

(1977) 03 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1096 of 1976

Kesari Lal

APPELLANT

Vs

Sub-divisional Officer, Ramgajmandi and Others

RESPONDENT

Date of Decision : 10-03-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Tenancy Act, 1955 — Section 30E

Citation : AIR 1977 Raj 229

Hon'ble Judges : Rajindar Sachar, J; R.L. Gupta, J

Bench : Division Bench

Advocate : C.K. Garg, G.G. Sharma, for the Appellant;

Judgement

Sachar, J.—This petition has been filed against the judgment of the Board of Revenue against the proceedings under ceiling law which were started against one Smt. Chandrakanta under Chapter III-B added to the Rajasthan Tenancy Act, 1955 (hereinafter to be called the "old law").

2. The land was originally recorded in the name of one Smt. Gulab Bai, who had adopted Govindlal, son of petitioner No. 1. After the death of Smt. Gulab Bai, the land was recorded in the name of Govindlal and after his death, in the name of Smt. Chandrakanta, who was recorded as the Khatedar tenant. Since she was holding the land in excess of the ceiling area, notices were issued to her and the present petitioners joined the proceedings and claimed one-fourth share in favour of each of the three petitioners and one-fourth share in favour of Bam Narain, another son of Kesharilal. An effort was made before the authorities to contend that the petitioners were in possession of the land since 1957 on the basis of one mutation entry made in that year, though that entry was not repeated subsequently. The authorities below have come to the conclusion that in view of the entry in the name of Smt. Chandrakanta as a Khatedar tenant, the land must be presumed to belong to her and on that basis surplus area has been determined under Chapter IIIB of the Rajasthan Tenancy Act, taking Smt.

Chandrakanta as a Khatedar tenant. The petitioners having failed in the proceedings before the Board of Revenue, have come up to this Court in this writ petition.

3. Mr. Garg tried to reopen the finding of fact by the authorities below by urging that the petitioners have been in possession of the land since 1957, and even earlier, and that the entry in the revenue record in the name of Smt. Chandrakanta could not deprive them of their title to land. We are afraid, this is a finding of fact, and it is not open to us to reopen that finding in the present proceedings. The authorities below have correctly stated that the entries in the revenue record show that the land was entered in the Khatedari of Smt. Chandrakanta and the petitioners have not been able to rebut that presumption. We also find that when the petitioners appeared in escheat proceedings before the Additional Collector, Kota, in 1972, they made a statement in which it was stated that they were the legal representatives of Smt. Chandrakanta and therefore the escheat proceedings could not be taken. This shows that the petitioners accepted that they were the heirs of Chandrakanta, which admission obviously shows that they were not claiming any independent right to the land. It is not understood why, if claim of the petitioners was that they had independent right apart from the right to claim the land as legal representatives of Smt. Chandrakanta, the said claim should not have been put before the Additional Collector. Be that as it may, as the authorities have come to the finding of fact that the land was in Khatedari of Smt. Chandrakanta the said finding cannot be interfered with.

4. Smt. Chandrakanta died in 1969. The order of the Sub-divisional Officer was passed sometime in 1975. The Sub-divisional Officer and the other authorities have proceeded to determine the ceiling area on the basis of the land having been held by Chandrakanta on April 1, 1966, the notified date in terms of Section 30-E of old law. The contention of Mr. Garg, however, is that the ceiling area is not to "be determined with reference to April 1, 1966, but should be determined with respect to the date of the death of Smt. Chandrakanta. The argument proceeds that as proceedings for determination of ceiling area with regard to the Chandrakanta's case were pending in 1969, it means that in 1969, on her death, she was succeeded by the petitioners and therefore the land must be taken to be in the Khatedari of the petitioners with the result that the ceiling area should be determined with respect to each one of the petitioners separately and not as has been done by treating the whole land to be of Smt. Chandrakanta alone.

5. Section 30-C of the old law defines the extent of ceiling area which may be held by a family consisting of 5 or less than 5 members with a proviso for additional land, in case the members of the family exceeds 5. Section 30-E of the old law lays down that no person shall as from a date, notified by the State Government in this behalf, continue to hold or retain his possession in any capacity and under any tenure whatsoever land in excess of ceiling area

