

(2004) 11 BOM CK 0018

In the Bombay High Court

Case No : Writ Petition No. 1035 of 1988

Fattechand Dharamchand Mehta

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 01-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 10, 10A, 12, 13, 2(1)(14)

Citation : (2005) 2 BomCR 700

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : R.C. Madkholkar, for the Appellant; T.R. Kankale, A.G.P. for respondent Nos. 1 and 2, for the Respondent

Judgement

Dharmadhikari B.P., J.—By this writ petition filed under Articles 226 and 227 of the Constitution of India, the land owners are challenging the order of Sub-Divisional Officer, Darwha, dated 31-1-1986 in Ceiling Case No. 1/60-A(5)/70-71 and the order dated 11-4-1988 delivered by the member, Maharashtra Revenue Tribunal, Nagpur, in Ceiling Appeal No. A/c.A.71/86 by which the deceased land owner Shri Fattechand was held to be surplus holder of land to the extent of 235.09 acres and Maharashtra Revenue Tribunal had remanded matter back to Sub-Divisional Officer for obtaining the choice of said land holder about retention of lands and to de-limit the surplus land.

2. I have heard Shri Madkholkar, learned Counsel for the petitioners who are legal representatives of the deceased Fattechand and Shri Kankale, learned Assistant Government Pleader for respondents No. 1 and 2.

3. The necessary facts in brief can be summarised thus:

Upon report of Tenancy Revenue Inspector, a case u/s 12 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, (hereinafter referred to as Ceiling Act), was started against the deceased Fattechand by the Sub-Divisional

Officer, Darwaha, vide Ceiling Case No 260/(2) of 62-63 of Digras. It was stated therein that the deceased was in possession of land more than the prescribed ceiling area of 108 acres and still he did not file return u/s 12 of the Ceiling Act. The deceased was noticed to show cause and accordingly he filed his say. The deceased stated that he was holding only 96 acres and 17 gunthas of land which was below the prescribed ceiling area and therefore he was not required to file return. In these proceedings, an order was passed and a penalty of Rs. 25 was imposed upon him u/s 13 of the Ceiling Act and he was directed to file return. Accordingly, he filed a return of his holding on 16-1-1971 and he had shown that he was in possession of only 40 acres and 37 gunthas of land comprised of field Survey Nos. 34 and 27 situated at village Sangwa, Tahsil-Darwaha. It is to be noticed that since 1975, the provisions of new Ceiling Act have come into force and the ceiling limit was reduced from 108 acres to 54 acres.

Earlier, the deceased had submitted that his ancestor by name Mohanchand who expired in the year 1942 had huge agricultural lands and in the year 1942, he executed a document on stamp paper of Rs. 1.50 (alleged to be a "Sulenama") by which he allotted some property to the deceased Fattechand (677.35 Acres), Jewtibai wife of the appellant (111.17 acres). Anubai wife of Mohanchand (115.20 acres) and Mohanchand himself 76.21 acres. He further states that there was oral partition in the years 1958-59, according to which, the property which came to the share of the above persons was again divided between the above persons except Mohanchand. He stated that in this partition, lands admeasuring 94 acres and 20 gunthas was allotted to the son of the appellant-deceased viz., Rukapchand and this oral partition was reduced into writing and registered on 31-10-1960. In view of this say, the authority called for a report from the Revenue Officer and thereafter provisionally held that the deceased was in possession of 194 acres and 30 gunthas of land. The authority thereafter passed a detailed order and held that by virtue of the family arrangement, the deceased Fattechand was in possession of 673.35 acres of lands. This order came to be passed on 27-10-1970. It is mentioned by the Sub-Divisional Officer in his order that by the time of next partition which took place on 31-10-1960, the deceased had transferred all lands that were allotted to him in Sulenama of 1942 except 96.17 acres of lands and in return he stated that he was holding only 40 acres 37 gunthas of lands and remaining land out of this 96 acres and 17 gunthas was disposed of.

