

(1984) 07 GUJ CK 0012
In the Gujarat High Court

Chudasama Shambhaji Kalubha

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 10-07-1984

Acts Referred:

Bombay General Clauses Act, 1904 — Section 3(35)

Gujarat Agricultural Lands Ceiling Act, 1960 — Section 2(16), 2(2)(iv) , 6(3B), 6(3B)

Citation : (1984) GLH 1001 : (1985) 2 GLR 824

Hon'ble Judges : S.A. Shah, J

Bench : Single Bench

Judgement

S.A. Shah, J.—The Advocates appearing on behalf of the petitioners in the respective petitions have submitted that in this group of petitions the main and common question that arises is with respect to interpretation of Section 6(3-B) of the Gujarat Lands Ceiling Act, 1960 (Gujarat Act No. XXVII of 1961) (hereinafter referred to as "the Ceiling Act") and, therefore, they may be disposed of by a common judgment without entering into facts of each petition, because if they succeed in their interpretation, it will be necessary to remand the matters to the authority below for deciding the ceiling area in each individual case. I have, therefore, heard all these petitions together and they are disposed of by this common judgment.

2. For the purpose of appreciating the contentions of the parties regarding the interpretation of Section 6(3-B) of the Act, I would refer to the facts of Special Civil Application No. 1000 of 1978. The petitioner of the said petition was the owner of lands admeasuring 57 acres 9 gunthas in village Pipli, Taluka Dhandhuka, District Ahmedabad. He was also the owner of lands admeasuring 12 acres 27 gunthas in village Barhanpur, Taluka Dhandhuka, Dist. Ahmedabad. Minor son of the petitioner was owner of 8 acres of land in village Pipli.

3. The Ceiling Act came into force in the State of Gujarat on 1-9-1961, and that will be the appointed day within the meaning of Section 2(2)(iv) of the Ceiling Act. The Ceiling Act was amended by The Gujarat Agricultural Lands Ceiling

(Amendment) Act. 1972 (Gujarat Act No. 2 of 1974) (hereinafter referred to as "the Ceiling Amendment Act")- The Ceiling Amendment Act was brought into force by a Notification published in the Official Gazette on 1-4-1976. By this Ceiling Amendment Act substantial changes have been made in the original Ceiling Act, and it has been applied to all pending proceedings by Section 31 thereof. I shall discuss the scheme of the Ceiling Amendment Act at an appropriate stage.

4. The case of the petitioner of Special Civil Application No. 1000 of 1978 being pending before the Mamlatdar and Agricultural Lands Tribunal, Dhandhuka, order therein was passed on 23-3-1977 (Annexure "A") by the Mamlatdar holding that the petitioner was holding 77 acres 36 gunthas of lands in village Pipli, including the land of his son at Pipli, and since the petitioner was entitled to hold and possess only 54 acres of lands, the remaining 23 acres 36 gunthas of lands were found to be surplus, as shown in the said order. The Mamlatdar has added 8 acres of land of the petitioner's son in order to decide the total holdings of the petitioner.

5. The contention of the said petitioner is that in his family, besides himself, he has his wife, one minor son and five minor daughters, i.e. in all eight persons, and therefore, under the provisions of Section 6(3-B) of the Ceiling Act he was entitled for the extra land of $\frac{3}{5}$ th of the ceiling, i.e. $\frac{1}{5}$ th for each of the members of his family in excess of five. The Mamlatdar rejected this contention of the petitioner on the ground that the petitioner was not entitled to the benefit of the provisions of Section 6(3-B) of the Ceiling Act, without giving any reasons.

6. Being aggrieved by the said decision of the Mamlatdar, the petitioner filed an appeal, being Ceiling Appeal No. 75 of 1977, before the Deputy Collector, Dholka, who by his order dated 18-5-1977 (Annexure "B") was pleased to reject the claim of the petitioner for excess land on the ground that the petitioner has not proved that in the family unit there were qualified members exceeding five and therefore, he was not entitled to the benefit of enlargement of ceiling area.