applicable to him. It is common case that the date notified u/s 30-E of the old law, is April 1, 1966. Sub-section (2) of Section 30-E directs every person to give a report of land in excess of ceiling area held by him and requires him to surrender such excess land to the State Government; Sub-section (3) of Section 30-E provides a penalty against the persons who fail intentionally to make a report or surrender the land. Sub-section (4) of Section 30-E of the old law provides that any person retaining possession of the land in excess of ceiling area, shall be deemed to be a trespasser; and Sub-section (5) of Section 30-E lays down that all lands coming to the State Government by surrender under Sub-section (2) or by ejectment under Sub-section (4) shall vest in it free from all encumbrances. Mr. Garg seeks to support his argument by relying upon *Dadarao and Another Vs. State of Maharashtra and Others*, In that case, land was held by one Parvati Bai on January 26, 1962, which was the appointed date under the Maharashtra Agricultural Lands (Ceiling of Holdings) Act, 1961. She had submitted a return and enquiries were being held, when she died on Sep. 3, 1963. Before her death, she had, by a will, given these lands to the writ petitioners and it was claimed before the Deputy Collector that the surplus area will have to be determined, not on the basis of the land having been held by Parvati Bai, but on the basis that the writ petitioners had succeeded to the land.

6. Section 4 (1) of the Maharashtra Act prohibited person from holding a land in excess of the ceiling area as determined in the manner provided for in the Ceiling Act. Sub-section (2) of Section 4 provided that land held by a person in excess of ceiling area, shall be deemed to be surplus land. The Bench took the view that the ceiling area is to be determined by a competent authority with respect to a person and it is only when possession has been taken of the land that it vests in the State Government, and therefore, till such vesting takes place, the owner enjoys all the facilities without any let or hindrances except that he cannot transfer the land. It also held that holder of land is not divested of land on January 26, 1962. It also held that as ceiling has to be determined with respect to a person, it means that if a person dies after having filed a return, then the determination of ceiling area would be with respect to that person who is alive on January 26, 1962 as heir though it found no provision in the Ceiling Act for substitution of legal representatives. It held that Ceiling Act contemplates a person who is alive not only on January 26, 1962, the appointed day, but at the time of starting of ceiling till the acquisition made by the Collector u/s 21 of the Ceiling Act. According to this decision, therefore, if after a return has been filed, but before the determination of ceiling area by the Collector, that person dies, the surplus land has to be determined not with respect to area on the appointed day but as having been held by his heirs also. This obviously means that if the person remained alive, the surplus land may be of a particular area but would be different or in some cases even no surplus area in case person has died. Variation, according to this judgment, would remain till the matter was finally determined by the Collector. No doubt, the observations in this Bombay case do support somewhat the contention made by Mr. Garg. But, with respect, we are

not persuaded that this case lays correct law, in any case old law is clear that surplus area must be determined with respect to a notified date and cannot remain in a state of flux. It appears to us that when Section 30-E says that no person shall as from April 1, 1966, the date notified, continue to hold or retain any land in excess of the ceiling area, it is a mandate of the Legislature that the determination of surplus area has to be determined with reference to a fixed date and cannot continue to vary. A fiction has been created and therefore the date cannot be advanced beyond the notified date by the fortuitous circumstance of the death of a person. Even if a person has died subsequent to the notified date, by virtue of legal fiction, determination must proceed with reference to a notified date only. It must be appreciated that the Legislature wants all areas in excess of ceiling to be treated as surplus and to accept any argument of variation and constant changing of this date will defeat the purpose of the legislation, which has its purpose, the social amelioration of the landless and is in fulfilment of the constitutional mandate to give social and economic justice to the underprivileged. We are fortified in this view when we find that the interpretation given to the Maharashtra Act by Dadarao and Another Vs. State of Maharashtra and Others, has however not been accepted by the Supreme Court in Raghunath Laxman Wani and Others Vs. The State of Maharashtra and Others, That was also a case under the Maharashtra Act. u/s 6 of the Act, if a family consists of members exceeding 5, such family is entitled to hold the land exceeding the ceiling area to the extent of one-sixth of the ceiling area for each member in excess of 5. In the proceedings for determination of ceiling area, the land holders had claimed to include in the family 3 persons who had been born after Jan. 26, 1962, the appointed day. The argument before the Supreme Court was that as prior to the determination by the Collector, three more persons had been born even though after Jan. 26, 1962, i. e. the appointed day, they must be included in the definition of family. The Supreme Court examined the scheme of the Act and observed that (at p. 2142),--

