
(1973) 06 BOM CK 0015

In the Bombay High Court

Case No : Spl. C. Application No. 1030 of 1969

Baburao Raoji and another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-06-1973

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 2, 2(11), 2(14), 2(20), 2(21)

Citation : (1974) MhLj 385

Hon'ble Judges : B.A. Masodkar, J

Bench : Single Bench

Advocate : J.N. Chandurkar, for the Appellant; M.B. Mor, Asstt. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

B.A. Masodkar, J.—The two petitioners question the validity of the orders made by the authorities under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter called the Act), the last order being that of the Maharashtra Revenue Tribunal passed on June 12, 1969, rejecting the appeal of these two petitioners.

2. The petitioner No. 1 Baburao had filed a return under the provisions of the Act showing that he had 134 acres of land in different villages. Certain disputes were raised by him with respect to fields survey Nos. 22, 18 and 290/2, in that he was a tenant and had surrendered the tenancy rights. That has been negated by both the Courts. He further contended in respect of field survey No. 19 that he was only in possession of half of the land and the other half was with one Vithabai, the widow of the cousin of Baburao. There appears to have been certain proceedings with respect to that field and the authorities came to the conclusion that the entire field No. 19 has to be included in the property of Baburao. No exception is taken to that portion of the order in this petition.

3. The main ground before the authorities under the Act was that Baburao, the

petitioner No. 1, was not an individual as such but represented a joint Hindu family consisting of petitioner No. 2 Ramrao and other members, numbering about 10. It was further the case that there were two fields in the name of Ramrao being Nos. 14/1 and 12/1 of village Atkali and that is also the property of this family of Baburao and Ramrao. It was, therefore, claimed that this was a case governed by the provisions of section 6 of the Act and the family represented by Baburao was entitled to retain the land to the extent of 2 ceiling areas.

4. Initially, petitioner No. 1 had not set up any such case. It came through petitioner No. 2 upon a plea in objection filed by him, This aspect of the matter has weighed with the authorities in finding that there was no substance in such a plea raised by Ramrao, i.e. petitioner No. 20. The second ground on which the authorities did not find substance in this plea was that Baburao had other sons like Dashrath, Maroti, Laxman and Shamrao. These other sons are separate since about 10 or 12 years and possess their own lands. Therefore, the authorities took the view that this case set up by Ramrao on November 7, 1967 and supported by Baburao was based on a weak presumption and, therefore, they were not entitled to the benefit of section 6 of the Act, Certain other matters relating to Soudechithi, i.e. the earnest note of 18-1-1954 with respect to the two lands, i.e. Survey Nos. 14/1 and 12/1, have also been taken into account to show that Ramrao must be treated as separate and his objection found no merit. The learned Member of the Tribunal has observed upon this state of facts that taking of the earnest note by Ramrao in his individual name was a strong circumstance to contradict the case of jointness between Baburao and Ramrao. Taking that view, Ramrao's objection and Baburao's case that section 6 applied and all the members residing together under the same roof and under the same head of the family, i.e. Baburao, should get benefit, has been negatived.

5. This part of the order is under challenge, obviously because, if section 6 is applicable to this case, then the family headed by Baburao would be entitled to retain the land to the extent of two ceiling areas as prescribed.

6. Certain facts cannot at all be disputed. Rather there is no other evidence to contradict certain state of affairs available in the family of Baburao. Baburao has five sons. Ramrao is related to him, being one of them. Both Baburao and Ramrao have entered the witness-box. Similarly one Vithabai has also been examined. As against this oral evidence, there is no other testimony as such. There is also a statement under the signature of a Patwari of January 2, 1967 showing Baburao Raoji Yedwar of Murtizapur as "Pramukh" i.e. the head of the family, then having one Dashrath Baburao as his son and having 4 more sons and one daughter-in-law. In column 10 it is said that this Baburao has got other 4 sons and they reside separately with their families. This is all information, and Baburao Raoji resides with his son Dashrath s/o Baburao. This statement goes counter to the case made out by Baburao that he resides with his son Ramrao ; but no effort is made to examine this Patwari nor to verify from where he got all

this information. That statement is useful to indicate that Baburao is an old man over about the age of eighty and is residing with some son of his and has got other members like grand-sons and daughter-in-law. In the record of rights as well in the first return filed Baburao showed himself to be the owner of the property. Though the case appears to have been started in the year 1965, really the proceedings began in the year 1966 and it was Ramrao who came out to say that he was joint with his father, which case ultimately fell for consideration.