7. Being aggrieved by the said order of the Deputy Collector, the petitioner filed a revision application before the Gujarat Revenue Tribunal (hereinafter referred to as "the Tribunal")- Before the Tribunal the petitioner raised a contention that his family consisted of 8 members and, therefore, he was entitled to retain $\frac{3}{5}$ th of the ceiling unit in addition to the normal ceiling unit of 54 acres. The Tribunal has dealt with this point in para 4 of its judgment, and on interpretation of Section 6(3-B) of the Ceiling Act held that the "members of such a family besides a person must belong to all or any of the categories mentioned therein, and such a family whose members are in excess of five will be entitled to $\frac{1}{5}$ th of the ceiling area each. In short, the Tribunal was of the opinion that in order to get the benefit of the provisions of Section 6(3-B) of the Ceiling Act, the members of the family besides a person must be either (i) minor son, (ii) widow of a predeceased son, or (iii) minor son or unmarried daughter of a predeceased son, where his or her mother is dead, and only such family is entitled to hold the land in excess

of the ceiling area to the extent of one fifth of the ceiling area for each member in excess of five. According to the Tribunal, except the members coming under any of the aforesaid three categories, no other members of the family can be considered to be the members of the family for the purpose of enlargement of ceiling area. In view of this interpretation of Section 6(3-B) of the Ceiling Act, the Tribunal dismissed the revision petition of the petitioner.

8. In all the cases, which are the subject-matter of this group of petitions, the Tribunals have given such a narrow meaning to the provisions of Section 6(3-B) of the Ceiling Act and held that for the application of the said provisions, a family or a joint family must consist members belonging to the aforesaid three categories in excess of five, and only such family which consists such excess members will be entitled for enlargement of ceiling area. In other words, according to the Tribunal, a family must be such in which there should be more than five numbers belonging to all or any of the aforesaid three categories, and even if there is any excess over those five members, such excess members will get 1/5th of the ceiling area. This would mean that if in a family there are 5 minor sons, or 5 minor sons and a widow of a predeceased son, or a minor son, widow of a pre-deceased son, and minor or unmarried daughter of a pre-deceased son, whose father and mother have expired, will get a unit. If there are five such members and a person then they will get 1/ 5th of land in excess of the ceiling unit. If there are seven such members and a person, then they will get 3/4th of the land in addition to the ceiling unit. In short, such a type of family, as contemplated by the Tribunals, will be hardly available, with the result that the benefit of the provisions of Section 6(3-B) of the Ceiling Act would not be available to a large number of families though they may consist more than five members, and in some cases consist of members whose lands have also been clubbed together as required u/s 6(2) of the Ceiling Act.

9. Before I deal with Section 6(3-B) of the Ceiling Act, I shall consider the relevant provisions of the Ceiling Act prior to its amendment so as to understand its scheme and the intention of the Legislature as revealed therefrom. Section 2(6) of the Ceiling Act defines "class of land" as under:

2(6) "Class of land" means any of the following classes of land, that is to say:

- (i) perennially irrigated land;
- (ii) seasonally irrigated land;
- (iii) dry crop land;
- (iv) rice land;....

The remaining part of this definition clause is not material for our purposes. Section 2(5) defines "ceiling area" as under:

2(5) "Ceiling area" means the extent of land determined u/s 5 to be the ceiling area.

Section 2(15) defines the expression "to hold land" as under:

2(15) "To hold land" with its grammatical variations and cognate expressions means to be lawfully in actual possession of land as owner or tenant, as the case may be.

Section 2(16) defines "joint family" as under:

2(16) "joint family" means an undivided Hindu family and in the case of other persons a group or unit the members of which by custom or usage are joint in estate or residence.

Section 2(21) defines "person" as under:

2(21) "person" includes a joint family.

Section 3 deals with lands exempted from the provisions of the Ceiling Act. Section 4 reads:

4. There shall be classes of local areas in the State as specified in Schedule I and the local areas falling in such class shall be as respectively specified in Schedule II.

The local areas specified in Schedule "I" to the Ceiling Act are from Classes "A" to "I".

