

(1975) 08 BOM CK 0023

In the Bombay High Court

Case No : Special Civil Application No. 742 of 1972

Keshao Govind Begde

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-08-1975

Acts Referred:

Constitution of India, 1950 — Article 227

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 10, 13(2), 14, 16(2), 17

Citation : AIR 1976 Bom 78

Hon'ble Judges : Lalit, J

Bench : Single Bench

Advocate : V.A. Masodkar, for the Appellant; R.R. Deshpande, for Addl. Govt. Pleader, for the Respondent

Judgement

Lalit, J.—The petitioner is a landlord residing at village Chimur. He filed a return on September 12, 1962. u/s 10 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act. 1961 (hereinafter called the ceiling Act) That return was sent by the Collector to the Sub-Divisional Officer. Warora, for an enquiry according to the provisions of the Ceiling Act. The Sub-Divisional Officer registered the case as Revenue Case No. 32/60-A (3) /63-64. In the return the petitioner had mentioned that he was in possession of lands to the extent of 110.02 acres. The Sub-Divisional Officer issued a notice u/s 17, made an enquiry and passed an order on April 4, 1965. whereby he held that the petitioner was holding lands to the extent of 437.01 acres. Against that order the petitioner filed an appeal before the Maharashtra Revenue Tribunal. The tribunal by its order dated June 28, 1986 set aside the order of the Sub-Divisional Officer and remanded the case for further enquiry. The Tribunal also by its order granted an opportunity to the petitioner to lead further evidence. After the remands, a fresh enquiry was made on the basis of the earlier notice u/s 17. The Sub-Divisional Officer then passed an order on March 31, 1970 whereby he held that the petitioner was in possession of 337.81 acres of land. By allowing the petitioner to retain 108 acres

permissible under the Ceiling Act, the Sub-Divisional Officer declared that 229.81 acres of land was surplus. It may be stated that in this enquiry before the Sub-Divisional Officer, a number of transactions made by the petitioners in favour of the present respondents 2 to 38 were being challenged as being contrary to Section 8 and 10 of the Ceiling Act. Notices had been issued to these respondents and they had appeared before the Sub-Divisional Officer dated March. 31, 1970 was challenged by the petitioner by filing an appeal before the Maharashtra Revenue Tribunal. Some of the alienees of the petitioner also filed appeals. All these appeals were heard together and a common order was passed by the Maharashtra Revenue Tribunal on February 1, 1972. The Tribunal partially allowed the appeal filed by the petitioner and excluded an area of 24.24 acres from the holding of the petitioner's holding was 312.57 acres and directed that the surplus land of the petitioner was 204.57 acres. It further directed that this surplus of 204.57 acres should be given to the State by taking 110.02 acres which was in the actual possession of the petitioner and 94.53 acres to be taken from the possession of the transferees of the petitioner. The present petition has been filed to challenge this order of the Maharashtra Revenue Tribunal.

2. The petitioner has made a number of sale transactions in favour of respondents 2 to 38. All these transactions are between the period December 28, 1959 to December 22, 1961. They are admittedly made after August 4, 1959. These transactions are prima facie hit by Section 10 of the Ceiling Act. Section 10 of the Ceiling Act provides thus:

"10(1) if-

(a) any person after the 4th day of August 1959 but before the appointed day, transfers or petitions any land in anticipation of, or in order to avoid or defeat, the object of this Act or

(b) X X X X X

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 to 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"

Explanation -- For the purposes of clause (a) transfer and partition have the same meaning as in Section 8.

All transfers and partitions made after the 4th Day of August 1959 but before the appointed day, shall be deemed (unless the contrary is proved) to have been made in anticipation of or in order to avoid or defeat the objects of this Act".