7. In the oral evidence given by Baburao and Ramrao on oath before the authority they stated that they were joint, residing together and messing together; They are both putting labour for cultivation. The cultivation is joint and father is the head or Karta. The other brothers Dashrath, Maroti, Laxman and Shamrao separated since about 15 years. At that time they had no land as such. They began the cultivation by first taking the land on lease from some Jamadar. That was prior to 15 years. As the original family had no property as such, there was no question of partitioning the same. House is, however, ancestral and it is with them. The other brothers had their separate propertied, but there was no partition of the house as the father was alive. The property standing in the name of Ramrao was said to have been purchased in his name but really it was purchased for the joint family. Baburao was cross-examined by the Enquiring Authority where he said that when others partitioned, there was no property with them. It was land taken from one Jamadar for the first cultivation on lease and that was also transferred to Ramrao. When evidence was being given, Baburao is shown to be of eighty-seven years of age. He states that he does not remember for what particular amount that field was taken nor the year, but he says that I paid the amount by installments Upon further Cross-examination Baburao stated that the others have also purchased properties in their own name. At the instance and insistence of one Vinayakrao the property purchased in the name of Ramrao only Ramrao's name came to be shown. As to his earlier statement of 13-8-1966, the witness was not able to remember who wrote it nor he could give reasons for omission to say that Ramrao was residing with him.

8. I have referred to all this evidence in extenso to point out that both Baburao and Ramrao were contending that they were residing in one house and messing together and it was their case that the properties standing in the Ramrao really belonged to the family consisting of father i.e. Baburao and son Ramrao. Both the Courts have not accepted this evidence as indicated earlier, though there is no clear finding as to whether Ramrao with his family is residing With Baburao, his father, under the same roof and under his domain. There is no other evidence except the statement of Patwari of January 2, 1967, which merely says that Baburao is residing with Dashrath and that information he got from some source.

9. Under such circumstances, it is clear that minimum that is established is that Baburao is the father and Ramrao is the son and that they are residing, as they say under the same roof and messing together; that Baburao has other 4 sons and that they have separated or broken away from the family long back. It is

further clear that the family of Baburao having five sons was not owning any joint family agricultural land as such. The present claimants are not interested in the land which stands in the name of those 4 sons and it can be safely assumed that those are their self-acquisitions. It is Ramrao who, on the saying of both Baburao and Ramrao, is living under the same roof of Baburao in the ancestral house and is shown to have two fields in his name and having wife and 3 sons and other daughters. So if all of them as a group answer the term "Hindu joint family" or even a "joint family", or even, in the third alternative "the family" as defined and contemplated by the Act, the submission is that they are entitled to the benefit of section 6 of the Act. It is strenuously urged, therefore, by Mr. Chandurkar appearing for the petitioners that the very approach of the authorities in this case is erroneous and has ultimately vitiated their reasoning in holding that Baburao is the only individual holder of the land and that the other members of his family who are admittedly residing with him cannot at all be counted for the purpose of section 6. For this purpose he relied upon the terms which are defined by the Act like "family"-S. 2 (11), "to hold land"-S. 2 (14), "members of a family" -S. 2 (20) and "person"-S. 2 (22). He further relied on the underlying policies of the Act which are clearly evinced, according to him, by the provisions of section 4 and section 6, to allow that group of persons which can answer "the family" to retain land if other conditions are satisfied to the extent of twice the ceiling area.