10. Section 5 of the Ceiling Act deals with "ceiling areas". Under the scheme of this Section 5, ceiling is dependant upon the class of land in relation to each class of local area as specified in Schedule I. As slated above, there are four classes of land, and 9 classes of local area as mentioned in Schedule "I" to the Ceiling Act, and in respect of each class of local area, different ceiling has been prescribed in respect of class of land, e.g. in respect of Class "A" of local area, the ceiling area in acres provided for perennially irrigated land is 19, whereas for dry crop land the ceiling area is 56 acres, and in Class "I" of local area, the ceiling area for perennially irrigated land is 44 acres, while for dry crop land it is 132 acres. In other words, the minimum ceiling area which one gets will be 19 acres of perennially irrigated land and 56 acres of Dry Crop land under Class "A" of the local area, and the maximum of 44 acres of perennially irrigated land and 132 acres of dry crop land under Class "I" of Local area. The ceiling area, therefore, ranges from 19 acres to 132 acres depending upon the class on local area in relation to class of land.

11. Then comes the material Section 6 of the Ceiling Act, which reads:

6.(1) Notwithstanding anything contained in any law for the time being in force or in any agreement, usage or decree or order of a Court, with effect from the appointed day no person shall, subject to the provisions of Sub-sections (2) and (3) be entitled to hold whether as owner or tenant or partly as owner and partly as tenant land in excess of the ceiling area.

(3) Where an individual who holds land, is a member of a family, not being a

joint family, and land is also separately held by such individual's spouse or minor children, then the land held by the individual and the said members of the individual's family shall be grouped together for the purpose of this Act and the provisions of this Act shall apply to the total land so grouped together as if such land had been held by one person.

(3) Where on the appointed day a person holds exempted land alongwith other land then,

(i) if the area of exempted land is equal to or more than the ceiling area he shall not be entitled to hold other land; and

(ii) if the area of exempted land is less than the ceiling area, he shall not be entitled to hold other land in excess of the area by which the exempted land is less than the ceiling area,

(4) Land which under the foregoing provisions of this section a person is not entitled to hold shall be deemed to be surplus land held by such person.

On reading the aforesaid Section 6, it clearly appears that Sub-section (1) of it provides that subject to the provisions of Sub-sections (2) and (3) no person shall be entitled to hold whether as owner or tenant or partly as owner and partly as tenant land in excess of the ceiling area. It is, therefore, evident that ceiling has been fixed in relation to a person. However, Sub-section (2) of Section 6 provides for grouping together the land in respect of a family, not being a joint family. The word "family" has not been defined anywhere in this Ceiling Act, but Sub-section (2) of Section 6 provided that if an individual, who is holding the land, is a member of a family, not being a joint family, and the land is also separately held by such individual's spouse or minor children, such lands shall be grouped together for the purpose of this Act and the provisions of this Act shall apply to the total land so grouped together as if the same have been held by one person.

12. Now, the definition of "person" is an inclusive definition which includes a joint family, and a "joint family" is an artificial family, i.e. an undivided Hindu family or a group or unit the members of which by custom or usage are joint in estate or residence. Though "joint family" has been specifically treated as a person, and is not subject to any grouping of lands of its members, and the lands held by some of the members of the family, viz. spouse or minor children, have not to be clubbed together for the purpose of ceiling.

13. Principles regarding interpretation of the word "includes" in the definition clause are well settled. The word "includes" is ordinarily used to enlarge the meaning of the words and phrases, and in interpreting such definition we have to include a "joint family" as defined in Section 2(16) of the Act. Since the word "person" has not been defined in the Ceiling Act, we have to refer to its definition as given in Section 3(35) of the Bombay General Clauses Act, 1904, according to which "person" shall include any company or association or body of individuals,

whether incorporated or not. Hence, the word "person", apart from the words "joint family" shall have to be construed by reference to the context in which it is used in the respective provisions of the Statute.

14. Sub-section (1) of Section 6 of the Ceiling Act provided that subject to subsections (2) and (3) a person shall not be entitled to hold land in excess of the ceiling area. This Sub-section (2) refers to a family in which an individual who is holding the land is a member. It, therefore, follows that such a family is not only entitled to a ceiling but can also hold land in excess of ceiling.

