(1972) 03 BOM CK 0017

In the Bombay High Court

Case No : Spl. C.A. No. 122 of 1969

Asaram Ananda Shinde APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 18-03-1972

Acts Referred:

Hindu Succession Act, 1956 — Section 6
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 12, 14, 15, 16, 17

Citation : (1973) MhLj 278

Hon'ble Judges : V.S. Deshpande, J;K.K. Desai, J

Bench : Division Bench

Advocate : B.R. Naik, for the Appellant; M.R. Kotwal, Assistant Government Pleader, for the Respondent

Judgement

K.K. Desai, J.—One Ananda Shinde, along with his sons, wife and unmarried daughter, constituted a joint and undivided Hindu family. The family held in ail 190 acres and 37 gunthas of lands situated at village Murshatpur, Taluka Kopargaon, District Ahmednagar. Ananda Shinde filed a return u/s 12 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, on July 19, 1962. This return was not complete and, as directed, he filed another return on November 21, 1964. Before inquiries under the" Act could be completed, Ananda Shinde died on April 2, 1965, leaving him surviving as his heirs and next of kin his two sons being petitioners Nos. 1 and 2, his unmarried daughter being petitioner No. 3, his widow being petitioner No. 4 and his married daughter being petitioner No. 5. Having received information about the death of Ananda Shinde, the Enquiry Officer (Special Deputy Collector) issued notices to the petitioners as the heirs of Ananda Shinde for proceeding further with the enquiry which had already commenced. Each of the petitioners claimed to be owner of and entitled to one-fifth of the above lands. By his Order dated September 30, 1965, the Enquiry Officer accepted the contention of these petitioners that they were each entitled to one-fifth of the above lands and having regard to the ceiling area being 108 acres, held that the petitioners did not hold land in excess of the ceiling area. Having made these findings he closed the proceedings. In revision by his Revisional order made u/s 45 (2) of the Act on June 7, 1968, the Commissioner, Poona Division, held that the family of Ananda Shinde consisted of only five members and entitled to retain 108 acres of dry crop land, and it held 82 acres and 37 gunthas surplus land. He recorded by para. 4 of his order that it was admitted that even after the demise of Ananda Shinde there was no disruption of the joint family. He observed that the death of Ananda Shinde occurred after the appointed day, namely, January 26, 1962, and since the family had not disrupted, the devolution of property either by survivorship or inheritance would take place after the quantum of surplus holding of the family was ascertained under the Act. He, therefore, made the above finding as regards the surplus land held by the family on the footing of the lands being of a joint and undivided family.

2. The above order of the Commissioner is challenged in the present petition.

3. Dr. Naik for the petitioners has made the following contentions : As Ananda Shinde died before a declaration in respect of the surplus land was made u/s 21 of the Act, the proceedings of inquiry in pursuance of the return filed by Ananda Shinde should have been held to have abated. The submission was that upon the death of the holder who files a return, the properties mentioned by him in the return would pass by testamentary and/or intestate succession to third parties. The proceedings of inquiry commenced by reason of the return filed by a deceased holder can have no relevance to the holdings of the legatees and/or heirs in whom the properties of the deceased holder vests. The result of the scheme of the Act and in sections 18, 20 and 21 thereof particularly is that in respect of the holdings of a deceased holder who dies after filing the Return a declaration u/s 21 can never be made. This is so because the lands mentioned in the Return as of the ownership of the deceased holder would form part of the holdings of his legatees and/or his heirs. In that connection strong reliance was placed on the decision in the case of Dadarao Kashiram v. The State 1969 Sih. L J 813=(1969) 72 Bom. L K 246.

4. In respect of the lands mentioned in the return filed by Ananda Shinde there was no warrant and/or justification in proceeding to decide the issues raised on the footing that these lands were of the ownership of the joint family and/or continued to belong to the joint family of Ananda Shinde and the petitioners. In this connection reliance was placed on the provisions of section 6 of the Hindu Succession Act.