10. As against this, the learned counsel appearing for the State submitted that under the provisions of this Act and particularly u/s 6, there is a clear distinction between an individual owning the property and a family as such owning the property. If it is a case of a family owning the property, then and then section 6 is attracted. If it is a case merely of an individual like the one the petitioner No. 1 Baburao, then that section is neither attracted nor need be applied. The learned counsel submitted that whatever may be the connotation of the term "family", whether in restricted or wider sense, what is of essence is that, that family must hold the land which is the subject-matter of the ceiling proceedings. If there is a mere individual having a family, then it cannot be said that it is the family that is owning the land and no question of section 6 at all arises.

11. Upon these submissions, the main and important question that arises for consideration is the true connotation of the word "family" and its legislative concept. In other words can a person having family and owning land be entitled to the benefit of section 6 of the Act will have to be considered.

12. No doubt, the provisions of this Act purport to give its own dictionary and defines several terms which also include the term "family". The legislation itself is a general one and is in essence a secular piece of law. It takes in all persons and all families and restricts right to hold land above the prescribed area. Some of the important definitions in section 2 which require some consideration for resolving the present debate may now be extracted:

2. In this Act, unless the context otherwise require-

X X X X

(9) "to cultivate personally" means to cultivate land on a person's own account-

(i) by his own labour, or

(ii) by the labour of any member of his family, or

(iii) by hired labour, or by servants on wages, payable in cash or kind (but not in crop share) under the personal supervision of himself or any member of his family;

Explanation I- A person under disability shall be deemed to cultivate personally, if he cultivates through his servants, or by hired labour;

Explanation II- in the case of a joint family, land shall be deemed to be cultivated personally, if it is so cultivated by any member of such family;

X X X X

(11) "family" includes, a Hindu undivided family, and in the case of other persons, a group or unit the members of which by custom or usage, or joint in estate or possession or residence;

(14) "to hold land", with its grammatical variations and cognate expressions, means to be lawfully in actual possession of land as owner or as tenant and "holding" shall be construed accordingly;

x x x x

(20) "member of a family" means a father, mother, spouse, brother, son, grandson, or dependent sister or daughter, and in the case of a Hindu undivided family a member thereof and also divorced and dependent daughter;

x x x x

(31) "owner", in relation to any land, includes the person holding the land as occupant, superior holder, tenure-holder or land-holder as defined in the relevant Code or as lessee of Government, a mortgagee-in-possession, and a person holding land for his maintenance;

x x x x

(22) "person" includes a family;

x x x x"

(Italics provided.)

These are all sub-sections of section 2 which open in usual term by saying that these are the meanings of the words Legislature has preferred to use in the body of the Act unless the context otherwise requires. With these definitions provided, sub-section (1) of section 4 imposed a prohibition on holding land in excess of

ceiling area by saying that no person shall hold land in excess of the ceiling area, as determined in the manner provided by the Act. Now, "person" would also include a "family". Therefore, under sub-section (1) no family also could hold land in excess of the ceiling area. Section 5 deals with ceiling areas and gives how the same have to be calculated. Section 6 which may now be extracted, reads as under:-

6. Where a family consists of members which exceed five in number, the family shall be entitled to hold land exceeding the ceiling area to the extent of one-sixth of the ceiling area for each member in excess of five, so however that the total holding shall not exceed twice the ceiling area; and in such case, in relation to the holding of that family, such area shall be deemed to be the ceiling area:

Provided that for the purpose of increasing the holding of a family in excess of the ceiling area as aforesaid, if any member thereof holds any land separately, he shall not be regarded as a member of that family for such purpose.

(Italics provided)

Here for the first time the word "family" is introduced, though that expression is not separately used either in section 4 or in section 5 or even in section 7 of the Act. Section 6 prescribes that where a family consists of members which exceed five, the family will be entitled to hold land exceeding the ceiling area and then prescribes the final limit being twice the ceiling area depending upon the members and the area permitted to be retained. For the purpose of computing such limit a mode is prescribed and a proviso is added to exclude any member who holds land separately. The proviso is clearly an exception to the main section by which normally a member would have been counted for the purpose of computing of the ceiling area.