15. This issue can be seen from another angle also. Sub-section (2) of Section 6 of the Ceiling Act not only refers to a family where an individual holder of land is a member, but it also provides that the land held by such, individual's spouse or minor children shall be clubbed together as if such land is held by one person for the purpose of the Ceiling Act. Now, if lands of some of the members of a family are clubbed together, can such members be excluded from the benefits of other provisions of the Ceiling Act? In my opinion, even Under the scheme of the Ceiling Act (before amendment), a family which is not a joint family has been treated as "a person", if the head of the family, viz. father, is holding the land and in case of such a family if the land is held by a spouse or minor children of a member of such family, the same is subjected to clubbing.

16. Sections 7 and 8 of the Ceiling Act provide restrictions on transfers, and transfers made before the commencement of this Act in certain circumstances will be ignored for the purpose of completing the surplus land. Section 15 of the Ceiling is material for our purposes, and the relevant part of it reads:

15. The extent of surplus land, if any, held by any person on the appointed day shall be computed on the basis of the total land held by such person on that day : Provided that the total land so held shall include:

(a) where such person holds in addition to the land held by him individually as owner or tenant, a share in the land held by a joint family, an area of land equivalent to his share in the land which such joint family is entitled to hold u/s 6.

Though there is no clubbing of lands in respect of members of the joint family, while computing the ceiling in respect of & member in his individual capacity as a person, his share in the joint family land is required to be added. It, therefore, follows that a joint family is a separate entity, a person, for the purpose of Section 6(1) of the Ceiling Act, and a member of a joint family is also "a person" in his individual capacity, and his share in the joint family is to be added in computing the ceiling area.

17. Again, if an individual is a member of a family and not of joint family, the land of his spouse or minor children will be clubbed together as if held by one person. Therefore, there is no escape from not treating a family as "a person", being an association of persons or a group of persons, as defined in the Bombay General Clauses Act, 1904. It may also be noted that the ceiling area for such

person from 19 acres for Class "A" to 132 acres for Class "I", depends upon the class of land and class of local area.

18. Now, the Ceiling Amendment Act has made certain changes, but the changes with which we are concerned in this petition are those made in Section 6 of the Ceiling Act and Schedule "I" thereto. I will first consider Schedule "I". Class of local area has been retained from "A" to "I", but there is a change made in both, the class of land and the ceiling area. Originally there were four classes, but the classification of "Rice land" has been done away with. Perennially irrigated land has been sub-divided into (1) Irrigated by source other than private source, and (ii) Irrigated by private source and the ceiling area of land fixed in respect of these categories is different. Dry Crop land is also re-classified as "Superior dry crop land" and "Dry crop land", having separate ceiling area. In all, the land has been classified into 5 classes. The minimum ceiling area fixed in respect of perennially irrigated land by source other than private source is 10 acres, for "A" class of local area, and for the last Class "I" of local area, viz. Dry crop land, the maximum ceiling area fixed is 54 acres. This would show that from 19 acres of perennially irrigated land in respect of Class "A" of local area, it is reduced to 10 acres, and from maximum 132 acres of Dry Crop land in respect of Class "I" of local area it is reduced to 54 acres, which is less than half.

19. By the Ceiling Amendment Act, in Section 6 new Sub-sections (3-A), (3-B), (3-C) and (3-D) are introduced with consequential changes in other provisions of Section 6 of the Ceiling Act. Sub-section (3-B) has been introduced for the purpose of giving benefits to a family as well as to a joint family. Sub-sections (3-B), (3-C) and (3-D) are material for our purposes, and they are as follows:

(3-B) Where a family or a joint family consist of more than five members comprising a person and other members belonging to all or any of the following categories, namely:- (i) minor son, (ii) widow of pre-deceased son, (iii) minor son or unmarried daughter of a pre-deceased son, where his or her mother is dead, such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five, so however that the total holding of the family does not exceed twice the ceiling area; and in such a case. in relation to the holding of such family, such area shall be deemed to be the ceiling area:

Provided that if any land is held separately also by any member of such family, the land so held separately by such member shall be grouped together with the land of such family for the purpose of determining the total holding of such family:

Provided further that where, in consequence of any member of such family holding any land in any other part of India outside the State, the ceiling area in relation to the family is reduced as provided in Sub-section (3-A), the one-fifth of the ceiling area as aforesaid shall be calculated with reference to the ceiling area as would have been applicable had no such land been held by such members in

any other part of India.

