition effected prior to the 26th day of Sept. 1970, then for determining the surplus land in any holding which is in excess of the ceiling area on or before the commencement date, such land shall not be deemed to be held by the family unit"

"Transfer" means transfer by act of parties (whether by sale, gift, mortgage with possession, exchange, lease or any other disposition made inter vivos) and includes transfer made under decree or order of a Court, Tribunal or Authority, and "partition" has the same meaning as in section 11. Explanation - A "family unit" means (a) a person and his spouse (or more than one spouse) and their minor sons and minor unmarried daughters, if any, or (b) where any spouse is dead, the surviving spouse or spouses, and and minor sons and minor unmarried daughters: or

(c) where the spouses are dead, the minor sons and minor unmarried daughters of such deceased spouses."

7. Another Amending Act of which it is necessary to take notice is the amending Act No. 2 of 1976, which replaced the Ordinance No. 14 of 1975. By this Amending Act No. 2 of 1976 section 2(6)(a) introduced by the Amending Act, 1972 giving the definition of the expression "commencement date" as the date from which the Amending Act, 1972 would come into force was changed. The commencement date in section 2(6)(a) was defined as "w-10-1975" as per the Amending Act No. 2 of 1976.

8. In the light of the above legislative history of the aforesaid amendments to the

Ceiling Act, the submission of behalf of the petitioner is that the proviso to section 4(1) as per the Amending Act, 1972 was in existence and was in force on 19-9-1975. It is, therefore, urged that as per the said proviso to section 4(1) as it existed in the original Amending Act 1972, the separate land held by the wife of the petitioner No. 1 Kantabai as per the partition effected on 20-7-1961 i.e before 26-9-1970, could not be clubbed together with the land held by the family unit of the Petitioner No. 1. According to the petitioners, the wife of the petitioner No. 1 admittedly held land below the ceiling limit introduced by the Amending Act, 1972, on the date of the sale of S. No. 436/1 on 19-11-1971. The submission, therefore, is that since the proviso to S. 4(1) existed and was force on 19-11-1971, the land belonging to the wife of the petitioner No. 1 was not the land deemed to be belonging to the family unit and, as such, it cannot be said that the sale dated 19-11-1971 was intended to avoid or defeat the object of the Amending Act, 1972, particularly in view of Narayanibai's case, 1976 MahLJ 865, in which it is held that the transfer effected by the landholder who held land below the ceiling limit on the date of the transfer is not hit by section 10(1) of the Ceiling Act.

9. It is the true that the decision of this Court by the learned single Judge (Puranik, J.) in Vithalrao's case cited supra supports the contention raised by the petitioners in this petition. However, the above question is considered by the Division Bench of this Court in Special Civil Application No. 1514 of 1977 cited supra which is rendered upon a reference made by the learned single Judge (Padhye, J. as he then was) in that case. Although the judgment of Puranik, J. referred to above is not in terms considered by the Division Bench in that case. The learned single Judge in Sharawain's case, relying upon Narayanibai's case held in the said case that any land held by a member of the family unit and separately possessed by him on 26-9-1970 could not be deemed to be held by the family unit for determining the surplus land. The Division Bench in the judgment cited supra held that no such proposition is supported by Narayanibai's case. The Division Bench further held that the reference in para 5 of the judgment in Narayanibai's case to the proviso to section 4(1) in the Amending Act, 1972, and its deletion by the Act No. 47 of 1975 were merely recitals of facts and were not the basis of the said decision. The learned single Judge (Puranik J.) in Vithalrao's case 1983 MahLJ 952 cited supra has also relied for his view upon the observations in para 5 of the judgment in Narahanibai's case, referred to above, which, as held by the Division Bench, does not lay down the proposition that any land separately held and possessed by a member of the family unit before 26-9-1970 could not be deemed to be held by the family unit for determining the surplus land.

