
(1981) 07 BOM CK 0027
In the Bombay High Court
Case No : Spl. C.A. No. 2719 of 1976

Chintaman Gangaram Dhage	Vs	APPELLANT
State of Maharashtra and another		RESPONDENT

Date of Decision : 24-07-1981

Acts Referred:

Citation : (1983) MhLj 289

Hon'ble Judges : R.D. Tulpule, J

Bench : Single Bench

Advocate : S.A. Jaiswal, for the Appellant; S.J. Jichkar, Assistant Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

R.D. Tulpule, J.—In this petition challenging the order as to the area which is surplus and the area which the petitioner is entitled to retain as the ceiling area of the family unit which he represents, is the only point in dispute, but though several challenges were made initially and an additional challenge was sought to be also added to it by way of amendment application having heard Mr. Jaiswal the only point which remains and which has survived and fit for consideration is in connection with exclusion on account of the members of the family unit, and the addition to the ceiling area on that count.

2. There is no dispute that the petitioner held 121.22 acres of land. That he had a major son. Calculating notionally the major son's share which came to 24.24 acres, the petitioner was found to be in possession of 96.98 acres of land. From out of this the Surplus Land Determination Tribunal deducted 0.58 acres of land as being pot-kharab and therefore no land. That left with the petitioner 96.40 acres of land.

3. Mr. Jaiswal contended that the Surplus Land Determination Tribunal and the Maharashtra Revenue Tribunal in appeal were in error in counting only 7 members in the family and adding thereto only two additional shares being 10.80

per additional share. There is also no dispute that the petitioner has two wives, three daughters and three sons, one of whom is major. In other words, the total number of members in the family excluding the major son come to 8. The surplus Land Determination Tribunal observed "the total number of persons in the family unit is to be taken as 7 only inasmuch as two wives have only one share." Mr. Jaiswal challenged this conclusion and contention.

4. Now if we refer to sections 4 and 6 which are the relevant sections for this purpose, it will be seen that u/s 6 a family unit consisting of members more than 5 is entitled to hold an additional land to the extent of $\frac{1}{5}$ over and above 5 members in the family. In other words, over and above 5 members in a family unit each member is entitled to hold an additional $\frac{1}{5}$ th of the ceiling area. It is on this basis that Mr. Jaiswal says that since the petitioner's family excluding the major son is of 8 members, he is entitled to an addition of $\frac{3}{5}$ of the ceiling area. If that is done Mr. Jaiswal says that he does not press for any other points and would be willing to surrender the surplus area excluding 10.80 to which he would be entitled.

5. Turning now to section 4 which defines a "family unit", the "family unit" has been defined to mean: (a) a person and his spouse (or more than one spouse) and their minor sons and 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.

6. In the present case we are concerned with clause (a) of Sub-section (1) of section 4. The plain reading of that section means that a person and his spouse including the spouses, or if there are more than one, their minor sons and unmarried daughters have to be taken into account as a family unit. Merely because under the Hindu law if there is a partition between the sons, the mother gets one share together, even if there are more than one wives it does not mean that they cease to be members. The physical presence of a member in the family is distinct from the share to which he or she may be entitled. For instance an unmarried daughter in a Hindu joint family is not entitled to any share at all. But that does not mean that merely because an unmarried daughter is not entitled to any share, therefore, for the purpose of counting the number of persons in the family, the daughters are to be excluded. This is exactly what the Surplus Land Determination Tribunal has done in this case and has virtually eliminated one of the spouses though she was physically alive. The object of granting an additional holding or area to a person or family unit in section 6 of the Ceiling on Holdings Act, and the broad definition of the "family unit" in section 4 seems to be to provide for that person and not for any other purpose and not count merely the shares. Had the intention of the Legislature been that if there are more than one spouses they should be governed for the purpose of the family unit as one, then the clauses of sub-section (1) of section 4 would have been differently worded. On the contrary in the bracket it is stated "or more than one spouse", meaning

clearly, therefore that for the purposes of computing the members of a family unit, if there are more than one spouse, they are to be counted in such family as independent members and not to be counted together. The Surplus Land Determination Tribunal, therefore, clearly fell in an error in counting the two spouses as one for the purposes of determination of the additional share, or fraction of the same to which the petitioner was eligible u/s 6. I may say the learned Assistant Government Pleader conceded to this position.

6. The petition succeeds and is allowed to that extent. Rule accordingly. The petitioner, therefore, would be entitled to an exclusion of additional 10.80 acres of land from the surplus area held and will hand over after delimitation the remaining area. No order as to costs.