(3-C) Where a family or a joint family irrespective of the number of members includes a major son, then each major son shall be deemed to be a separate person for the purposes of Sub-section (1).

(3-D) For the purpose of Sub-section (2), (3-B) or (3-C), the members comprised in a family or as the case may be, a joint family on the specified date shall alone be taken into consideration and any changes in the character or number of members of the family occurring thereafter shall be ignored.

Before I advert question of interpretation of the aforesaid new provisions, it would be advantageous to refer to the circumstances and reasons which led to the introduction of these provisions in Section 6 of the Ceiling Act.

20. Unfortunately, in none of the petitions the history of those circumstances and reasons has been given. However, Mr. P. V. Hathi, learned Advocate, appearing for the petitioner in Special Civil Application No. 2944 of 1979, has invited my attention to the decision of the Bombay High Court in *Vithalrao Udhaorao Uttarwar and Others Vs. The State of Maharashtra*, . In Maharashtra State the Maharashtra Agricultural Land (Ceiling on Holdings) Act (27 of 1961) (hereinafter referred to as "the Maharashtra Ceiling Act") was brought into force in 1961 (which is similar to our Ceiling Act) wherein the definitions of "person" and "joint family" are the same. However, there is some difference in the wording of Section 6. The Maharashtra Ceiling Act was also amended by the Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and Amendment Act, 1972 (21 of 1972), whereby the ceiling area, as in our Ceiling Act, was reduced with some benefits of enlargement of ceiling to a family unit and joint family under the provisions of Section 6 of that Act. In that case before the Bombay High Court about 2661 petitions were filed challenging the provisions of the Maharashtra Ceiling Act as amended by Act No. 21 of 1975 and another Act No. 47 of 1975. We are not concerned with the constitutional validity or those enactments in the instant case. However, the Division Bench of the Bombay High Court in that case has reproduced the circumstances and history of the legislation in order to explain the provisions of Section 6 of the Maharashtra Ceiling Act in respect of clubbing and giving of benefit for enlargement of the ceiling. In paragraph 141 of the judgment the Division Bench has observed:

The case relating to lowering down of the ceiling area of land is not a haphazard device found by the State Legislature. It has clear national history and is a part of the national policy. Lowering down of ceiling as a measure of national land policy so as to better subserve the agrarian economy has been undertaken by several States and almost simultaneously as is evident from the statement filed before us on behalf of the State showing how revised ceiling laws in different States have been put into effect between the period ranging from 1970 to 1975.

The Division Bench has referred to the report made by the Agrarian Reforms Committee in 1949, and thereafter considered the policy under our First Five

Year Plan. It also referred to the Land Reforms Panel which was formulated in 1955 and which made a report on "Size of Holdings". Amongst other recommendations, it initiated a policy of imposition of ceiling on land for the purposes inter alia of reducing glaring inequalities in ownerships and use of land. The Reforms Panel indicated that a farm which yielded a gross average income of Rs. 1,600/- or a net income including remuneration for family labour of Rs. 1,200/- and was not less than a plough unit or its multiple in area, may be considered as "a family holding". It recommended three family holdings for an average family of five members. It was further advised that family being the real operative unit in land ownership as in land management, the members of the family should be taken into account and husband and wife and dependant sons and daughters and grand children may be reasonably included in the concept of family.