10. The further and the most important question considered by the Division Bench in the judgment cited supra is in its para 17. The question which is considered by the Division Bench is whether the expression "the Amending Act, 1972" used in section 10(1) of the Ceiling Act should be read as the Amending Act, 1972, prior to its amendment by the Amending Act No. 47 of 1975 or the

Amending Act, 1972 as amended by Act No. 47 of 1975. The important expression which has been construed by the Division Bench in the case cited supra as well as by Puranik. J. in Vithalrao's case in the context of the Amending Act, 1972 "The Division Bench has laid emphasis upon the expression "the object of" in construing the said expression occurring in section 10(1)(a) of the Ceiling Act and its First Explanation. The Division Bench held that what is intended by using all these words is to look to "the object of the Amending Act, 1972, and not to the various provision contained therein. "According to the Division Bench, the preamble to the Act serves broadly as an object of the Act, though the object can also be gathered from the scheme and various provisions of the Act taken together. The Division Bench held that the object of the Amending Act, 1972 is to lower the ceiling on holding of agricultural land for making available additional land for distribution to landless and other persons. The Division Bench also held that what the Amending Act No. 47 of 1975 did was merely to amend some of the provisions of the Amending Act, 1972, and that it did not make any departure from the object with which the Amending Act, 1972 was enacted. The Division Bench thus held that whether the words "the Amending Act, 1972" occurring in section 10(1) are read referring to that Act as it stood amended by the Amending Act No. 47 of 1975, or without it, it would not make any different.

11. However, the learned single Judge (Puranik J.) In Vithalrao's case 1983 MahLJ 952 cited supra held that the explanation to section 10(1) regarding the deeming provision related only to assuming of intention on the part of the transferors of avoiding or defeating the object of the Amending Act, 1972, prior to its amendment by the Amending Act No. 47 of 1975, which came into force on 20-9-1975 by which the proviso to section 4(1) of the Amending Act, 1972 was deleted. (See para 8 of the report). The view of Puranik, J. Therefore is that the object of the Amending Act, 1972, is different from the object of the Amending Act No. 47 of 1975 which came into force on 20-9-1975 by which the proviso to section 4(1) of the Amending Act, 1972 was deleted. (See para 8 of the report). The view of Puranik, J. therefore is that the object of the Amending Act, 1972, is different from the object of the Amending Act No. 47 of 1975 which view as stated above is inconsistent with the view taken by the Division Bench in the judgment cited supra. The Division Bench further held in para 18 of its judgment that the Amending Act, 1972, as amended by the Amending Act No. 47 of 1975 amended the original Ceiling Act relying upon the judgment of the earlier Division Bench of this Court in Vithalrao Udhaorao Uttarwar and Others Vs. The State of Maharashtra, . The Division Bench thus held that wherever the Amending Act, 1972 is cited, it would have to be read as including the amendments made by the Amending Act No.47 of 1975. It, therefore, answered in the affirmative the point No. III in the reference on the question as to whether the expression "Amending Act, 1972" used in section 10 of the Ceiling Act should be read as "Amending Act, 1972 as amended by the Amendment Act, 1975". It is thus clear that the view taken by Puranik, J. in Vithalrao's case cited supra is contrary to the view taken by the Division Bench in the aforesaid case. In fact,

Puranik, J. has also heavily relied upon the decision in Narayanibai's case which, as held by the Division Bench in the aforesaid case, is not applicable to a case in which the family unit existed on the commencement date i.e. 2-10-1975.

12. In my view, in construing the expression "Amending Act, 1972" occurring in section 10(1) of the Ceiling Act resort can be had to the canon of construction that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnance, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words secured out so that thereafter there is no need to refer to the Amending Act at all. The above canon of construction is approved and is made applicable by the Supreme Court in the case of *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, in a case under the Preventive Detention Act, 1950, as amended by section 2 of the Amendment Act, 1952. In para 7 of the report, where the aforesaid canon of construction is considered by the Supreme Court, reliance is placed upon *Craies on Statute Law*, 5th Edn. page 207, *Crawford on Statutory Construction* page 110. The Supreme Court held, vide para 7 of the report, that bearing the above principle in mind, the expression "The Act of 1950" remained the Act of 1950 even with its subsequent amendments and , therefore, the moment the amending Act 1952 was passed and section 2 came into operation, the Act of 1950 meant the Act of 1950 as amended by section 2 of the Amending Act, 1952.