13. The rival contentions centre round, therefore, mainly on the meaning of the words "the family shall be entitled to hold land exceeding the ceiling area". Do these words indicate that it must be the family as such holding the land in the state of ownership or in the state of tenancy, or are these words wide enough to include an individual having a family and as such holding the land either in ownership or in tenancy? At the very outset, it is plainly clear that even though the family as such may be owning the land and having members more in number than five, then by mere fact that there is a sixth member having land separately, the latter cannot be counted for the benefit of the section.

14. If reading the definition of the term "family" it is possible to conceive of an individual with family as included within that definition, then there would be no difficulty in applying section 6 even to a case where there is an individual having a family and as such answering the other parts of section 6.

15. The term "family" has been defined in an illustrative manner. It is an inclusive definition and, therefore, would take in even those cases which would not answer strictly the contemplation of the term "family". It is well settled that

such definitions are intended to cover wide and divergent ranges of objects which may not have been normally included in the connotation of the same said word.

16. Looked from this angle, it is reasonable to infer that the Legislature used and defined the term "family" keeping in view the socio-economic pattern available in the agrarian society in our country. In the life of a nation like ours which has been the meeting place of several cults and cultures and where historical evidence is available to indicate a variety of patterns of basic social structure, it is but logical to indicate the term "family" by an elastic definition, illustrating merely what it may include. To any society that has reached an organised level of the State in modern times, "family" serves as a basic unit and it means a group of individuals related either by blood or custom or usage or even because of law. The development of this form of organisation of the family is sociologically a basic development in human history that has evolved itself to form larger and larger circles which ultimately resolves into the concept of a Nation or State. First and foremost assumption can be that Legislature was all well aware of the realities that contain such a concept.

17. As far as Indian Society is concerned there is a marked erosion of the so-called "traditional family" and it has undergone some radical changes in its constitution and in its inbuilt structure. In the All India Seminar on the "Indian Family In The Seventies" organized by the Family Centre of the Indian Social Institute, it was pointed out that the traditional typology of "joint", "nuclear" and "matrifocal" was useful for the exploration of the situation of the families in India today; that there was a general consensus on the gradual breakdown of the joint family and the movement to individual family units and that this variation in familial structure is accompanied, by emotional and economic strains on the family. (See Report of the Seminar appearing in Social Action, a Quarterly Review of Social Trends Indian Social Institute, Vol. 22, page 64). This indicates how age-old structure of Indian Family is and has undergone radical changes because of the fast changing socio-economic context in which people find themselves living. It further indicates structural breakdown of the group called family and emphasizes evidence that shows individual living with family having different economic and social reach. It is thus a social fact that the basic structure of Indian Family is under constant strain both because of new emotional tensions and vigorous economical necessities. Passage appears to be indicated by the term "joint family" to "Nuclear Family" formations wherein an individual or two of them form an unit earning for self and for those who depend upon them either living together or earning together. This fission from unit to unit is very much a part of the modern social experience.

18. Juridically, the term "family" has been understood and applied in different contexts by different thinkers. I may merely quote some of these trends from acknowledged thinkers in the field of jurisprudence. To Jean Jacques Rousseau, "family" is the most ancient of all societies, and the only one that is material, is the family and even so the children remain attached to the father only so long as

