
(1983) 04 BOM CK 0018

In the Bombay High Court

Case No : Spl. Civil Application No. 1930 of 1977

Bhagwandas and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-04-1983

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 2(5), 3(3), 4, 5

Citation : AIR 1983 Bom 471 : (1983) MhLj 825

Hon'ble Judges : Mohta, J

Bench : Single Bench

Advocate : S.A. Jaiswal, for the Appellant; D.D. Sinha, Asstt. Govt. Pleader, for the Respondent

Judgement

1. Heart of the question is whether in determining the extent of the total holdings under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 ("the Act" for short), the consideration of the requirement of making provision for the expenses for marriage and/or maintenance of unmarried major daughter in a general partition in a Hindu family has any place.

2. Petitioner 1 Bhagwandas Heda's Joint family consists of his wife Smt. Kamlabai (petitioner 2). three minor sons: Amritlal (petitioner 3), Tarachand (petitioner 4) and HemantKumar, two minor unmarried daughter : Premalatha and Hemalata and a major unmarried daughter Kiran. Bhagwandas as the held of the family filed a return of total holdings as required u/s 12 of the Act. On making enquiry, the SLDT found 34.24 acres as surplus. In appeal the MRT maintained this order. Being aggrieved, the present petition under Article 226 of the constitution has been filed.

3. Two points were originally raised in this petition. One relates to the extent of Pot-kharab land. According to the petitioner. 9.30 acres (and not merely 4019 acres as held by the Authorities) is the extent of Pot-kharab land. The areas covered by drainage work. embankment, etc. which are maintained for the

purposes of agriculture were not excluded by the Authorities as they fall within the definition of the term "land" u/s 2 (16) of the Act. It seems to me that the finding recorded is correct. My attention was invited to the statement of patwari examined on behalf of the State to the effect that one Nala exists in field survey 2/1 of mouza Esapur. It is contended that at least the area of the Nala should have been excluded. There is no material on record about the nature and extent of the Nala. Even in the writ petition these details are missing. Hence this contention also cannot be accepted. The other point relates to the difference of two acres out of this very field initially measuring 15.21 acres. Area of 10 acres out of this was sold in the year 1971 to Abdul Rahim (respondent 3). The authorities did not accept the case that though in the sale deed only 10 acres is mentioned, the purchaser wrongly took possession of 12 acres. No valid reason is demonstrated before me to take a different view of the matter. Crop statement for the year 1970-71 (the correctness of which was not disputed in appeal) and the statement made by petitioner 1 indicates his physical possession over 5.21 acres. It is true that crop-statements for subsequent years and the oral testimony of the purchaser does indicate his physical possession over 12 acres. But that evidence has not been accepted. The finding is thus based on appreciation of evidence.

4. This takes me to the points raised by way of amendment to the petition in February 1983. In the first place it is contended that Kiran, the major unmarried daughter who is not included in the concept of "family unit" u/s 4 of the Act was entitled to share on partition of the ancestral and joint family property and, therefore, land to the extent of her share should be excluded in terms of S. 3 (3) (i) read with Section 4 of the Act. This point has merely to be stated to be rejected. Hindu Law is clear that only certain females such as wife, widow, mother, grandmother only are entitled to share on partition. Unmarried daughter -- major or minor, married or unmarried does not belong to the category of females.

5. It is next contended that as the expenses of marriage and maintenance of an unmarried daughter are liabilities on the family property and, therefore, as Hindu law enjoins for making provision to meet those expenses at the time of general partition of the family property and allotment of respective shares, keeping in view those liabilities, the Authorities under the Ceiling Act are under a mandatory duty to enter verdict on the extent of that liability without which the extent and value of the family property available for partition cannot be determined. I find it impossible to accept this submission for variety of reasons. First of all, the scheme and purpose of the Act. The Act imposes a maximum limit on the holding of agricultural lands to provide for acquisition and distribution of the excess to the needy. Section 4 introduced the concept of "family unit" by which land held by each member of a family unit -- whether jointly or separately -- is deemed to be held by the family unit. Several categories of persons such as major son, father, mother, major unmarried daughter -- though member of the jointly family -- have not been included in the concept. Section 3 (3) (i) provides that "in the

land held by family of which the person is a member, the share of each member of the family shall be determined so that each member who is entitled to a share on partition shall be deemed to be holding separately and to that extent of his share as if the land had been so divided and separately held on the relevant date". What is thus contemplated is not the actual general partition by metes and bounds, but an imaginary or notional partition merely to calculate the total land of the family unit or the person. The combined effect of Sections 3 and 4 is to calculate share of each member separately for the purpose of the Act and to club together lands of those who fall within the concept of "family unit" for determining the total holdings and consequently, the surplus, if any. The Act is again concerned only with the agricultural land and has nothing to do with other family property -- moveable or immovable. Similarly, it is concerned only with the extent of the land and not with its value. It is true that at the time of making actual general partition, several factors including value of the burden of the total liabilities on the family property as a whole have to be taken into consideration before determining the value of the total property available for partition. But introduction of these principles of Hindu law while determining the extent (and not the value) of the land for the purposes of the Act would obviously amount to adopting as impermissible course of re-writing the provisions and doing violence to the entire scheme and object of the legislation. Section 18 gives the nearly exhaustive list of the matters to be considered and that (there ?) is no scope to travel beyond that.