5. With reference to the first contention, it is first necessary to notice the relevant observations in the case of Dadarao Kashiram v. The State. That decision relates to two Special Civil Applications. In one of the applications the holder was one Parvatibai and the lands admittedly were of her ownership. The question was regarding these lands which were acquired by her legatees under a Will made by her before any declaration in respect of her lands was made u/s 21.

In the second application the lands belonged to one Vasantrao Kahate and the lands were of his personal ownership. He also died before a declaration was made u/s 21 of the Act. Proceedings were continued in respect of all lands of these parties against the subsequent owners who in one case were legatees and who in the other case were heirs. On behalf of these parties the main contention made was that the provisions in the Ceiling Act do not affect persons who acquired properties of a deceased holder either by inheritance or as legatees under a Will upon the death of the holder after the appointed day, i. e., January 26, 1962. Now, in connection with this contention the Division Bench examined the scheme of the Act, and particularly sections 14 to 21 thereof. The Division Bench noticed that under the Act a ceiling bad to be determined with respect to a person which included a family and that the Act created a bar to a person holding land in excess of the ceiling area. The Division Bench further noticed that surplus area was liable to be deter mined with respect to a person who was in existence at the date of the determination, i.e., declaration u/s 21. The relevant observation was (p. 253) :

It will thus be seen that the holder of the land is not divested of the surplus land on January 26, 1962, but continues to be the owner of land till the final declaration is made by the Collector, or by the Revenue Tribunal, or the State Government, as the case may be and continues to be the owner and in possession and enjoyment of all his land till the date of vesting of the surplus landing the State Government.

In the view of the Division Bench

...If that person dies or ceases to be in existence after return is filed, then the determination of the ceiling area to be retained by the holder cannot be with respect to that ''person'' because a dead person cannot hold or retain any property... In the absence of any such provision, it must be taken that the Ceiling Act contemplates ''a person'' who is alive not only on the date January 26,1962, the appointed day, but at the time of the filing of the return and till the date of the declaration made by the Collector u/s 21 of the Ceiling Act.

The burden of the contention made by Dr. Naik is that the above ratio of the decision of the Division Bench is wholly applicable to the facts of this case. Towards that purpose he emphasised that u/s 6 of the Hindu Succession Act the lands mentioned by Ananda Shinde in his Return would not devolve by survivorship and that the interest of Ananda Shinde in the lands was bound to devolve as on intestacy to the petitioners as heirs of Ananda Shinde and not as surviving members of a joint family.

6. Dr. Naik is therefore right in his submission that on the death of Ananda Shinde on April 2, 1965, as on intestacy, the interest of Ananda in the above joint family lands devolved on the petitioners as his heirs mentioned in Class I in the Schedule to the above Act. His submission was that the result of the above fact was that in accordance with the ratio in the case of Dadarao Kashiram v. The

State, surplus land could not be found with respect to the lands of which Ananda was the holder on January 26, 1962 ; and therefore a declaration u/s 21 could not be made in respect of the lands mentioned in the return filed by Ananda. In this connection it again requires to be stated that the question in the case of Dadarao Kashiram v. The State arose on returns filed by Parvatibai in one case and Vasantrao in the other as individual personal holders of the lands mentioned in their returns. The above decision therefore does not relate to a return filed on behalf of a joint Hindu family by the Karta and/or holder of the lands ; and the ratio of the decision therefore does not directly apply. In this connection it requires to be noticed that at p. 252 of the report, the Division Bench has noticed the fact that the Scheme of the Ceiling Act provided that the ceiling area was to be determined with respect to a person which phrase included a family also and that with respect to a family the unit was taken as five members permitting it to hold land equal to one ceiling area. The further observation was (p. 252) :

This ceiling area is, however, to be determined by a competent authority in accordance with the provisions of the law, whether such determination is for a person or a family and it is only after such determination that the surplus land is found out having regard to the ceiling fixed.

As regards the return made by an individual, the observation was : ''"The surplus area is thus to be determined with respect to a person who is in existence at the date of determination". Apparently, the above observation was not meant to apply and cannot be applied to the case of a return made on behalf of a joint family. Apparently, death of one or more members of a joint family after the appointed day, i.e., January 26,1962, would not attract the ratio in the above decision because the other members of the family will have survived the deceased member as continuous owners. The return would continue to have been made on behalf of the surviving members. Even at p. 253 of the report it is noticed that the declaration u/s 21.