21. Now, the question to be considered is whether the authorities below (including the Tribunal) were right in interpreting the provisions of Section 6(3-B) the Ceiling Act ? This sub-section has been introduced by the Ceiling Amendment Act alongwith Sub-sections (3-C) and (3-D). A plain reading of this Sub-section (3-B) of Section 6 clearly reveals that it provides enlargement of a ceiling, i.e. a family or a joint family consisting of members exceeding five in number is entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five, but the total holding of such family should not exceed twice the ceiling area. It should not be lost sight of the fact that before the introduction of Sub-section (3-B) by the Ceiling Amendment Act, the minimum ceiling area prescribed in the original Ceiling Act was 19 acres of perennially irrigated land under Class "A" of Local area, and maximum was 132 acres of Dry Crop Land under Class "I" of the Local area, and that ceiling has been reduced to 10 acres and 54 acres respectively by the Ceiling Amendment Act, i.e. approximately to half the area. It may also be noted that the provisions of the Ceiling Amendment Act have been applied to pending proceedings. While reducing the area to approximately half, the legislature appears to have conferred some benefits to the families whose members exceed 5 in number, and such excess has to be calculated to the extent of one-fifth of the ceiling area for each member in excess of five. It is thus evident that the intention of the legislature is to see that the reduced ceiling area is sufficient only for a family consisting of 5 members. If the members are more than 5, the legislature has in clear terms provided that each excess member will be entitled to one-fifth of the ceiling area subject to the maximum holding of land which should not exceed twice the ceiling area. To this extent there is no difficulty.

22. The difficulty arises thereafter, and it is in regard to the membership of a family or a joint family. Provisions of Section 6(3-B), if interpreted in the manner in which the Tribunal has interpreted will lead to a totally absurd result, inasmuch as, such a family or a joint family consisting of more than five members, consisting of all three or any of the three categories mentioned in said Sub-section (3-B) of Section 6 will hardly be available. This would mean that though

the ceiling has been reduced to approximately half by the legislature, and the enlargement of a ceiling has been provided to a family consisting of more than 5 members, i.e. to each member in excess of five, such a family will be denied the benefit on account of such a narrow interpretation as made by the Tribunal.

23. In my opinion, provisions of Sub-section (3-B) of Section 6 of the Ceiling Act cannot be interpreted out of the context of other provisions of Section 6 itself. It is, therefore, necessary to first consider the scheme of the entire Section 6 as it stood prior to amendment and after the amendment in 1972.

24. Section 6(1) of the Ceiling Act (after the amendment) clearly provides that a person shall not be entitled to hold land in excess of a ceiling subject to the provisions of Sub-sections (2), (3), (3-A) and (3-B). Therefore, these are the only provisions which might provide the holding of land in excess of the ceiling area. Though the main purpose of Sub-section (2) of Section 6 is to provide grouping or clubbing of the land of a spouse or minor children of an individual, it postulates a family in which an individual holds the land. In such a family the lands held by a spouse and minor unmarried daughters are required to be clubbed, and the holding of such a family has been treated as the land held by one person. It, therefore, means that a family has been considered to be an entity to which the provisions of the Ceiling Act are made applicable. There is also another mode to show that a family has been treated as an entity if not for any other purpose, for the purpose of enlargement of ceiling, and that is as provided in Sub-section (3-B) of Section 6, which I have already reproduced earlier. Sub-section (3-D) also suggests that for the purpose of Sub-section (2), (3-B) or (3-C), the members comprised in a family, or as the case may be, a joint family on the specified date shall alone be taken into consideration, and any changes in the character or number of members of the family occurring thereafter shall be ignored. This sub-section also, therefore, suggests that a family whose land has been clubbed together is an entity for the purpose of Section 6(3-B) for the enlargement of its ceiling.

The provisions of Section 6(3-B) of the Ceiling Act, on analysis read:

- (1) Where a family or a joint family consists of more than five members,
- (2) comprising a person and other members belonging to all or any of the following categories, namely:
 - (i) minor son, (ii) widow of a pre-deceased son,
 - (iii) minor son or unmarried daughter of a pre-deceased son, where his or her mother is dead,

such family shall be entitled to hold land in excess of the ceiling area,

The question, therefore, that arises for consideration as to who are the members of a family or a joint family entitled for the enlargement of the ceiling area?