The appointed day is defined as the day on which the Act comes into force. This date is January 26, 1962. The effect of Section 10, therefore is that the transfers or partitions between August 4, 1959 and January 26, 1962 are deemed to have been made in anticipation of or in order to avoid or defeat the objects of the

Ceiling Act, unless the contrary is proved. Section 10 also further lays down the consequence in respect of transfers in calculating the ceiling area which the person is entitled to hold. The area so transferred or partitioned under transfers between August 4, 1959 and January 26, 1962 shall be taken into consideration and the holding of the person concerned would be calculated as if the land under the concerned transfers belonged to him. As stated above, all these transfers in favour of respondents 2 to 38 are between the period December 28, 1959 to December 22, 1961. They are therefore, clearly governed by Section 10 of the Ceiling Act. The land so transferred will, therefore have to be included in the holding of the petitioner and all these transfers will be deemed to be made in anticipation of or to avoid or defeat the provisions of the Ceiling Act unless the petitioner establishes it to the contrary. The authorities below have given notices to the concerned transferees. The transferees appeared and their statement are recorded. The evidence-- oral as well as documentary-- was led in this behalf and after the entire evidence was considered, it was found that these transfers made by the petitioner were contrary to the provisions of Section 10. It was found that the petitioner had failed to establish that those transfers were not in anticipation of or to avoid or defeat the provisions of the Ceiling act. It was ultimately held that those lands will have to be taken into account for calculating the ceiling area of the petitioner. On the footing the Tribunal has now found that the total land with the petitioner was 312.57 acres, though in the return the petitioner has disclosed 110.02 acres. On this footing the Tribunal has made a further consequential order with regard to the area to be determined as surplus land.

3. Mr. Masodkar, the learned advocate for the petitioner, has strenuously argued that u/s 10, there is only a presumption that the lands transferred are for the purposes of avoiding or defeating the provisions of the Ceiling Act. He submits that if the holder establishes that the transfers were not made to avoid or defeat the provisions of the ceiling act, or that they were not in anticipation of the Ceiling Act, then even if the transfers are between August 4, 1959 and January 26, 1962 those transfers will have to be excluded from the holdings of the petitioner. It is true that Section 10 only raises a statutory presumption. It may be possible in given cases to lead evidence to show that those transfers were not in anticipation of or to avoid or defeat the provisions of the Ceiling Act. But it is clear that the burden to establish it clearly lies on the holder and it is for the holder to establish it to the contrary. Whether the holder has satisfactorily established or not is a question of fact. In the present case, both the authorities have considered the evidence in respect of each transfer. Notices were issued to the transferees and the transferees also gave their statements. The transferees were also vitally interested and were protecting their rights and both the petitioner and the transferees led evidence oral as well as documentary. That entire evidence was considered and both the Courts found that these transfers were void u/s 10 of the Ceiling Act. The findings are that the petitioner failed to establish that these transfers were not in anticipation of or to avoid or to defeat the provisions of the Act. Such a finding is a pure finding of fact and will be

binding on me in this writ petition. In fact it appears to me that on merits each transfer has been separately dealt with by the lower authorities in great details and the entire evidence connected with each transfer has been minutely taken care of. These findings, therefore, have to be accepted. Accordingly, it will follow that in calculating the holding of the petitioner, the lands so transferred will have to be taken into account.

4. Mr. Masodkar argued that there was no intention on the part of the petitioner to defeat or avoid the provisions of the Act and it could not be said that the transfers were made in anticipation of the Act because the petitioner did not know that the Bill was moved and the Legislation in that behalf was in the offing. It must be stated that the first Bill in this behalf was moved in the Bi-lingual State of Bombay on August 4, 1959. Nothing substantial followed till May 1, 1960, when the present State of Maharashtra was formed. On January 3, 1961 a second Bill which now forms the Act was introduced. Mr. Masodkar submits that the transfers have been made before January 3, 1961 and no knowledge could be imputed to the petitioner to defeat the provisions of the Act. It is not possible to accept this submission of Mr. Masodkar. In fact, it appears from the provisions of Section 10 of the Ceiling Act., that the question of knowledge in this behalf is immaterial. The statutory requirement is that all transfers between August 4, 1959 and January 26, 1962 are statutorily presumed to be made in anticipation of the Act, or with a view to avoid or defeat the provisions of the Act. The situation cannot change merely because the Bill was introduced on January 3, 1961, in the Legislature of the State of Maharashtra. It has to be noted that the Bill was first introduced on August 4, 1959 and that has been the relevant date with reference to which the provisions have been made in the Ceiling Act. Want of knowledge on the part of the petitioner cannot possibly alter the situation in the face of the statutory presumption created u/s 10 of the Ceiling Act. It has also to be noted that this matter comes from Chandrapur district and Chandrapur district was a part of Maharashtra State even on August 4, 1959. The contention of Mr. Masodkar that the transfers were made in ignorance of the provisions of the Act must, therefore, be rejected.

