
(2006) 07 BOM CK 0062
In the Bombay High Court
Case No : L.P.A. No. 96 of 1994

Bhagyashreeraje Dhanwatey and Another APPELLANT
Vs
State of Maharashtra and Another RESPONDENT

Date of Decision : 19-07-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 12, 14, 18, 21, 21(16)

Citation : (2007) 1 BomCR 219 : (2006) 44 MhLj 350

Hon'ble Judges : S.R. Dongaonkar, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : S.V. Manohar and A.S. Manohar, for the Appellant; B.H. Dangre, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

R.M.S. Khandeparkar, J.—Heard the learned Counsel for the parties.

2. The appellants challenge the judgment dated 3-3-1994 passed by the learned Single Judge in Writ Petition No. 1828/93. The only ground on which the impugned judgment is sought to be challenged is that the learned Single Judge as well as authorities below failed to take note of the fact of existence of natural tank in the land of the family unit of the appellants while ascertaining the total area available as the surplus land for the purpose of declaration u/s 21 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 and considered the land occupied by natural tank as forming part of the land available at the disposal of the appellants.

3. Few facts relevant for the decision are that the appellants herein filed their return in terms of Section 12 of the said Act on 5-12-1975. The S.L.D.T., Bhandara passed its order u/s 21 on 5-4-1976 declaring 92.91 acres of land as the surplus land. Being aggrieved, the appellants filed appeal before the Maharashtra Revenue Tribunal and by order dated 23-12-1976 while setting

aside the order of S.L.D.T. the Tribunal remanded the matter for fresh consideration. The S.L.D.T. on fresh consideration of the matter passed its order u/s 21 on 27-10-1978 declaring 87.75 acres of land as the surplus land. Again being aggrieved by the said order, the matter was carried in appeal before M.R.T. and by its order dated 17-7-1981 again the order of S.L.D.T. was set aside and the matter was remanded for fresh consideration. The S.D.O. after hearing the parties by its order dated 27-7-1992 confirmed the order passed on 27-10-1978 by S.L.D.T. The matter was again carried in appeal before the M.R.T. and while setting aside the order passed by S.D.O., the appellate authority by its order dated 23-4-1993 declared 34.47 acres to be the surplus land with the family unit of the appellant. Same was challenged by way of Writ Petition No. 1828/93 which came to be dismissed by the impugned order dated 3-3-1994. Hence, the present L.P.A.

4. Referring to the definition of the term "land" in Section 2(16) and in particular clause (d) thereof, the learned Advocate for the appellants submitted that the term reservoir used therein which also includes tanks would apply only to the artificial reservoirs or tanks constructed by the human labour and not to the natural reservoirs or tanks. The land occupied by such natural reservoirs, therefore, cannot be construed as forming part of the land which can be considered in the enquiry u/s 14 of the said Act and for the same reason it cannot form part of the total land at disposal of the family unit of the person who submits the return u/s 12 of the said Act. Reliance is sought to be placed on the unreported decision in the matter of State of Maharashtra, through Collector, Bhandara v. Vithoba s/o Sitaram Dubey, resident of Gunthara, Tq. and District Bhandara in Special Civil Application No. 381/69 delivered on 1-2-1971.

5. The learned A.G.P., on the other hand, submitted that the point which is sought to be canvassed was never raised before the authorities below and, therefore, the appellants are not entitled to raise the said issue in this appeal. She also submitted that the term "reservoir" cannot be restricted to the natural tanks in view of the decision of the Apex Court interpreting the word "land" in M/s. R.S. Rekchand Mohota Spinning and Weaving Mills Ltd. Vs. State of Maharashtra, . Attention was also drawn to the decision of this Court in Dr. Jayaprakash Kanhaiyalal Bhiwapurkar and Anr. v. State of Maharashtra reported in 1995 (2) Mah. L.R. 294

6. As regards the contention on behalf of the respondents that the point which is sought to be raised was never raised and that, therefore, the appellants are not entitled to raise the said issue in this appeal, it is to be noted that the point which is sought to be canvassed is purely a question of law based on undisputed facts on record. Being so, merely because the appellants had not raised the said issue before the concerned authority, the appellants would not be disentitled to raise the said issue in this appeal.

