

(1987) 03 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 1494 of 1983

Ashokchand Tated and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 05-03-1987

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 2, 3, 3(2), 4(1)

Citation : (1987) 3 BomCR 301 : (1987) MhLj 721

Hon'ble Judges : M.S. Deshpande, J

Bench : Single Bench

Advocate : S.N. Kherdehar, for the Appellant; V.V. Naik, A.G.P., for the Respondent

Judgement

M.S. Deshpande, J.—The petitioners challenge the order passed by the Maharashtra Revenue Tribunal delimiting 78 acres 37 gunthas of land belonging to the family unit of Manakchand and his wife Madanbai as surplus.

2. Manakchand Pannalal Tated filed a return u/s 12 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (Ceiling Act, for short) as amended. His family unit comprised himself and his wife Madanbai. There was a partition between Manakchand, Madanbai and their four sons and five daughters on October 13, 1956, before the Ceiling Act came into force, and in that partition Manakchand had got on his share 62 acres 19 gunthas of land while Madanbai got 87 acres 16 gunthas of land. Manakchand died on 31-7-1977 and the proceedings continued after his death. The Surplus Lands Determination Tribunal passed an order on 21-2-1979 holding that the family unit of Manakchand and Madanbai held land to the extent of 161 acres 6 gunthas out of which an area of 9 acres 38 gunthas was treated as Potkharab. The family unit was allowed to retain 54 acres of land in addition to Potkharab land and 87 acres 8 gunthas was declared as surplus. An appeal was taken against this order to the Maharashtra Revenue Tribunal and the Maharashtra Revenue Tribunal found that in all 18

acres 9 gunthas of land should have been excluded as Potkharab and it accordingly delimited 78 acres 37 gunthas as surplus.

3. Two points were raised by Shri Khardekar the learned Counsel for the petitioner in this Court on the basis of the fact that Manakchand died on 31-7-1877 and Madanbai died on 11-6-1982 and that at the time of their deaths there were neither minor sons nor minor daughters who could have formed a family unit along with them, the shares of the sons and daughters having already been given to them in the partition dated October 13, 1958. He firstly urged that in view of the Explanation to section 4 of the Ceiling Act, there could be no family unit in the present case because there were no minor sons nor minor unmarried daughters and it was necessary that such minor sons and daughters exist for the formation of a family unit under Clause (a) of explanation to section 4(1) of the Ceiling Act. As a sequel, it was urged that the holdings of Manakchand and Madanbai should be treated separately and each should be allowed to hold 54 acres of land which is the maximum which can be held under the Ceiling Act and the remaining land only should be declared as surplus. Another contention raised was that the second paragraph of sub-section (2) of section 3 of the Ceiling Act cannot have any effect because succession cannot be held in abeyance and the heirs of the deceased holders would be entitled immediately upon their deaths to hold the property of the deceased which would vest in them.

4. I would reproduce sub-section (1) of section 4 of the Ceiling Act because it is necessary to do so for setting out the contentions of Shri Khardekar :

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

Explanation.---"family unit" means :---

(a) a person and his spouse (of more than one spouse) and their minor unmarried daughters, if any or

(b) Where any spouse is dead, the surviving spouse or spouses, and the minor sons and minor unmarried daughters, or

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

Under Clause (11) of section 2 "family" includes, a Hindu undivided family, and in the case of other persons, a group unit the members of which by custom or usage, are joint in estate of or possession or residence; and under Clause (11-A) "family unit" means a family unit as explained in section 4. In fairness to Shri Khardekar it must be mentioned that Shri Khardekar pointed out that a learned Single Judge of this Court in Nirmalabai and Others Vs. State of Maharashtra, held that husband and wife constitute by themselves a family unit, but he urged that this view of the learned Judge requires reconsideration because he relied on the observations in State of Maharashtra Vs. Vyasendra, , but in that case the