5. Mr. Masodkar then argued that the petitioner was over 70 years of age. He was separate from his son and he was not in position to cultivate the lands properly. The petitioner holds lands at different villages and as he was not in a position to cultivate the lands, he kept with him the lands which were on the miserable road and sold off the remaining lands. It was also argued by Mr. Masodkar that the petitioner was indebted and there were pressing demands from the creditors. The petitioner had also to make expenses for the marriage of his two daughters. On account of these circumstances the petitioner was required to sell the lands. It is, therefore, submitted by Mr. Masodkar that the existence of these circumstances will clearly show that there was no intention to defeat or avoid the provisions of the Act. It is not possible for me to accept this submission of Mr. Masodkar. The case made out by the petitioner in this behalf about the reasons which required the petitioner to make the transfers has been considered

in great details by both the authorities. Whether such circumstances existed or not, or whether on account of such circumstances the transfers were justified or not, is a question of fact. The Tribunal has found that the petitioner did not lead satisfactory evidence about the fact of his indebtedness. The claim that the lands were required to be transferred for the marriage expenses was also rejected as the two marriages were celebrated between the years 1963 to 1965, whereas the transfers in question were between August 12, 1959 to December 22, 1960. The Tribunal, therefore, felt that the sales could not be justified on account of the marriage expenses. The petitioner also has failed to give details about his indebtedness. It was not also shown as to how much income the petitioner appears to be highly interested evidence as one witness examined was the son-in-law of the petitioner. The petitioner had transferred about 300 acres of land for nearly 20,000 rupees within a span of about five months. Therefore, after a consideration of the entire circumstances, the Tribunal found that the petitioner was not in a position to take of his case out of the provisions of Section 10 of the Ceiling Act. As I find that this is essentially a question of fact and all the circumstances in that behalf have been taken into consideration, the contention of Mr. Masodkar that the transfers were required to be made on account of necessity has to be rejected. The entire evidence shows that the findings made by the authorities are correct. The result is that the lands transferred by the petitioner will have to be taken into account for calculating his holdings.

6. Mr. Masodkar then argued that proper procedure has not been followed in the present case. His submission was that the petitioner in his return u/s 12 of the ceiling Act, had disclosed that 110.02 acres of land was with him. According to Mr. Masodkar, after the return was filed, straightway a notice u/s 17 of the Ceiling Act was issued by the Collector. Mr. Masodkar contends that it was not open for the authorities to find out whether the petitioner was in possession of lands in excess of 110.02 acres. Mr. Masodkar advanced this argument by drawing my attention to Section 13 of the Ceiling Act, the material part of which is to this effect:

"13 (1) Where a person required by Section 13 to furnish a return-

(a) fails without reasonable cause so to do, within the time specified in that section, or

(b) furnishes a return which he knows, or has reason to believe, to be false, he shall be liable to pay a penalty which may extend in the former case to one hundred rupees, and in the latter case of five hundred rupees.

(2) Where the Collector has reason to believe that a person, required by Section 12 to furnish a return has, without reasonable cause, failed so to do, or has submitted a return which he knows or has reason to believe to be false, the Collector shall issue a notice calling upon such person to show cause within fifteen days of the service thereof, why the penalty provided by sub-section (1) should not be imposed upon him....."