7. Besides, it is for the competent authority, namely, the Collector in terms of Section 18 of the said Act who has to take into consideration various matters

while ascertaining the total holding of land of every family unit and before making a declaration in terms of Section 21 regarding the surplus land available with a particular family unit. When the obligation is cast upon the Collector to ascertain the total area of land and the term land having been defined in the said Act, it is evident that primarily it is the responsibility of the Collector to make a proper enquiry and ascertain the exact area available with every family unit for the purpose of declaration as the surplus land. The main object of the said Act is to ascertain the total holding of agricultural land in the State and to distribute the land to the landless people whenever a land in excess of ceiling area with a particular family unit is available. The object of the Act being to make the agricultural land available to the landless people as well as put the agricultural land to the best and maximum possible use, it is the duty of the Collector while ascertaining the total holding of the land to find out the exact area available with every family unit in the State. This obligation will not only cast a duty upon the Collector to ensure that no landholder is allowed to suppress the facts regarding the total holding of land with such landholder, at the same time it has to be borne in mind that no prejudice is caused to any landholder while assessing the total holding of land with such landholder. Making the land available to the landless people does not mean taking away the land from person in whose possession the said land is and giving it to other. The very object of the Act being to put the agricultural land to the best and maximum use in the State, a proper balance should be struck while exercising the powers under the said Act to ascertain the total holding of every family unit and find out the surplus land available with such family unit. Bearing this in mind, merely because the appellants have failed to raise the said issue before the Competent Authority, that will not debar the appellants from bringing the said fact to the notice of this Court and this Court having noticed the said fact and the lapse on the part of the Collector in that regard, nothing will forbid this Court from exercising the powers under Order 41 Rule 33 CPC in that regard while dealing with the appeal. The preliminary objection which is sought to be raised in that regard is, therefore, to be rejected.

8. That apart, the appeal was admitted after hearing the respondents. At the time of admission, the respondents have not sought to reserve their right to raise the said objection at the time of final hearing. Considering the fact that appeal was admitted in the year 1993, it will be highly improper to non-suit the appellants on such preliminary objection raised in 2006.

9. Section 2(16) defines the term "land" and clause (d) thereof refers to various things which are included in the said definition of the term land and they include canals, channels, wells, pipes or reservoirs or other works constructed or maintained on such land for supply or storage of water for the purpose of agriculture. Sections 5 and 6 of the said Act deal with the subject of ceiling area prescribed under the said Act. Section 12 requires every person or family unit to submit a declaration regarding the total holding of land with such family unit. Sections 14 to 18 of the said Act deal with the enquiry to be conducted pursuant

to submission of such form or on account of failure on the part of the landholder to submit such return. Those Sections also enumerate various things and matters which are required to be considered as well as which are to be excluded from consideration while ascertaining the total holding of the land to identify the surplus land available with every family unit in the State. Pursuant to such enquiry, Section 21 requires a declaration to be made regarding the total area of land and the surplus area of the land available with every family unit.

10. Section 21 clearly specifies that the Collector after considering the matters referred to in Section 18 and the questions if any under Sub-section (3) of Section 20 shall make a declaration stating therein his decision on the total area of land as well as total area which is in excess of the ceiling area with every family unit. As already stated above, in terms of Section 2(16) land includes reservoir or other works constructed or maintained on such land. The contention on behalf of the appellant is that the expression reservoir or other works constructed or maintained on such land would relate to the reservoirs or tanks or similar such works which are constructed by human labour and they will not include the natural reservoir or the tanks which are naturally formed and in existence. The contention is sought to be seriously disputed on behalf of the respondents.

11. The issue which is sought to be raised is no more *res integra* as the learned Single Judge of this Court in Vithoba Sitaram Dubey's case (*supra*) while dealing with the similar issue has held thus:

The definition is an inclusive one and the word "includes" is always used in order to enlarge the meaning of the word and when it is so used the word defined must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that it shall include. As a result of this inclusive definition of "land" canals, channels, wells, pipes or reservoirs or other works constructed or maintained on such land for the supply of storage of water for the purpose of agriculture have been included in "land". The question is whether the word "reservoir" must be read as referring only to an artificial reservoir which is the product of efforts or labour of man or whether it has to be read in the general sense taking within it not only artificial reservoirs but also natural reservoirs, such as a lake or a tank. In clause (d) of Section 2(16) the legislature has juxtaposed the words "or other works" with the words canals, channels, wells, pipes or reservoirs. In Stroud's Judicial dictionary the meaning of "work" is given as follows:

The word "work" may be used in two senses, it may mean either the labour which a man bestows upon a thing, or the thing upon which the labour is bestowed.

In Shorter Oxford English dictionary the meaning of word "work" is given as "to construct, build (a house, wall, etc.)". The word "work" thus may mean either

the labour which a man bestows upon a thing or the thing upon which the labour is bestowed. The word, therefore, has obviously reference to some construction. The use of the words "or other works" read in the context of the words earlier used were clearly intended to refer to works upon which labour has been bestowed. Canals, channels, wells and pipes are not natural phenomena and have to be put up with the labour of man and the word "reservoir" must also take its colour from the words earlier used. It is obvious, therefore, that the reference to the word "reservoir" in Clause (d) of Section 2(16) is intended only to refer to the reservoirs which are the produce of human labour as against reservoirs which have a natural existence. In the context in which the word has been used and also in the light of the words following the word "reservoirs", it is not possible to accept the contention of the learned Additional Government Pleader that the word "reservoirs" must be read in the wider sense as taking within its sweep also natural reservoirs.