question whether the husband and wife could be regarded as a family unit even in the absence of minor sons and unmarried daughters, did not fall for consideration. In that case the question for decision was whether the land which was held by the wife as either separate or stridhan property could be excluded and it was held that the nature and character of the interest of members of the family unit in the land held by them is irrelevant for computing the ceiling area which the family unit may retain. Though there was a reference to State of Maharashtra Vs. Vyasendra, in the judgment of the learned Single Judge, he has not relied for anything said in that judgment for the view he took and he relied entirely on the interpretation of the clauses in the Explanation to sub-section (1) of section 4 of the Ceiling Act. u/s 3(1) of the Ceiling Act, there is a prohibition to hold land in excess of the ceiling area. Section 4 refers to the land held by family unit. Section 5 refers to different classes of land which have to be considered while ascertaining the ceiling area and Chapter III imposes restrictions on transfers. Section 10 particularly refers to consequences of certain transfers and acquisitions of land. The underlying idea for introducing the concept of family unit was to lower the ceiling on holdings. It is in this back-ground that the provisions of section 4 fell to be understood. Clause (a) of Explanation to section 4(1) refers to all the persons who would constitute a family unit, while Clause (b) refers to the circumstances where one of the spouses is dead and Clause (c) relates to the case where all the spouses are dead. Shri Kherdekar urged that in the three clauses there is reference to minor sons and minor unmarried daughters, and in his submission the underlying idea is that there cannot be any family unit without minor sons or minor unmarried daughters, and separate provision has been made in respect of major sons who would be entitled to the share in the joint property. While elaborating his argument in respect of Clause (a) he urged that the words "if any" appearing after minor sons and minor unmarried daughters, would qualify the words "minor unmarried daughters" and not "minor sons". According to Shri Kherdekar the reason would be that minor unmarried daughters would not be entitled to a share in the joint property and, therefore, their case would have to be dealt with on a different footing. Though at one stage he suggested that the words "if any" were superfluous, he did not pursue that argument further realising that no words in a statute can be held to be redundant, if they are capable of being given their full meaning and the expression "if any" cannot, therefore, be regarded as a mere surplusage. Giving the words used in Clause (a) their plain meaning, it appears to me that the words "if any" qualify both minor sons and minor unmarried daughters, in view of the punctuation mark preceding the words "if any". Shri Kherdekar, however, urged that the words "if any" are absent in Clauses (b) and (c) and the omission was deliberate. It is difficult to agree with Shri Kherdekar on this point because what a family unit (sic) means is apparent from Clause (a) which refers to all its constituents while Clauses (b) and (c) relate respectively to where one or more spouses and all the spouses are dead and the unit continues with the surviving spouse or spouses and the minor children or with only the minor children. The words "if any" do not appear in Clauses (b) and (c) not because of

any deliberate omission as is urged by Shri Kherdekar, but because those words were unnecessary "while providing for the situations mentioned in Clauses (b) and (c).

5. Shri Kherdekar urged that the view that I am taking is contrary to the one taken by a learned Single Judge of this Court in *State of Maharashtra v. Anubai*, 1982 Mh.L.J. 74 . That was a case where three widows of the deceased who did not have any minor son or daughter were sought to be dealt with on the footing that the lands individually held by them were liable to be clubbed together on the basis that they constitute a family unit under the Explanation to section 4(1) of the Ceiling Act and the learned Judge took the view that the word "and" in Clause (b) under the Explanation to section 4(1) of the Ceiling Act, cannot be read disjunctively because it appears that when the Legislature intended that the conjunction "and " should be read disjunctively, it added words "if any" at the end. The result of the use of the words "if any" is that even if there is a person and his spouse as found in clause (a) of the Explanation without minor sons/or minor unmarried daughters they will constitute a family unit. Where however any spouse is dead in which situation Clause (b) is attracted, the words "if any" having deliberately been omitted the only conclusion is that for constituting a family unit the surviving spouse or spouses must have either minor son or sons or minor unmarried daughter or daughters and the three widows together therefore were not members of a family unit within the meaning of the Explanation to section 4(1) of the Ceiling Act. Firstly, this decision goes against the view which Shri Kherdekar is canvassing in respect of clause (a) because even in that case the construction on Clause (a) was that the words "if any" cover both minor sons and minor unmarried daughters. We are not concerned with the interpretation put on Clause (b) by the learned Judge for deciding the present case, but it appears to me that merely on account of omission of the words "if any" in Clauses (b) and (c), it cannot be said that the surviving spouses in the absence of minor sons and minor unmarried daughters, cannot form a family unit. I am supported in the view I am taking by the interpretation put on the Explanation by the learned Single Judge in *Nirmalabai and Others Vs. State of Maharashtra*, . I may refer to the meaning of the word "And" given in *Stroud's Judicial Dictionary*, third edition, at page 135, where it is pointed out that "and" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of Or. Sometimes, however, even in such a connection, it is, by force of a context, read as "or". "And" may be relative as well as copulative. In the present case having regard to the context and the connection in which the word "and" is used in Clause (a) before "minor unmarried daughters" it cannot be regarded as "or", on the ground of force of context, because both the categories after which it is used, fall into the same classes which is sought to be covered viz. the class of descendants of the "person and the spouse" which appear at the beginning of Clause (a). It would, therefore, follow that the existence of minor sons and minor unmarried daughters are not necessary for the purpose of constituting a "family unit" and