...has to be made on the basis of the return filed by ''a person'' which includes a family and that return has to be filed with respect to the land which'' he held on and after August 4, 1959 and continues to hold till January 26, 1962. ...If that person dies or ceases to be in existence after the return is filed, then the determination of the ceiling area to be retained by the holder cannot be with respect to that ''person'' because a dead person cannot hold or retain any property.

Apparently the above observations cannot be applicable to the facts of a return filed on behalf of a joint family for the reasons already discussed above. In fact, it appears to us that the object and purpose with which the Ceiling Act has been enacted should be always borne in mind whilst giving effect to the provisions in the Act. The object, as mentioned in the preamble, was to secure the distribution of agricultural land as best to subserve the common good and it was expedient in the public interest to impose a maximum limit on the holding of agricultural land so that the surplus land could be acquired and distributed amongst the landless and other appropriate persons. In that connection, as from the appointed day, i.e., January 26, 1962, the ceiling area was fixed and by section 4 it was provided that no person (which includes a joint family) should hold land in excess of the ceiling area as from and after the appointed day. All transfers of landed properties were prevented as from August 4, 1959 as having been made to defeat the provisions of the Ceiling Act. The liability to make returns u/s 12 was in respect of the land held by a person, including a joint family, as on the appointed day. The above discussion goes to show that the policy of the Act was that a joint family as a unit as from and after January 26, 1962, was not entitled to hold any land in excess of the ceiling area fixed. The direct consequence of the above provision of law was that members of a family (living on the appointed day) constituted one single unit with reference to which the issue about the surplus land held would be required to be decided for making a declaration u/s 21. Devolution arising after January 26, 1962 by the death of a member of and/or addition into the family of another member, would be irrelevant in connection with ascertaining the ceiling area and/or the surplus land which the unit of the family would be entitled to retain and/or would lose under the Act. The above finding has the effect of holding that the surplus holding of the unit of the joint family will in no event be different because of addition of a new member in the family and/or death of one or more members of the family after January 26, 1962. This being the true position, the death of Ananda on April 2, 1965, did not make any difference and alter the ceiling area which the joint family of Ananda was entitled to retain and the quantum of surplus land which the family became bound to surrender for acquisition for distribution in accordance with the provisions in the Ceiling Act. We are, therefore, not in a position to accept Dr. Naik''s submissions that in this respect the fact of the death of Ananda on April 2, 1965, and the further fact that his interest in the joint family devolved by succession on the petitioners were relevant. It is clear that the surplus land was liable to be ascertained on the footing of the unit of the joint family as constituted on January 26, 1962.

7. In this connection support can be derived from the observations of the Supreme Court in the case of a Raghunath v. State of Maharashtra 1971 Mh.LJ877 (S C) = A I R 1971 SC 2137, where at para. 17 the Supreme Court observed that "the ceiling area of each person, including a family, was liable to be determined with reference to the appointed day. Therefore if there is a family consisting of persons exceeding five in number on January 26, 1962, the ceiling area for that family would be the basic ceiling area plus, ''6th thereof per member in excess of the number five. The ceiling area so fixed would not be liable to fluctuations with the subsequent increase or decrease in the number of its members, for, there is, apart from the explicit language of sections 3 and 4, no provision in the Act providing for the determination of the ceiling area of a family on variations in the number of its members.

8. In passing it requires to be stated that even when individuals having personal holdings have made returns, the effect of the above discussions and the

observations of the Supreme Court in the above case is that surplus land held by individuals was liable to be fixed on the basis of their total holdings as on January 26, 1962, and that the death of the holder subsequent to that date should make no difference of any kind. But we are not called upon in this case to decide this issue finally. In fact, we are bound in that connection by the observations of the Division Bench in the case of Dadarao Kashiram v. The State.

9. Since we have not accepted any submissions made by Dr. Naik, we see no reason whatsoever to interfere with the impugned order made by the Additional Commissioner, Poona, on June 7, 1968. The Rule is discharged. There will be no order as to costs.