Indeed, the above decision is a complete answer to the contentions sought to be raised on behalf of the respondent. We are in respectful agreement with the ruling in the above decision.

12. Similar view has been taken by another learned Single Judge of this Court in Dr. Jayaprakash Kanhaiyalal V. Bhiwapurkar and Anr. v. state of Maharashtra 1995(2) Mali. LR. 294

14. The question is. whether Survey No. 60 which has been found to be artificial tank would be covered under clause (d) of Section 2(16) of the Ceiling Act. The "land" under clause (d) of Section 2(16) of the Ceiling Act, includes canals, channels, wells, pipes or reservoirs or other works constructed or maintained on such land for the supply or storage of water for the purpose of agriculture. Further, as per clause (e) of Section 2(16) of the Ceiling Act, if there are drainage works, embankments, etc. appurtenant to such land, or constructed or maintained thereon for the purpose of agriculture, it would be the "land" within the meaning of Section 2(16) of the Ceiling Act. If by human labour, human efforts, human acts or activity or human work, the reservoir or tank or bund or any work similar to that is constructed or maintained on the land for the purposes of supply or storage of water for irrigation, it continues to be the "land" within the meaning of Section 2(16) of the Ceiling Act and therefore, is a land available for computation of holding under the Ceiling Act. The words "constructed" or "maintained" occurring in clause (d) of Section 2(16) of the Ceiling Act includes within itself any construction work or manual labour in construction of canals, channels, wells, pipes or reservoirs or such other works. Construction of steps to create embankment or to stop the flow of water, would definitely amount to artificial construction or manual construction of the reservoir or other works in contra-distinction to the natural reservoir or natural tank. But for the natural canal, natural channels, natural well, or natural reservoir or for the natural tank, all such canals, channels, wells, pipes or reservoirs or tanks works which are not natural but due to the works constructed or maintained by

the act of human being for supply of storage of water for the purpose of agriculture, would be a "land" within the meaning of Section 2(16) of the Ceiling Act and, therefore, available for computation of land holding and would not be exempted under the Oiling Act.

The law on the point, therefore, is very clear. The contention of the respondents that the term "land" in the said Act would include even the natural tanks is totally devoid of substance. It is only the artificial tanks constructed by the landholder which are to be considered as forming part of the land in possession or occupation of the landholder or the family unit. The natural reservoir or natural tank cannot be construed as forming part of the total land holding of a family unit.

13. The decision of the Apex Court in R.S. Rekhchand Mohota's case is on a totally different issue. It was in relation to the term "land" as found under entry No. 45 of List 2 of Schedule VII of the Constitution of India. It is relating to the subjects which are to be dealt with by the State Government for the purpose of exercising its legislative powers and it has nothing to do with the "land" as is understood under the said Act. Every word has to be understood in the context in which it is used in a statute. The term land under Entry No. 45 of List 2 of Schedule VII of the Constitution and consideration thereof by the Apex Court in the said decision cannot be straightaway applied to the term "land" in Section 2(16) of the said Act. The term "land" under the said Act has to be understood in the context in which it is defined u/s 2(16) of the said Act.

14. It is then sought to be contended on behalf of the respondents that it is not sufficient to contend that the reservoir or tank is an artificially constructed reservoir or tank. The water thereof must be used for the agricultural purposes by the concerned party. Otherwise, it would form a part of the land in possession of the family unit and will have to be considered for the purpose of the ceiling limit. Undisputedly, in the case in hand, the authorities have not ascertained whether the water from the tank in question has been actually utilised by the appellant for the purpose of agriculture or not. It is too premature for this Court to deal with the said issue which is sought to be raised on behalf of the respondents. In fact, the said aspect will have to be dealt with by the Competent Authority while ascertaining the exact area of the land occupied by such natural tank. Even assuming that where water of the natural tank is not used by the family unit, it will be necessary for the authorities to ascertain whether such natural tank is in exclusive possession of the landholder or the family unit or it is meant for the public use. In case such tanks are meant for the public use, they can hardly be construed as forming part of the landholding of a family unit. Be that as it may, all these and other issues connected therewith are to be decided by the concerned authority after taking into consideration the facts and circumstances of each case.

15. In the result, therefore, the appeal will have to be allowed while setting aside the orders passed by the learned Single Judge as well as by authorities below in

relation to the tank in question and matter will have to be remanded to S.D.O., Nagpur to ascertain the exact area of the land occupied by the tank and deal with the related issues required to be decided along with the decision regarding the area occupied by such tank.

16. In the result, the appeal is allowed. While setting aside the impugned orders, the matter is accordingly remanded to the S.D.O., Nagpur to do the needful as stated above. No order as to the costs.