When the appellant was fined Rs. 25/-, the appellant in his return revealed that he possess 782.22 acres of land and out of it only 40.37 remained with him and remaining lands were disposed of by him by various means prior to 4-8-1959. In this view of the matter, the concerned Revenue Inspector was again directed to place on record correct information regarding the holding of deceased. The said Revenue Inspector submitted his report and stated that the deceased was holding land to the extent of 996.10 acres. He further mentioned that on 4-8-1959, the deceased was holding land to the extent of 416.25 acres and after 4-8-1959, he was found holding land to the extent of 357.26 acres of land. The

Sub-Divisional Officer found from the record of Patwari and other crop statements that the deceased was holding 357.26 acres of land as on 4-8-1959. The order of Sub-Divisional Officer was challenged before the Maharashtra Revenue Tribunal, Nagpur, and the Maharashtra Revenue Tribunal by its order 15-11-1978 found that the inquiry was not conducted by the Sub-Divisional Officer in proper mode and manner. The Maharashtra Revenue Tribunal, therefore, directed holding of fresh inquiry after giving fair and reasonable opportunity to the deceased as well as by inviting all the interested persons or transferees of the suit land. The Maharashtra Revenue Tribunal also specifically framed five issues for that purpose. The said issues were :

- (1) What was the quantum of the land held by the appellant in 1942 by virtue of the so called Sulenama.
- (2) Whether partition of 1960 was brought into existence in accordance with the directions given in Sulenama whether partition of 1960 is valid in law apart from its validity u/s 10-A of the Ceiling Act.
- (3) What was the exact extent of land held by the deceased within the meaning of Section 2(1)(14) of the Ceiling Act on the relevant date.
- (4) Whether this partition was brought into existence with an oblique motive to defeat the object of the Ceiling Act and what was the exact extent of land held by the appellant-deceased on reference date i.e. 4-8-1959.
- (5) Lastly, to decide the extent of land alienated by the deceased after 4-8-1959.

The matter came back to Sub-Divisional Officer, Darwha, who after giving due opportunity, passed an order holding that the deceased was having 374.21 acres of land with him and he was entitled to retain only 108 acre. Therefore, it was held that the deceased was holder of surplus land to the extent of 266.21 acres. It directed the deceased-surplus land holder to exercise his choice of retention within 7 days from the date of communication of this order. This order was challenged by the deceased before the Maharashtra Revenue Tribunal and the Maharashtra Revenue Tribunal partly allowed his appeal. The order including the field survey No. 22/ 1-area 4 acres and Survey No. 44-area 27.12 acres (Total 31.12 acres) by Sub-Divisional Officer in holding of deceased was set aside and the deceased was declared to be a surplus holder to the extent of (266.21-31.12) 235.09 acres. This order of Maharashtra Revenue Tribunal and the order dated 31-1-1986 passed by the Sub-Divisional Officer have been challenged in this petition.

4. The petition has been admitted on 29-4-1988 and stay of possession has been granted. The said interim order is operating till today.

5. Shri Madkholkar, learned Counsel for the petitioner has raised four points for consideration. According to him, Sulenama of 1942 has not been appreciated either by the Sub-Divisional Officer or the Maharashtra Revenue Tribunal. He argues that as in earlier round of litigation, the Maharashtra Revenue Tribunal

itself has accepted the said document therefore, it was not open to the Sub-Divisional Officer or Maharashtra Revenue Tribunal to ignore that document at later point of time. He further contends that though lands have been acquired from deceased, those lands have not been excluded and he contends that if the total lands acquired are reduced from his holdings, he would not have been surplus land holder even under the old Act. He contends that about 207 acres of land has been acquired from the deceased and Maharashtra Revenue Tribunal has found him surplus to the extent of 235.09 acres only. So, according to him, after giving credit of this acquired land, his total holdings would have been reduced to 28 acres which was much less than the prescribed ceiling limit of 108 acres. He further states that the authorities below have similarly erred in ignoring the partition of 31-10-1960 between the members of the family and the explanation given therefore by the deceased. His last ground is that the Maharashtra Revenue Tribunal refused to exercise the jurisdiction by refusing to correct the error committed by the Sub-Divisional Officer.