"a person and his spouse" would be sufficient for constituting a "family unit". The consideration that unmarried daughters take no share in a partition of a joint Hindu family, would be entirely irrelevant when the meaning of Clause (a) is plain and clear. Having regard to all the factors, no exception can be taken to the lands belonging to Manakchand and Madanbai being clubbed together as required by the Ceiling Act.

6. The next contention of Shri Kherdekar is that the second paragraph of sub-section (2) of section 3 of the Ceiling Act (this paragraph conflicts with provisions of the Hindu Succession Act) provides that in determining surplus land from the holding of a person or as the case may be, of a family unit, the fact that the person or any member of the family unit has died on or after commencement date or any date subsequent to the date on which the holding exceeds the ceiling area, but before the declaration of surplus land is made in respect of that holding shall be ignored, and accordingly the surplus land shall be determined as if that person, or as the case may be, the member of a family unit had not died. It is necessary to remember that under the first paragraph to sub section (2) all land held by a person, or as the case may be, a family unit shall notwithstanding, anything contained in any other law for the time being in force or usage, be deemed to be surplus land, and has to be dealt with in the manner provided for surplus land. Sub-section (2) therefore, excludes the application of any other law including the Hindu Succession Act to the extent of its inconsistency. However, what is overlooked is that the succession is not held in abeyance and the vesting is not postponed. The vesting would not be postponed even under the provisions of section 3 and all the heirs would be entitled to succeed, but subject to the consequences which flow from the land belonging to the propositus being declared surplus under the provisions of the Ceiling Act. In *Bhikoba Shankar Dhumal (Dead) by Lrs. and Others Vs. Mohan Lal Punchand Tathed and Others*, it was pointed out that the proceedings would not become infructuous and would not have to be dropped if such person dies before a notification containing the declaration regarding surplus land held by him is published in the Official Gazette u/s 21 of the Act, and possession of such surplus land is taken over by the concerned authorities. In such a case the proceedings have to be continued and the surplus land in the hands of the tenure holder as on the appointed day should be determined and taken possession of in accordance with law. The heirs of the tenure-holders entitled to participate in the proceedings representing the estate of the tenure-holder, but they would be entitled as heirs only to such land that may remain after surrendering the surplus land as may be determined under the Act. In view of this clear proposition it is difficult to accept the contention of Shri Kherdekar that sub-section (2) of section 3 of Ceiling Act cannot be given any affect on account of its inconsistency with the provisions of the Hindu Succession Act.

7. The last point raised is only a sequel to the aforesaid two points raised by Shri Kherdekar viz. that the holding of Manakchand and Madanbai should be treated as separate holdings and in respect of each of those holdings 54 acres of land

should be allowed to be held and the rest should be regarded as surplus land. Since the two contentions cannot be accepted, naturally the consequence which the petitioners have in hand cannot follow.

8. In the result, I see no merit in the petition. The rule is discharged. There will be no order as to costs.