13. In the instant case, on or after the commencement date when section 10(1) would be made applicable the original Amending Act, 1972 had stood amended by the Amending Act No. 47/1975 after it came into force on 20-9-1975. The expression "Amending Act 1972" occurring in section 10(1) has, therefore, to be construed as the Amending Act 1972 as it stood amended by the Amending Act 47 of 1975 because it stood incorporated in the former Act by reason of which the proviso to section 4(1) stood deleted. As will be presently pointed out, the above construction does not intend to give retrospective effect to the Amending Act 47 of 1975 but only seeks to interpret the expression "Amending Act 1972" occurring in section 10(1) of the Ceiling Act made applicable on or after the commencement date.

14. The above construction of the Amending Act, 1972, is of great assistance in properly interpreting the legal fiction created in the first Explanation to section 10(1) of the Ceiling Act that all transfers made after the 26th day of Sept. 1970 but before the commencement date, shall be deemed (unless the contrary is proved) to have been made in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972. If the expression "Amending Act 1972" in section 10(1) meant the Amending Act, 1972 as amended by Act No. 47 of 1975, as it stood on or after the commencement date, then giving full effect to the legal fiction it will have to be understood that all transfers made after the 26th

day of Sept. 1970 but before the commencement date shall be deemed to have been made in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972 the proviso to S. 4(1) of which stood deleted by the Amending Act 47 of 1975.

15. It is well settled that full effect must be given to the statutory fiction and it should be carried to its logical conclusion (see *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, It is also necessary for giving full effect to the legal fiction to assume all those facts on which alone the fiction can operate (see *Commissioner of Income Tax, Delhi Vs. S. Teja Singh*, The classic oft-quoted passage of Lord Asquith from *East End Dwellings Co. Ltd. v. Finsbury Brough Council* (1951) 2 All ER 587 (HL) , can be usefully referred to in this regard :

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it."

16. Bearing the above principles in mind and also the fact that under S. 3(1) of the Ceiling Act, the surplus land as belonging to any person or any family unit has to be determined on or after the commencement date, in aid of which section 10(1) in which the legal fiction is created must be imagined to mean the Amending Act, 1972 after the deletion of the proviso to section 4(1) by the Amending Act 47/1975. The presumption created by the legal fiction would therefore be that the transfers made during the period from 26-9-1970 to the commencement date i.e. 2-10-1975 would be in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972, as it stood after deletion of the proviso to section 4(1) by the Amending Act 47 of 1975.

17. If looked at in this way, since the proviso to section 4(1) originally introduced by the Amending Act 1972 was not in existence on the commencement date i.e. 2-10-1975 or thereafter, there is no merit in the contention that the said proviso should be taken into consideration in determining the expression "Amending Act 1972" occurring in the legal fiction created in the first Explanation to section 10(1) of the Ceiling Act. There is no rationale in assumption of the intention on the part of the transferors of avoiding or defeating the object of the Amending Act, 1972, upon the footing that the said Act originally came into force on 19-9-1975. It would have been a different thing if any ceiling area under S. 3 read with section 10(1) of the Ceiling Act were to be determined on 19-9-1975. It is quite clear that the original Amending Act 1972 was not in force prior to 19-9-1975 so that no actual knowledge could be attributed to the transferor that prior to 19-9-1975 they were free to transfer the land in their possession held separately by them on or before 26-9-1970 in view of the proviso to section 4(1) of the Ceiling Act. The occasion to apply section 19(1) can only arise when the ceiling area is to be determined u/s 3 of the Ceiling Act, i.e. on or after the commencement date when the return is filed. It is, therefore, the Amending Act

1972 which existed on or after the commencement date which is relevant for the purpose of the legal fiction created in the first Explanation to section 10(1) of the Ceiling Act, In this view of the matter, the contention raised on behalf of the petitioners that in view of the proviso to section 4 (1) in the Amending Act, 1972, existing on 19-9-75 i.e. prior to its deletion by the Amending Act No. 47 of 1975, the transfer effected on 19-11-1971 by Smt. Kantabai, is not within the mischief of Section 10(1) of the Ceiling Act deserves to be rejected.

In the result, the writ petition fails and is dismissed. However, in the circumstances of the case there will be no order as to costs.

18. Petition dismissed.