6. As against this, Shri Kankale, learned Assistant Government Pleader appearing for respondents No. 1 and 2 argued that Sulenama has not been accepted by the Maharashtra Revenue Tribunal at any point of time and it was left for consideration by the Sub-Divisional Officer after remand. He contends that the Sub-Divisional Officer has correctly found that original Sulenama was not produced on record and has therefore refused to act on the basis of unproved Sulenama. He contends that there is no error or illegality committed by the Sub-Divisional Officer or Maharashtra Revenue Tribunal in this respect. He invites attention of this Court to discussion in para 4 page 40 by Maharashtra Revenue Tribunal about partition dated 31-10-1960 and contends that the said partition has been rightly ignored by the Sub-Divisional Officer and also by Maharashtra Revenue Tribunal, He states that there is no refusal by the Maharashtra Revenue Tribunal to exercise jurisdiction. He argues that these findings are according reached by both parties and there is no error or any jurisdictional mistake by the said authorities. He further points out that the lands acquired have been individually considered by both the authorities and they have recorded a finding that the lands have been acquired from other transferees and amount of compensation has also been paid to the transferees. So according to him, there is no error even on this ground. He states that all these questions are correctly and appropriately dealt with by the lower authorities and no interference is called for in the writ jurisdiction.

7. Insofar as arguments about Sulenama, the first point argued by Shri Madkholkar, learned Counsel for the petitioner is concerned, his contention that the Maharashtra Revenue Tribunal while passing the first order dated 15-11-1978 has accepted said document is not borne out from the record. The relevant observations of Maharashtra Revenue Tribunal which is in para 14 of its order which reads as under:

"What was the quantum of the land held by the appellant in 1942 by virtue of the

so called Sulenama."

Thus, it will be seen that the Maharashtra Revenue Tribunal has not recorded any finding about the validity or otherwise of the said document and has deliberately used the word "so called Sulenama". Thus, the Maharashtra Revenue Tribunal has left the point of its acceptability or otherwise to be inquired into by the SDO and therefore, the argument on these lines made by the learned Counsel for the petitioner cannot be accepted. The Sub-Divisional Officer has considered this aspect and has found that the copy of Sulenama produced on record is unregistered document which is written on a simple paper and Court fee stamp of Rs. 2.55 is affixed on it. The Sub-Divisional Officer has further remarked that the original document was never produced in Court and document is not proved as required by law. After perusal of the document the Sub-Divisional Officer states that it appears to be signed by Mohanchand Malchand, Fattechand Dharamchand, Anubai wife of Mohanchand and Jiwani bai wife of Fattechand. He states that there are no witnesses on this document. No evidence has been given by the holder to prove it. The Sub-Divisional Officer has, therefore, doubted the genuineness thereof.

8. The Maharashtra Revenue Tribunal in its impugned order has considered this Sulenama in para 3 and has further held that as the original copy of Sulenama was not produced by the deceased before the Maharashtra Revenue Tribunal for its perusal, the document cannot be said to be a genuine document which is proved. It is to be seen that thus, the document has been considered by both the authorities and both the authorities have refused to believe it. It is to be noticed that the holder i.e. deceased Fattechand did not adduce any evidence in relation to this document and also did not produce any other document to corroborate the contents of that Sulenama.

9. Shri Madkholkar, learned Counsel for the petitioner argued that the Sub Divisional Officer or Maharashtra Revenue Tribunal ought to have given him a notice if they were going to ignore the said Sulenama. He contends that in the absence of such opportunity to him, it cannot be said that he has not produced the original Sulenama on record or he did not adduce any evidence to substantiate it. However, the burden was upon the petitioner. It was his duty to prove Sulenama by adducing appropriate oral or documentary evidence. Thus has not been done. However, inference drawn by both the authorities cannot be interfered with at this juncture. I do not find anything wrong with the conclusions reached about the said document either by the Sub-Divisional Officer or Maharashtra Revenue Tribunal in the impugned orders.