"The scheme of the Act seems to be to determine the ceiling area of each person (including a family) with reference to the appointed day. The policy of the Act appears to be that on and after the appointed day no person in the State should be permitted to hold any land in excess of the ceiling area as determined under the Act and that ceiling area, would be that which is determined as on the appointed day. Therefore, if there is a family consisting of persons exceeding five in number on January 26, 1962, the ceiling area for that family would be the basic ceiling area plus 1/6th thereof per member in excess of the number five. The ceiling area so fixed would not be liable to fluctuations with the subsequent increase or decrease in the number of its members, for, there is, apart from the explicit language of Sections 3 and 4 no provision in the Act providing for the re-determination of the ceiling area of a family on variations in the number of its members. The argument that every addition or reduction in the number of the members of a family requires re-determination of the ceiling area of such a family would mean and almost perpetual fixation and re-fixation in the ceiling area by

the revenue authorities, a state of affairs hardly to have been contemplated by the legislature. The argument would also mean that where a surplus area is already determined and allotted to the landless persons such area would have to be taken back and given to a family, the number of whose members subsequently has augmented by fresh births."

After referring to Sections 12 and 21, the Supreme Court further observed that except that in those cases the scheme of statute is that ceiling area has to be ascertained with reference to the state of affairs existing on the appointed day. Their Lordships accepted the interpretation given in *State of Maharashtra, Revenue and Forest Department Vs. Dinkarrao Narayanrao Deshmukh and Another*, and differed from a contrary view expressed by some of the other Bombay cases. In *D. N. Deshmukh's* case it was held that (at p. 117),--

"The provision requiring the Collector or Enquiry Officer to determine the total land possessed by the family on the date enquiry is made has no relevance in determining the date with reference to which the entitlement, that is, the quantity of the land that the family can retain, or the limit of ceiling area upto which it can hold land is to be found. The right to land and the limit to which it can be held can be never made to depend on the exigencies of time when enquiries are held or orders are passed. Neither births nor deaths during enquiry but subsequent to the appointed date, i. e. 26th January 1962, will affect the determination of the ceiling area in a family."

In our view, when the legislature says that no person shall hold land in excess of ceiling area with respect to a notified date, that intention cannot be allowed to become non-existent and of no effect by augments of events which may supervene subsequent to that date. The question of holding an enquiry is also a procedural matter to determine whether the declaration given by a person is correct or not. But the relevant date, with respect to ceiling area, has !been determined by the Legislature. The notified date cannot and does not fluctuate. In *Mastana Dudh Utpadak Sahkari Samiti, Pali Vs. Board of Revenue for Rajasthan, Ajmer and Others*, it has been held that the procedure to determine the quantum of surplus area does not affect the rights created in favour of the State, and that as soon as the exact amount of surplus land is determined, the right of the Government to take such land would relate back to the point of time when the right was actually created by law in favour of the State. The Bench also held that the obligation not to retain land in excess of ceiling area arises from the time prescribed under Sub-section (2) of Section 30-E of the old law and from that date the rights of the State are perfected and cannot thereto "be called inchoate rights. Mr. Garg seeks to distinguish this by urging that the point before the Full Bench was different. That no doubt is true, but the observations of the Full Bench as to the factum of the date with reference to which the ceiling area has to be determined, stated in so clear terms are in accord with our view and scheme of the old law.

7. The next case referred to by Mr. Garg is *Chet Singh and Others Vs. The State*

of Punjab and Others, In that case, it was held that as the vesting of the surplus land with State only takes place when possession of the land is taken and therefore if before possession is taken of the land, the land-holder has died leaving his legal heirs, the surplus area has to be determined with respect to the shares of the heirs. It is apparent that this case was decided on its own facts and provision of law which is different from our provision of law applicable here, and the case is therefore distinguishable.

8. The Board of Revenue has rightly held that since Smt. Chandrakanta was the recorded Khatedar on April 1, 1966, and was alive on the said date, her ceiling case had to be assessed with respect to this date. The Board has also further correctly held that the applicants, if indeed they are heirs, could only succeed to the extent of the land she was left with up to the ceiling and no other land. But the direction of the Board that the proceedings under the escheat Act may be started, is difficult to appreciate. It will be seen from the order of the Additional Collector dated May 26, 1972, that he has accepted them as the heirs of Chandrakanta. Not only that, in the reply filed by the State, it is mentioned that after the death of Chandrakanta, proceedings under the escheat Act were started, which and the Additional Collector, by his order of May 26, 1972, found the petitioners to be the legal representatives of deceased Chandrakanta. Now, if in proceedings under the Escheat Act, the petitioners have already been recognised as legal representatives of the deceased Chandrakanta, the direction given in the Board's decision is not understandable and cannot be upheld. This direction is separable from the rest of the order of the Board and is set aside. The rest of the judgment of the Board is not open to any exception and the writ petition with regard to that fails. There will be no order as to costs.