they used him from their preservation. As soon as this need ceases the natural bond is dissolved. The children, released from the obedience they owed to the father, and the father, released from the care he owed his children, return equally to independence. If they remain united, they continue so no longer naturally, but voluntarily ; and the family itself is then maintained only by convention. (Quoted from the translation of "The Social Contract" by G. D. H. Cole as given in the book The Great Legal Philosophers By Clarence Morris at page 215). To the sociological jurisprudence; family is an organised association or a genetic association, through which men "begin." to form other associations with others and which ultimately become a weapon in the struggle for existence and thus ultimately society is nothing but a sum total of the human associations that have mutual relations with one another. (See Fundamental Principles of the Sociology of Law by Eugen Ehrlich, reprinted at pages 437-440 of the above book). I may allude even to "Rudolf von Ihering" who looked to the family from another angle. In this celebrated "Law as a Means to an end" (Translation by Issak Husik, reprinted in the above book at pages 398-406) he states that the family is a means of compulsive coercion and says, the master of the house must have the authority; and the nature herself has indicated this position for him in its essential outlines in relation to his wife by the superiority of the physical strength and by the greater amount of work which falls to his share-in relation to the children, by the helplessness and dependence in which they are for years, The influence of which even after they are grown up, remains. The foundation of the structure of the family was found in the relation and the principle of superiority and subordination. These are few trends that clearly indicate their own marks as to the identity of this fluid term family. It is patent that family is the basic structural organisation in the Social phenomena and the group is identifiable and is bound by known recognised relations which itself evolve into complex patterns. This may be the exact reason why while dealing with the agricultural society in the State, the Legislature advisedly framed an inclusive definition merely indicating what would otherwise not be included may also be included in that term keeping in view the past and looking ahead into the future. What was regarded as a family some hundred years back may not be regarded today and depending on several factors it may take different form in coming tomorrow. It is therefore sample to observe that "family" consists of a social group of persons which may be bound together by certain basic relations either arising out of blood or other social and economic necessities. That may take in also the principles of superiority and subordination based upon the natural conditions too.

19. As far as the Hindu society goes, from ages the family has been understood and the relative rights of the members who constitute the family have been considered upon the backdrop of the personal law governing Hindus, What existed as a social reality is found translated in these tenets. The concept of coparcenary or the concept of joint Hindu family is necessarily a "non-nuclear" concept. The passage of this family from divisions to partition create unit of different nucleus and give birth to different families which are really answered by

the description "individual having a family". The learned author Sir Dinshaw Mulla of the celebrated commentaries on Hindu Law (Thirteenth Edition) has noticed and observed that joint and undivided family is the normal condition of Hindu society and an undivided Hindu family is ordinarily joint not only in estate but also in food and worship. The existence of joint estate is not an essential requisite to constitute joint family and a family which does not own any property may nevertheless be joint. Such a family, which may not own any estate, still is the family for the purpose of the Ceiling Act, because that is expressly included in the term "family", all other groups none the less having been already included. It is evident that a Hindu separating himself from the joint family may form a nucleus for being answered by the term family and live a life in that organisation. For that he need not necessarily be joint. He may as a husband have wife and children or any other dependents under his dominion and having dependence on his earning. Could such a state of existence be reasonably excluded from the term family? There are no compelling reasons to answer this in negative. Under our social structure this type of existence is a reality and must be deemed to be present to the mind of legislature. If an individual having a family, in other words, answers the terms of a family as distinguished from joint Hindu family, he appears to have been included within the term "family".

20. If the unit is a "Hindu undivided family" owning the property, it clearly falls both in sub-section (11) of section 2 as well as answers all the requirements of section 6, because there it is conceived in the state of owning the property, i.e. the agricultural land, and then, with reference to the members, there is a further computation provided. But when it is a matter relating to "a person" or individual, the definition of person appears to have some relevance for that includes "a family". Juridically it is ever conceived that a person is such a human being as is regarded by the law as capable of rights and duties. Sir Thomas Evaskine Holland, the famous jurist, thought of rights in rem by observing that a person "must be recognised by the State as a person; so must not be a slave in the absolute control of his master-Any individual combining these two characteristics is a person, i.e., is capable of rights and liable to duties." (Elements of Jurisprudence). In the present enactment the legislature thought it wise to include family in the term "person" and thus made it capable of rights and liable to duties.

21. Even in plain language and according to the dictionary meaning (Webster's Dictionary, page 661-2nd Edn.), the word "family" indicates and means, a collective body of persons who live in one house and a father, mother and their children; children of the same parents once husband and wife or children; a group of people related by blood or marriage; relatives; or those who descend from one common progenitor; a tribe or race; descent; lineage are also included in that term. The word itself is derived from Latin phrase "familia" which means, the servants in a household or a household itself.

22. In the Judicial and Statutory Dictionary (Definitions of Words and Phrases,

Vol. III, West Publications) under the term "family", several authorities have been collected together to indicate how the word was understood in its Anglo-American context. The original root of the term "familia" which meant, the whole of the slaves of a household, appears to have been followed even while considering the judicial connotation of the terms under several of the statutes. It is stated:

"Family" at law, is a collective body of persons who live in one home, under one head or manager-----Including parents, children and servants, and as the case may be, lodgers or boarders.