10. Coming to the next point argued by Shri Madkholkar, about partition dated 31-10-1960, both the authorities have found that though the partition is stated to be of the year 1960, the entire land was in possession of deceased fattechand till 1962-63. The Maharashtra Revenue Tribunal in para 4 of its order considered the explanation tendered by the deceased in this respect. The argument was advanced before the Maharashtra Revenue Tribunal that partitions as per

directions contained in Sulenama could not be made prior to 1960 because some Court case referred to by Maharashtra Revenue Tribunal "Gandhi case" was pending since long and it came to be decided in the year 1959. The Maharashtra Revenue Tribunal has refused to accept said reason as valid and has held that in view of provisions of Section 8 and Section 10(j) of the Maharashtra Agricultural Lands (Ceiling on Holdings) 1961 unamended such a theory cannot be accepted and acted upon. It has thereafter referred in provisions of said section and has found that by partition deed, the deceased has tried to transfer the land after reference date i.e. 4-8-1959 and therefore, partition is liable to be ignored. In view of these findings of fact reached by the Maharashtra Revenue Tribunal, no interference is called for in writ jurisdiction. Nothing has been shown to this Court by the petitioner to term the findings of Lower Court as perverse.

11. Coming to the third point of Shri Madhkholkar, about non excluding the lands which are acquired from the holdings of the deceased, one has to consider the discussion of Maharashtra Revenue Tribunal in its order from para 6 onwards. Maharashtra Revenue Tribunal has made referred to several Survey Nos. and in para 6 itself, reference is to Field Survey No. 51 - area 22.12 acres, S. No. 14/1 - area 9.33 acres S.No. 49/1- area 6.30 acres, S.No. 46 - area 131.39 acres, S.No. 47 - area 14.22 acres and S.No. 45/1 area 12.38 acres of village Sawangi. Total area of this land works out to about 197 acres. Similarly, in para 9, there is reference to Field Survey No. 45 -area 29 acres 14 gunthas of village Dhanora, in para 10 there is reference to field Survey No. 44 - area 27 acres 22 gunthas and in para 11, there is reference to field Survey No. 22/1 area 4 acres of village Deurwada. Insofar as land mentioned in para 10 i.e. field Survey No. 44 and land mentioned in para 11. Field Survey No. 22/1, Maharashtra Revenue Tribunal has excluded these lands from the holdings of petitioner (deceased) in view of the reported judgment of this Court in the case of Hanumant v. State of Maharashtra, reported in 1983 Mh.L.J. 38. However, while considering the other lands in paras 6, 7, 8 and 9 of the impugned order, the Maharashtra Revenue Tribunal has recorded a finding that lands have been acquired from the possession of transferees and therefore, the petitioner was not in possession of those lands at the time of their acquisition.

12. By giving this reason, the Maharashtra Revenue Tribunal has refused to exclude these lands from the holdings of petitioner. As pointed out by the learned Assistant Government Pleader, even compensation amount for these lands acquired from transferees have not been paid to the petitioner and has been paid to transferees. Thus, it is clear that on one hand the respondents are stating that the petitioner is not the owner of these lands when the lands came to be acquired and therefore, compensation has not been paid to him while on the other hand, they are saying that lands must be included in the holdings of petitioner while determining his entitlement under the Ceiling Act. Thus, the mutually inconsistent and contradictory stand has been taken by the respondents in this respect. Thus, it appears that it is clear cut case of non-application of mind. If the lands were not belonging to the petitioner it ought not to have been

included in the holdings of the petitioner and if the lands were belonging to the petitioner and they have been acquired from him and if the subsequent transfers are liable to be ignored then in view of the acquisition of those lands, the lands ought to have been excluded from his holdings for giving him credit thereof as contemplated by this Court in judgment mentioned above.

13. Thus, in view of this, it is clear that there is error apparent on record. The order of Maharashtra Revenue Tribunal and Sub-Divisional Officer only to this extent is unsustainable and is liable to be quashed and set aside. The impugned order of Maharashtra Revenue Tribunal in Ceiling Appeal No. Alc.A. 71/86 dated 11-4-1988 and the order of Sub-Divisional Officer, Danwha, in Ceiling Case No. 1-60-A(5)/70-71 dated 31-1-1986 are quashed and set aside only to the extent mentioned above. The matter is remained back to the Sub-Divisional Officer for holding inquiry whether the lands acquired from the deceased or from his transferees as dismissed by Maharashtra Revenue Tribunal in paras 6, 7 and 9 of its order dated 11-4-1988 are liable to be excluded from the holding of the petitioner while calculating his entitlement under the Old Ceiling Act.

14. Rule is made absolute in above terms. There shall be no order as to costs.