25. Section 6(3-C) of the Ceiling Act provides that where a family or a joint

family irrespective of the number of members includes a major son, then each major son shall be deemed to be a separate person for the purpose of Sub-section (1). It, therefore, follows that all the major sons, though they are the members of the family, are to be excluded from consideration so far as enlargement of the ceiling area is concerned. While doing this, there may be scope to argue that such member's wife, minor son or unmarried daughters have also to be excluded because they are the members of the family of such person. However, question may arise that if a major son is dead on the specified date, whether his spouse and minor children can be included as the members of the family or joint family to which the deceased person belonged? Section 6(3-B) has expressly provided that in considering the members of a family or a joint family, widow of a pre-deceased son, where his or her mother is dead, will be included.

26. In interpreting Section 6(3-B) for considering the, membership of a family or a joint family, one has to resort to the provisions of Sub-section (2) of Section 6 of the Ceiling Act, because "family" is not defined anywhere. According to the said Sub-section (2), "family" means a family in which there is an individual who holds land, and at least his spouse and minor sons and minor unmarried daughters except major son have to be included, and this is mainly because this Sub-section (2) provides for clubbing of their lands. It would thus appear that when an individual land holder is a member of a family consisting of spouse and minor sons and minor unmarried daughters whose lands have been dubbed, he is necessarily entitled to the benefit of Sub-section (3-B) of Section 6 of the Ceiling Act, and is a person at least for the purpose of Sub-section (3-B), i.e. for the enlargement of the ceiling area.

27. Even if the narrow meaning given by the Tribunal is accepted, it is significant to note that the Tribunal has not explained as to what is the meaning of a "person". A person cannot only be an individual. The only satisfactory way in which this provision can be interpreted is that a family or a joint family must consist of five members comprising a person, and a "person" must necessarily mean a "family" or a "joint family" and include other members belonging to all or any of the three categories specified therein, because the words used are "a person" and not "an individual".

28. As reproduced hereinabove from the decision of the Bombay High Court in case of *Vithalrao Udhaorao (supra)*, the extracts in respect of composition of a family envisaged under the First Five Year Plan clearly show that a ceiling area fixed has been considered to be enough area for a family consisting of five members. The All India Chief Ministers' Conference held on 28th and 29th November 1969 also agreed for change of law reducing the ceiling, and in consequence thereof, even in Maharashtra State also a family consisting of five members is considered to be entitled to a unit of one ceiling area. In this context it would be proper to refer to Section 6 of the Maharashtra Ceiling Act, which reads:

6. Where a family unit consists of members which exceed five in number, the family unit shall be entitled to hold land exceeding the ceiling area to the extent of one-fifth 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 such family unit such area shall be deemed to be the ceiling area.

29. Again, in my opinion, Sub-section (3-B) of Section 6 of the Ceiling Act has a dual purpose, viz. (1) to include specified three categories of persons in the family, and (2) to group or club lands Individually held by any of the members of such family for the purpose of determining the total holding of such family. Hence, by one hand the legislature has given some benefit by enlarging the ceiling area and by another hand has grouped or clubbed the lands of the members of such a family for the purpose of computing the ceiling area.

30. In the aforesaid view of the matter, the true and correct interpretation of Sub-section (3-B) of Section 6 of the Ceiling Act would be that a family or a joint family which consists of more than five members including a person and other members belonging to all or any of the categories specified therein will be entitled for the enlargement of the ceiling as provided under that subsection itself. This view of mine is in consonance with the scheme of the Ceiling Act and will not lead to absurd results, as stated above. It is also in consonance with the intention of the legislature to provide one ceiling unit to a family consisting of five members; especially when the ceiling area has been drastically reduced to approximately half and applied to pending proceedings, persons whose cases have been disposed of, had the benefit of having larger area, while the persons whose cases were pending without any fault on their part are entitled to some reliefs which the legislature has granted and should not be denied to them by construing the provisions of Section 6(3-B) of the Ceiling Act in such a way that they would be deprived of such benefit.

31. Again, the provision of Section 6(3-B) of the Ceiling Act itself provides excess of 1/5th of a ceiling for each additional member read with words "a family or a joint family consists of more than five members". This clearly shows the legislative intent that the ceiling limit fixed in Schedule I to the Ceiling Act is enough for a family of five members only, and for each additional member the requirement will exceed at the same rate of one-fifth of a ceiling, subject, of course, to the maximum of twice the ceiling area.