* * * * *

The relation existing between such persons must be of a permanent and domestic character, not abiding together temporarily as strangers.

It is further found from the review of several United States' Courts' decisions that there are certain general rules which can determine the relation of a family, those being (1) the condition of relation of family flows from a social status and not from a contract, (2) that there are legal or moral obligations on the head to support the other members and (3) that there is a corresponding state of dependence on the part of the other members for this support. It is observed that the elements of "family" thus consists of certain persons in certain relations and the loss of any member by death, or severance by other means of these relations, must affect the collective body in its composition and constitution. This dictionary further goes on to say on authority that the word "family" has several meanings. Its primary meaning is a collective body of persons who live in one house and under one head or management. Its secondary meaning is who are of the same lineage or descend from one common progenitor. Unless the context manifests a different intention, the word family is usually construed in its primary sense.

(Emphasis provided).

23. Taken in its broad sense, the word "family" would indicate a group of persons closely related by blood: but, in a statute authorising a provision for the support of the family of a decedent, the provision being confined to the widow and children, members of his family at his death, the word is manifestly used in its restricted sense, as a collective body of persons who form one household under one head and one domestic Government. Thus the word even to the Courts dealing with English language has afforded various significations and it was applied and understood depending upon the context in which the same was used. (See pages 2673 to 2691 of Judicial and Statutory Definitions of Words and Phrases, Vol. III, West Publications.)

24. Several social principles, therefore, may have its interplay while determining whether a particular group answers the term "family". A "family" may be determined by applying the principle of dependence or residence or relationship

and laws applicable to such groups. The three elements noted above are of great assistance and furnish safe and sure guide in determining the family. It is no doubt true that one person or merely an individual may not answer the term "family" itself, for its basic meaning being that it should be a collective body of persons. But it is equally possible for law to make an articulate definition and treat even one or more persons as "family". Such articulate definitions are available and are exhaustively considered in the judicial and statutory definition under one person constituting a family because of the statute. (See page 2685 of Words and Phrases, Vol. III, West Publications.)

25. Even in the decided cases available here with us this variable content of the term "family" has been noticed. I will merely refer to some of these to illustrate how the word is understood by the Indian Courts. As far as this Court is concerned, in Ismail Haji Arat Vs. Umar Abdulla, , the connotation of the word "family" was examined as it occurred in Musalman Wakf Validating Act, 1913 and after discussing the several shades of the word, Justice Chagla, as he then was, observed:

The result of the decisions thus appears to be that the word "family" as used in Act 6 of 1913 would include (1) all those persons residing in the same house as the settlor and dependent upon him for maintenance and (2) all those connected with the settlor through a common progenitor or by ties of common lineage.

The said decision of this Court was followed by the Allahabad High Court in the reported decision in Abdul Qavi Khan Vs. God Almighty through Asaf Ali Khan and Others, . The Division Bench of the Allahabad High Court ruled that the word "family" has to be given a wide and not a restricted meaning and that a person may belong to a "family" either if he is from a common progenitor or if he is living under the same roof and is being supported and maintained by the settlor. In Syed Shah Maidal Islam and Others Vs. Commissioner of Wakfs and Others, , Division Bench of the Calcutta High Court considered the word "family" in the context of Bengal Wakf Act (13 of 1934), where the expression "descendants" had been used. Pal J., following the case of Ferbrace v. Grand Lodge 1 Mo. Appl. 268 stated that the word "family" is really one of great flexibility and is capable of many different meanings according to the context in which it is used; that even when used in a statute it may indeed be of a narrow or broad meaning as the intention of the Legislature using it may be made to appear; that in its ordinary sense the term signifies the collective body of persons living in one house, or under one head or manager, or one domestic Government and that it may include all members of the household living under the authority of the head thereof, as also the servants employed in the house. In Asha Bibi and Others Vs. Nabissa Sahib and Others, , the Madras High Court included nephews of the settler as the members of the family because of the wide connotation that is attached to that word. In Ram Charan Das Vs. Girjanandini Devi and Others, the Court was considering the term "family settlement" and the meaning to be given to the word "family". It is observed:

