
(1981) 04 BOM CK 0005
In the Bombay High Court
Case No : Spl. C.A. No. 89 of 1975

Hanumant Yeshwant Deshmukh and others	APPELLANT
Vs	
State of Maharashtra and others	RESPONDENT

Date of Decision : 13-04-1981

Acts Referred:

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

Citation : (1983) MhLj 38

Hon'ble Judges : V. Mohta, J; P.G. Palshikar, J

Bench : Division Bench

Advocate : S.C. Jog, for the Appellant; M.P. Badar, Asstt. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Mohta, J.—This matter, seeking to challenge the order of the Maharashtra Revenue Tribunal under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (the "Act" for short), was heard by the learned single Judge (Gadgil J.) who, after hearing parties, felt that the point involved deserves to be considered and decided by a Divisions Bench. This is how the matter has come before us. Point involved is whether lands acquired by the Government under the Land Acquisition Act in between the appointed day and the order of declaration of surplus land are includible in the holdings of a landholder while determining the Ceiling area.

2. Few relevant facts which deserve notice are: One Yeshwant Deshmukh the predecessor-in-title of the petitioners had extensive lands in Amravati and Nagpur Districts. Total acreage of his holdings was 231.22 acres, out of which, 5.14 acres was uncultivable and as such "no land". Considering the number of family members, the ceiling limit was 160 acres. While enquiry in respect of a return submitted was being made, the field Survey No. 38/3 measuring 19 acres 34 gunthas of village Pimpalkhuta was voluntarily transferred by the landholder

to the second respondent. Field Survey Nos. 1/1, 4/2, 183 and 203/1 of Mouza Morshi altogether measuring 18 acres 39 gunthas, were compulsorily acquired under the Land Acquisition Act, and after a contemplated enquiry, possession was taken after declaring an award in due course. In an order passed u/s 21 of the Act, choice of retention was given to land-holder. It was exercised in such a manner that the aforesaid one transferred field and four acquired fields were excluded in the list of land to be retained. The Sub-Divisional Officer, however, passed an order effect of which was to exclude these five lands in the total 165.14 acres an area to which the landholder was entitled to retain. Appeal was carried to the Maharashtra Revenue Tribunal which came to be dismissed.

3. It was conceded before us that the order in respect of land voluntarily transferred was unassailable and cannot be reasonably questioned. However, serious debate about four acquired lands has been raised in the petition. Contention is that acquisition of land does not constitute "transfer" as contemplated u/s 8 of the Act and is, therefore, not includible in determining the ceiling area. The respondents resist the contention on the ground that position of the area as on the appointed day namely 26th January, 1962 alone and nothing else has to be taken into consideration in determining the ceiling area. In order to judge the merits of the respective points of him, it will be necessary to have a short resume of the relevant provisions of the Act. Section 4 provides for prohibition on holding of lands more than ceiling limit which is to be determined under various provisions contained in Chapter II. Next following Chapter provides for restrictions on alienations and acquisitions of land and consequences of contraventions. This Chapter III opens with section 8 providing for restrictions on "transfer" the term explained below the section itself. Section 9 puts restrictions on acquisition of land in excess of ceiling limit. Section 10 deals with consequences of certain transfers and acquisitions. Chapter IV deals with declaration of surplus land. It opens with section 12 which deals with submission of the return in a prescribed form in certain cases. Section 14 deals with the power of Collector to hold enquiry. Section 18 deals with consideration of certain matters in the said enquiry list of which is given in clauses (a) to (1) and section 21 deals with the declaration of certain land and consequences thereof, inclusive of vesting of the surplus land in the State.

4. Section 8 at the material time read thus:

"Where any person, on or after the appointed day, holds land in excess of the ceiling area shall not on or after that date, transfer or partition any land until the land in excess of the ceiling is determined under the Act.

Explanation:--In this Section "transfer" means transfer by act of parties whether by way of sale, gift, mortgage with possession, exchange, lease, assignment of land for maintenance, surrender of a tenancy or resumption of land by a landlord or any other disposition made inter vivos and partition means any division of land by act of the parties.

It is obvious that this section refers to transfers inter vivos and any transfer by operation of law is not included in the same. It will be worthwhile mentioning that Explanation below section 8 was amended subsequently. We are referring to the new amended section not because it applies, but just to illustrate that even the extended definition of "transfer" does not take within its sweep acquisition of lands for public by state. New explanation reads thus:

In this section, "transfer" means transfer, whether by way of sale, gift, mortgage with possession, exchange, lease, assignment of land for maintenance, surrender of a tenancy or resumption of land by a landlord or any other disposition, whether by act of parties made inter vivos or by decree or order of a Court, tribunal or authority (except where such decree or order is passed in a proceeding which is instituted in such Court, tribunal or before such authority before the 26th day of September 1970), but does not include transfer by way of sale or otherwise of land for the recovery of land revenue for sums recoverable as arrears of land revenue, or acquisition of land for a public purpose under any law for the time being in force.