6. That apart, embarking upon enquiry into these matters will create a host of practical problems some of which may be nearly impossible if solution. The list of liabilities on the family property is long and additionally includes family debts, certain personal debts of a father, maintenance of disqualified heirs, funeral expenses of widow, mother etc. By the very nature of things, these expenses differ from man to man, family to family, community to community and the time when they are to be incurred. Time is also uncertain. It is true that law enjoins upon making provision only for legitimate expenses (para 440 of Mulla's Hindu Law, 14th Edition) but what is legitimate is always a question of fact to be determined in each case. Liability is on the entire property-- moveable as well as immovable. For carving out respective shares keeping in view these liabilities not only their value but the value of the entire property has to be determined. Entering into verdict on all these points by an officer of the rank of a Tahsildar in proceeding under the Act will present innumerable difficulties and will inevitably hamper the determination of the total holding and consequently cause delay. The ramifications of all these factors can properly be settled only by full disclosures and leading oral evidence and its testing by cross-examination. Exaggerated claims will be made most of times collusively to avoid loss of land by the rich landholders. That may not be the end of the problem. It is not as if that these liabilities are on particular property. The burden is on the entire hotchpotch. There will be a tendency to suppress the moveable property and to keep burden only on land. If by consent this is done, it will be nearly impossible for the

Authorities to negative that common choice. It will thus be very easy to get the landed property out of clutched of the Act.

7. In the scheme of the Act the value of the land has no place at all. The Act makes no difference between good and bad land for determination of surplus. The only distinction that the Act has made between land and land is with relation to the class of land as defined u/s 2 (5) of the Act. This classification between dry crop land and certain types of irrigated lands is only for the purpose of determining the ceiling area u/s 5. Thus, acceptance of this point would mean introducing the consideration of value of land by judicial interpretation against legislative policy.

8. My attention was invited to the Single Bench decision of this Court in the case of *Manaklal v. State of Maharashtra* 1982 Mah LJ 654 in support of the points introduced by amendment. Even this decision does not take a view that unmarried daughters are entitled to a share on partition. Indeed, it specifically negatives the same. However, the second proposition does not support in it. It is observed:

"At the time of carving out a national clause (v. o.) in terms of Section 3 (3) (1) of Ceiling Authority has to do is nationally ascertain the share of the coparceners as the Civil Court would have done at the time of passing of a partition degree. Naturally, therefore, the Ceiling Authority has to first ascertain what is the property available for partition and while ascertaining this basic fact, the provision for the marriage expenses of unmarried major daughters, who are not members of the family until as to be made. It is true as was argued by Shri. Naik, the learned A. G. P. appearing for the State, that the unmarried major daughters are nor entitled to a share on partition. However, for the purpose of Section 3 (3) (1) of the Ceiling Act, what is to be ascertained is not the entitlement of the daughters but entitlement of members of the family until after ascertaining the property available for partition according to law. The question as to how much property should be set apart for the propose of meeting the expenses of the marriage is a question of fact which can be decided by the Ceiling Authority on the basis of a material placed on record before it. It appears that this aspect was not present to the mind of the Ceiling Authority in the present case."

The learned Judge, on this view of the matter, allowed the petition and remanded the matter to the SLDT or the equivalent authority to ascertain the extent of property required to be set apart to meet the marriage and maintenance expenses and then to determine the property available for partition in the same manner as Civil Court would have done at the time of passing of a partition decree. With respect, it is not possible for me to persuade myself to endorse this line of approach, which I consider wholly foreign to the issues under the Act. When this decision was brought to my notice, my first reaction was to refer the point to a larger Bench as prayed for by the learned Bench was prayed for by the learned counsel for the petitioner. But, the learned Assistance Government

Pleader, appearing for the State seriously opposed this prayer on the ground that other Single Bench despite disagreeing with the view, and refused the prayer for reference. He submitted that consistency demands adoption of the same course specially when no reasons to make a departure are demonstrated. The copy of the judgment was, however, not available at the time of hearing. The matter was, therefore, adjourned at his request to 3-3-1983 to enable him to produce the copy of said judgment . today the said judgment Nagendra Verma v. State of Maharastra Writ Petn No. 661 of 1977 decided on 30th September, 1982 is made available to me. It seems to me that the learned A. G.P. is right, in is submission that under the circumstances reference will not be necessary.

9. In conclusion, the petition is dismissed and right stands discharged. No order as to costs.

10. Petition dismissed.