The word "family" in the context is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. In AIR 1927 227 (Privy Council) , of the three parties to the settlement of a dispute concerning the property of a deceased person one was his widow, other her brother and the third her son-in-law. The two latter could not, under the Hindu Law, be regarded as the heirs of the deceased. Yet, bearing in mind their near relationship to the widow the settlement of the dispute was very properly regarded as a settlement of a family dispute. The consideration for such a settlement, if one may put it that way, is the expectation that such a settlement will result in establishing or ensuring amity and good-will amongst persons bearing relationship with one another. That consideration having passed by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be permitted to be impeached thereafter.

In another decision, S.N. Sundalaimuthu Chettiar Vs. Palaniyandavan, , the Supreme Court was considering the Madras Cultivating Tenants' Protection Act (25 of 1955) and found in the context of the Act that a son-in-law could be regarded as a member of the family. There the question was to satisfy the test of personal cultivation by a member of the family. The Court observed:

.....Mr. S. C. Agarwal, appearing for the respondent, said that a son-in-law can be regarded as a member of the family because the word family is not to be construed in a narrow sense or meaning only a member of a Hindu joint family. He is quite right there because the Act applies to all tenants irrespective of the personal laws which govern them. In Webster's New World Dictionary one of the meanings of family is "a group of people related by blood or marriage, relatives". A person can, therefore, be properly regarded as being the member of his wife's family and not merely of his father's family.....

Thus a wider connotation was found to be the content of this term and even a son-in-law was treated to be the member of the family.

26. This is ample to indicate that the term has to be understood in the context of the legislation and has to be interpreted either in its narrow or in its wider connotation. It is also clearly ruled that this term may take various shades from such context and need not be restricted by any static notice about that term, particularly when the word is not equivalent to a particular state of social phenomenon available under any particular personal law. Therefore, if one considers carefully the context in which section 6 used the word and its operation, it is clear that it takes in an individual living with family and in that state, owns property upon which he and his family depends.

27. If a restrictive meaning is given, as contended for by the state, that it must be the family, who as a group must own the land and then it is only those groups or units which own the property as a unit that would get the benefit of section 6 and no other. Such a view would render the provision completely restrictive in

scope and ambit. No doubt, upon surface reading of that provision, it does indicate a collocation or a group of persons either living under one roof or one domain and related with each other must as such hold land. However, in the social context and the background available in the State it is a matter of common experience that a family, consisting of one head and having children and a spouse, owns the land by the head and depends for livelihood on such land by cultivating it. For such family agriculture is the way of life for, it depends for maintenance on such land. Any member of such a family can cultivate land and for the purpose of the Act it is personal cultivation. Though thus in the pattern of agrarian economy such family exists, that would by restrictive meaning have no benefit of section 6 at all. To give it a full meaning the terms of section 6 should have wider meaning and "family" in that section should be understood to take in an individual living with family. Of course, for the purpose of computing the members of the family, there is absolutely no difficulty because that is indicated by the definition clause itself i.e. section 2 (20) who can be so regarded under the Act.

28. The term "to hold land" which is defined by section 2 (14) though raises the debate also renders in answer. It connotes a state of lawfully in actual possession of land as owner or as tenant and the holding has to be construed accordingly. The term "owner" is defined in section 2 (21) and has to be understood to mean, in relation to any land as including "the person holding the land as occupant, superior holder, tenure-holder or land-holder as defined in the relevant Code, or as lessee of Government, a mortgage-in-possession, and a person holding land for his maintenance". It is plain that the word "person" under emphasis would include a family holding land for its maintenance. Further careful look to the term "owner" indicates legislative policy in making inclusive type of definition. It is not in strict juridical sense that the "owner" is contemplated or defined, but it is thought of with its relation to the land and even those who depend for maintenance are within its purview. Such a group or person may not possess title or ownership as such in strict legal sense. Rights they may enjoy and possess may be very much secondary or derivative in nature. Still the legislature included such persons for the purpose of the Act in the term "owner" which ultimately gives meaning to the term "hold land."