Relying on Section 13 (1), Mr. Masodkar argues that when the petitioner submitted his return, the Collector did not communicate to the petitioner that he had failed to furnish a correct return. A notice should have been given to the petitioner u/s 13(2) and, as such a notice was not given, the further proceedings are vitiated. It is not possible for me to accept this submission of Mr. Masodkar. Where a person fails to furnish a return or files a return which is false, the Collector can u/s 13 (2) issue a notice and call upon the concerned party to show cause why penalty should not be imposed. Section 13 deals only with regard to the powers to impose penalty and it does not follow that merely because notice u/s 13(2) has not been given, the procedure followed by the Collector is vitiated. In fact, u/s 14 and 17 of the Ceiling Act, an enquiry and notice are provided. u/s 14 the Collector is empowered to make enquiries on the basis of a return and on such records as he may deem necessary to refer it for the purposes of that enquiry. The powers, u/s 14 of the Collector are wide enough and the Collector can ascertain whether the return is correct or not. It is not obligatory for the Collector to issue a notice as the powers u/s 14 and 17 of the Ceiling act authorise the Collector to dispute the correctness of the return filed by the petitioner. Therefore, the submission of Mr. Masodkar in this behalf must fail. It has also to be stated that this matter, had first gone to the Tribunal and the Tribunal had remanded the matter. After the remand the Sub-Divisional Officer and the Tribunal have again considered the question of the holding of the petitioner in great details and their findings as I have already discussed, appear to be clearly justified. In view of this position, it is difficult for me to entertain such an argument in this writ petition. In fact such an argument was not made even before the Tribunal. This contention must therefore, fail.

7. Then Mr. Masodkar made a grievance about the order delimiting the surplus. It is his submission that if 204.57 acres is the determined surplus. It was not necessary to take 110.02 acres from the petitioner which are in his actual cultivation. Mr. Masodkar submits that this surplus 204.57 acres of land can be taken from the lands which the petitioner had transferred to the various transferees, Mr. Masodkar submits that as these lands have already been taken into account for calculating the holding of the petitioner, they should also be taken into account while delimiting the surplus and the petitioner should be allowed to retain 120.02 acres. It is not possible for me to accept this submission of Mr. Masodkar, Section 16 of the Ceiling Act provides:

"16 (1) Where a person holds land in excess of the Ceiling area, and the whole or part of such land is subject to an encumbrance, then (subject to the provisions of sub-section (1) of Section 10 and Section 15) he shall retain such encumbered land (whether he is the owner or tenant thereof) upto the extent of the ceiling area.

(2) Subject to the provisions of sub-section (1), persons shall be entitled to select the lands he wishes to retain with himself, upto the ceiling area".

section 16(2) gives a choice to the landholder in the matter of retaining the land. However, sub-sec. (2) is subject to subsection (1) of Section 16, and sub-section (1) makes it obligatory that the landholder (whether he is the owner or tenant) shall retain encumbered land if the whole or part of the land is subject to encumbrance. The policy is, therefore, clear. If it is obligatory on the holder to retain the encumbered land with him., it is difficult to see how the petitioner can insist that the lands which have been sold already should be taken in the first instance for delimiting the surplus land. It has to be noted that though u/s 10, the land will be taken into consideration after calculating the transferred lands. It does not mean that the transfer is to be entirely ignored for all purposes, At any rate, it will be extremely difficult to allow the petitioner to make a choice when he has already made alienations. It may also be noted that in case the transferred lands are taken up to meet the surplus, the transferees will be entitled to recover the purchase money from the petitioner and for the refund of the consideration money which they have paid under the Transfer of Property Act, the property would be under an encumbrance. Considered from any point of view, it seems difficult to accept the submission of Mr. Masodkar. Such inequitable pleas cannot be accepted in a writ petition under Article 227 of the Constitution. It therefore, follows that the order with regard to the delimiting of this surplus made by the Tribunal is correct and will have to be maintained.

8. As all the points canvassed by Mr. Masodkar fail, this petition will have to be dismissed. The rule is discharged. However, in the circumstances of the case, there will be no order as to costs.

9. Petition dismissed.