32. Definition of "joint family" also gives an indication as to who are the members of the family. The members who are joint in estate or residence are also the members of the family and, therefore, such members who are residing with the landholder and who are dependant upon the landholder for their livelihood cannot be excluded from being considered as members of such family of the landholder.

33. It may also be noted that in the Ceiling Act prior to its amendment by the Act

of 1974, the ceiling area fixed was approximately double without any reference to the size of the family. The Legislature by the amendment has reduced the ceiling area to almost half for a family consisting of five members, and has allowed enlargement of ceiling to the extent of one-fifth of the ceiling area for each member in excess of five, but the total holding of the family should not exceed twice the ceiling area, which was approximately the area which a family was entitled to hold under the Ceiling Act prior to its amendment.

34. In view of the above facts, circumstances and the legislative intent. I hold that for grant of benefit of Section 6((3-B) to the members of a joint family, as defined in Section 2(16) of the Ceiling Act, the members who are joint in estate and who are residing with the landholder and also dependant for their livelihood (excluding the major son and his family) including the members belonging to all or any of the three categories specified in Section 6(3-B) of the Ceiling Act have to be included as members of the family of the landholder, and such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five, but the total holding of the family shall not exceed twice the ceiling area.

35. Mr. Suresh M. Shah, learned Advocate for the petitioners in some of the petitions, has drawn my attention to the decision of the learned single Judge (A. M. Ahmadi, J.) of this Court in Special Civil Application Nos. 2037 of 1978 and 2038 of 1978, decided on 18th June, 1984, wherein it has been observed:

With respect, the Tribunal's thinking is confused. Sub-section (3-B) of Section 6 merely lays down that where a. family consists of more than five members comprising a person and other members of the categories mentioned therein, namely. (i) minor son, (ii) widow of a pre-deceased son; (iii) minor son or unmarried daughter of a pre-deceased son, where his or her mother is dead, such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five provided the total holding of the family does not exceed twice the ceiling area. A bare perusal of this sub-section makes it clear that in order to avail of the benefit of enlargement of the ceiling area, two conditions must be satisfied, namely, (i) the family should consist of more than five members, and (ii) it should have amongst it the categories of members mentioned in three sub-clauses. If a family does not consist of more than five members but has amongst it any of the members mentioned in the three sub-clauses, it will not be entitled to the benefit of enlargement of the ceiling area. Therefore, the benefit of enlargement of the ceiling area will ensure to only that family where the total number of members is more than five and amongst them are members belonging to the categories mentioned therein. However, there is nothing in the sub-section where from it can be inferred that the wife, widowed mother and unmarried daughters were intended to be excluded from the family, that is, group or unit constituting the family. I am, therefore, of the opinion that all the authorities including the Tribunal were wrong in coming to the conclusion that the aforesaid female

members of the family had to be excluded for the purpose of determining the size of the family.

In my opinion, that decision of the learned single judge of this Court clearly supports the view which I have taken.

36. In the aforesaid view of the matter, the decisions rendered by the authorities including the Tribunal in each of the cases, the subject-matter of which are the aforesaid petitions, are liable to be quashed and set aside, and the matters are required to be sent back to the Mamlatdar and Agricultural Lands Tribunal with a direction to compute the ceiling area again on the basis of the observations and interpretation made by me above. I have not decided other issues because on the interpretation of the relevant provisions of the Ceiling Act which I have reached most of them might not survive. However, it is made clear that the petitioners will be at liberty to raise such contention or contentions as and when such occasion arises, and non-consideration of the other contentions by me will not bar them from raising the same at an appropriate stage, if need arises.

37. In the result, all the petitions are allowed. The matters are sent back to the respective Mamlatdar and Agricultural Lands Tribunals with a direction to compute ceiling area in the respective cases in the light of the observations made above, as early as possible. Rule issued in each of the petitions is made absolute to the extent aforesaid. There shall be no order as to costs in these petitions.