5. Now it follows from the limited definition of the term "transfer" as used in the section that only particular types of transfer or acquisitions are intended to be hit by the Legislature and not all transfers or acquisitions. Thus, section 8 does not appear to be a provision of total prohibition on transfers or acquisitions after the appointed day. Its object clearly seems to be to put restrictions on private transfers by holder of excess land after the appointed day. Clear intention was to prohibit the voluntarily transfers of lands by the land-holders during the pendency of an enquiry and determination of ceiling area. What was intended to be achieved was the non-recognition of such transfers in determining the ceiling area; for if such restriction was not made, it would have been easy for the land-holders to voluntarily dispose of the property by bogus sales or otherwise during the intervening period and thus to successfully evade the provisions of the Act. However the law provides no prohibition upon transfers by any other modes except the one prohibited. Further, section 10 (1) provides no prohibition upon transfers by any other modes except the one prohibited. Further section 10 (1) provided inter alia to the effect that if any land is transferred or partitioned, in contravention of section 8, then in calculating the ceiling area which that person is entitled to hold, the area so transferred or partitioned shall be taken into consideration, and land exceeding the ceiling area so calculated shall be deemed to be in excess of the ceiling area for that holding notwithstanding that the land remaining with him may not in fact be in excess of the ceiling area. Converse of this is that if the land is transferred or partitioned not in contravention of provisions of section 8, the consequences contemplated u/s 10 (1) will not ensue. Section 10 (2) speaks of a postulation permitting acquisition of properties by modes mentioned in the said provision. Section 12 casts an obligation on a person to furnish a return containing certain particulars of lands held by him after 4th August 1959, but before the appointed day, or of the lands held by him after the appointed day. There are few more situations, but we are not concerned

with the same. It is on this basis that enquiry proceeds. Certain statutory points requiring an answer in an enquiry are raised in section 18. Amongst those is item No. (d) under which a finding has to be recorded as to whether any particular transfer or partition is in contravention of section 8 and if so, whether such transferred property should be considered in calculating the ceiling area in terms of sub-section (1) of section 10. Necessary implication of this is that if any transfer takes place in a manner not hit by section 10 (1), the lands so transferred have to be ignored in determining the ceiling area. At this stage, reference may be made to section 21. It is not as if that the surplus land vests in the State Government as soon as the Act comes into force. The vesting of the surplus land in the State Government is deferred till the result of an enquiry and determination of the surplus as contemplated under the Act. Thus refixation of ceiling area by reason of intervening events between the appointed day and declaration of surplus is inherent in the very scheme of the Act.

6. Relying on the decision in the case of *Raghunath Laxman Wani and Others Vs. The State of Maharashtra and Others*, it was contended on behalf of the State that surplus area has to be determined with relation of only one factor namely the position prevailing as on the appointed day, and the intervening factors like compulsory acquisitions will have no relevance in the final order of declaration. We are unable to see any such statement of law in the aforesaid decision. Controversy there had arisen in connection with the point raised that if any increase or decrease in the number of members of the family takes place after the appointed day, it has not to be taken into consideration in determining the ceiling area. It was in connection with this point that the provisions of the Act were examined and dealt with in the said decision. The ratio of the decision clearly is that the deaths or births in the family after the appointed day will have no impact on the ceiling area of the family. Situation of the type emerging in the present petition was not at all before the Supreme Court and, therefore, there is no authoritative pronouncement on the subject whether such acquisitions are includible in the permissible fluctuations indicated under various relevant provisions of the Act, in determining the ceiling area at the time of passing an order u/s 21. This Court had occasion to deal with the subject of type of partitions contemplated u/s 8, even after Supreme Court pronounced its judgement in *Raghunath's* case (cited supra). Strong reliance was placed by Shri Jog, the learned Counsel for the petitioners, upon that decision given in the case of *Wasudeo Hahadeoruo v. The State of Maharashtra* 1975 Mh. L. J. 404. It was a case of a partition during the pendency of the ceiling proceedings partition not effected inter vivos but because of a suit resulting into a decree. It was held that such a partition decree was not covered by Section 8 and the lands included in such partition decree cannot be taken into consideration as one unit. Thus, this type of event subsequent to the appointed day was held to be within permissible fluctuation. Heavy reliance was placed on *Raghunath's* case even at that time, but the learned Judge came to the conclusion that the ratio pronounced by the Supreme Court had no application to the point involved. We are in respectful

concurrence with this view of the matter.

7. It was contended by Shri Badar, the learned Assistant Government Pleader, that after all the land-holder got the market value of the property and thus would be put to no loss, in case the acquired property is not included within the ceiling limit. We are unable to see how this test will have any relevance to the point at issue. It was also contended that if the enquiry was made expeditiously and was finished before the acquisition, the land-holder would have got no benefit of Section 8. We are equally unable to appreciate this line of reasoning. Surplus area is determined u/s 21. Thereafter only surplus land vests in the Government. Any event such as acquisition etc. that takes place after this must stand altogether on a different footing, irrespective of the consideration of extent of period in holding the enquiry. Acquisition after the enquiry is over will have absolutely no relevance to the point at issue. That is the legislative wisdom reflected in the scheme of the Act and it is none of Court's function to question it. In our judgment, therefore, the ratio in Raghunath's case has no application to the present matter. Under the circumstances, it has to be held that the acquired lands could not be included in calculating the area of ceiling limit and the impugned orders passed have to be quashed.

8. The petition is thus allowed and the rule is made absolute, but, under the circumstances, without any order as to costs. The petitioner is directed to submit fresh choice of retention as required under law, in the light of the observations made above.

Rule Absolute.