29. The principle of dependence upon the land for maintenance is basically made the part of the definition of the term "owner". It will not be straining such a language to include, therefore, all those who depend as the members of the family upon the land to be the persons holding that land for the purpose of section 6. A group of persons must, therefore, for that section answer and form a "family". It might be headed by a common manager or head or karta of the family and who may be properly the owner of the land which is cultivated and utilised for the purpose of his family. Such persons forming the group may be indicative that they form a family because they reside and maintain together or cultivate land for all. Such a group may further indicate that they are related to the land because they draw upon and depend for maintenance on the land.

Though the land in legal ownership may be that of the head or of the father or of the manager of such a family, for the purposes of section 6 it is clearly permissible course to take into account the members so constituting the family and depending on agriculture and compute the ceiling areas. Such a holding so found to maintain a group of persons has to be regarded as the holding of the family, though all of them may not have the totality of the rights in ownership in law.

30. This position available under the main part of section 6 is further clarified even by the proviso, in that if any member of such a family holds land separately, he is excluded from being considered to be a member of that family. Thus proviso throws light on the operative part and indicates that under the main part "family" would include the group of persons depending upon land for their maintenance, though the rights in ownership of such land may well be with one of them.

31. Therefore wherever issue u/s 6 arises first it must be found whether there is a family as such which holds land and whether such family is under an individual who has filed return being the owner of the property. Then regard being had to the method provided by section 6, the members of the family as defined by the Act in section 2 (20) are to be counted and out of such members, those are to be excluded who hold any land separately apart from the family. Merely for an apprehension that is put forth that such persons would set up stones and defences to defeat the purpose of the statute, the obvious intentions to allow such a family the land to the extent of two ceiling areas cannot be permitted to be frustrated. I have, therefore, come to the conclusion that the term "family" may take in an individual living with, his family and for the purpose of section 6 such family may answer the requirements provided it is shown that the family is dependent for its maintenance upon the holding even though owned by an individual.

32. With this so found, the question is how the rights of Baburao were liable to be determined. The petitioner No. 1 Baburao is 87 years of age and it is clear that there is unequivocal statement made by both Baburao and Ramrao that they are residing and cultivating together. There are other members in the family of Baburao. Ramrao has two fields, i.e. survey No. 14/1 and survey No. 12/1 about the ownership of which both have taken oath to say that it is not his exclusive property. However, as appears from the record no effort has been made to establish the ownership of these fields nor any evidence has been led. Normally upon the construction placed upon section 6 and upon the evidence led by the two witnesses, i.e. Baburao and Ramrao, it would be that Baburao is the head of the family and his family consists of Ramrao and other members being wife and children of the latter. The findings are not very clear because the matter proceeded on the assumption that section 6 would not be attracted at all once it was established that there was severance of Hindu joint family.

32. The evidence which I have summed up in the earlier passages of this

judgment is neither full nor complete. It is therefore necessary that this case be remanded back to the Sub-Divisional Officer, Murtizapur, having powers of Collector under the Act, to hold enquiry afresh, particularly because he had received a report that Baburao was not living with Ramrao but was living with Dashrath. He will afford all opportunity to both Baburao as well as Ramrao as well as the State to lead evidence on the points as to whether Baburao and Ramrao with his family are residing together and as such form a family for the purpose of section 6 of the Act and further whether Ramrao owns any land of his own like the one which is mentioned in revenue record. Upon decision of these points, the Sub-Divisional Officer will proceed to find out the members of the family of Baburao and then decide the ceiling area which Baburao can retain for the family and also whether he will be entitled to retain double the ceiling area, if the conditions of section 6 as discussed above are satisfied.

33. In the result, the present petition is allowed. The orders passed by the Maharashtra Revenue Tribunal and the Sub-Divisional Officer are hereby set aside and the latter is directed to enquire afresh into the matter keeping in view the observations made hereinabove. Under the circumstances, however, there will be no order as to costs.