

(1972) 04 BOM CK 0004

In the Bombay High Court

Case No : Special Civil Application No. 982 of 1968

Laxman Gopal Joshi

APPELLANT

Vs

Narayan Govind Vidwans and Others

RESPONDENT

Date of Decision : 25-04-1972

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 12, 14, 33(1), 33(2)

Citation : AIR 1974 Bom 33 : (1973) 75 BOMLR 458 : (1973) ILR (Bom) 1250 : (1973) MhLj 874

Hon'ble Judges : G.N. Vaidya, J

Bench : Single Bench

Advocate : A.P. Vaze, for the Appellant; V.V. Divekar and S.C. Pratap, Asst. Govt. Pleader, for the Respondent

Judgement

G.N. Vaidya, J.—By this petition the petitioner, who is the landlord of respondent No.1. challenges the decision of the Maharashtra Revenue Tribunal dated October 31. 1967, dismissing his appeal under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 on the ground that, in calculating the holdings of respondent No. 1. the Deputy Collector had wrongly excluded the lands belonging to the petitioner from the said holding and this ground was not allowed to be agitated in appeal before the Revenue Tribunal.

2. By his order dated June 29, 1967, the Special Deputy Collector (Land Ceiling).G.S.Mills No. 1. Kopargaon, excluded S. Nos. 306/1, 30306/2 and 305/3 belonging to the petitioner on the ground that these lands ceased to be in actual possession of respondent No. 1 under a decree for partition passed in favour of his son observing as follows:

".... From the evidence already recorded I was also at one time inclined to treat the Civil Court decree as a collusive proceeding between interested parties, not borne out by facts and had a mind to ignore it and to come to the conclusion that there was no partition at all as alleged by the holder, but the family was joint. I

had taken a similar view in another case decided by me in the past, but the . M.R.T. Poona had set aside my decision. (Please vide No. M.R.T.AH.V. 13/55 TEB. AP. 237-66 dated 20.8.1966 holder Shri Karbhari Ganuji Chandgude of Chas. Taluka Kopargaon). In that case the M.R.T. have observed as follows:

"It must also be noted that in certain cases under the provisions of Bombay Fragmentation and Consolidation Act, the Civil courts are restricted to partition and to execute the decree with respect to certain lands. If that was the intention of the Legislature under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act. 1961, the Legislature could have straight way restricted the Civil Court to pass the decree for partition, but it is not done so far. It is, therefore, evident that the rights of the coparceners to ask for partition in the Civil Court are kept in tact and the jurisdiction of the Civil court to decided the suit for partition, is not taken away. This being the legal position, is not taken away, consider and respect the decrees of the Civil Court in the present case.

"This Court cannot, therefore, sit in judgment over the decision given by a civil Court and treat it as Collusive decree. I have, therefore, to accept the position as Civil court decree of 1960 and say that there was a partition is 1953, and there is no proof about reunion. As I have already stated above I was going to treat the decree in the Civil Court as a collusive proceeding, on the strength of the holder another interested person and had therefore even asked the holder to give me his choice of lands for retention which he had done. Thereafter I had also issued notices to the interested landlords whose lands were likely to be found as excess held by the holder to lead evidence to show how they were entitled for restoration u/s 19 of the Act. Their evidence was also recorded, but in the meanwhile the M.R.T.'s orders in Chandgude's case was also received by me, and so I had to change my whole course of action."

3. Now, there can be no doubt that the petitioner who appeared in answer to the public and private notice served on him u/s 17 could contend that in spite of the decree the lands were lawfully and actually in possession of the petitioner and the petitioner was the holder of the said lands. What the Deputy Collector had to ascertain was the holder of respondent No.1, u/s 12. The words ""to hold land" are defined u/s 2 (14) as meaning "with it s grammatical variations and cognate expression, means to be lawfully in actual possession of land as owner or as tenant." If the respondent No.1 was in actual possession of the lands lawfully with the permission of the owner, in spite of the decree, the lands owner, in spite of the decree, the lands had to be included in the holdings of respondent No.1. the petitioner had a right of appeal u/s 33 (1) (2), in which he could challenge the declaration made u/s 21 by the Deputy Collector on the ground that the declaration was made illegally excluding the lands which were in actual lawful possession of respondent No. 1. It is, therefore, difficult to appreciate how the Revenue Tribunal could dismiss the appeal of the petitioner observing as, follows:

".....He wants that the lands of which he is a landlord of the holder, Vidwans. That is surely a matter which the appellant cannot raise in this appeal." I fail to

understand how it could be considered by the Revenue Tribunal that the petitioner had no right of challenging the finding of the Deputy Collector excluding his lands from the possession of the holding of respondent No.1.

4. Mr. Divekar, the learned Counsel for the respondent No. 1, however, submitted in supports of the finding of the Revenue Tribunal that in Special Civil Appl. No. 1156 of 1967, decided on down that where the tenant himself is found not to be a surplusland-holder, the very purpose for which the notice was served on the land-holder u/s 20 did not exist and the further inquiry as to his rights u/s 19 of the Act stands frustrated. The decision is to be understood in the context of the facts of that case. In that case a declaration u/s 21 was challenged before the Revenue Tribunal in Special Civil Application No. 1156 of 1967. The tenant holder was declared not to be surplus holder on considering the facts of the case in the appeal filed by the tenant. The landlord's appeal was dismissed by the Revenue Tribunal. The landlord had filed Special Civil Application No. 1156 of 1967 challenging the decision of the Revenue Tribunal, Mr. Justice Deshpande considering the merits of the case found that the Revenue Tribunal was quite right in holding that the tenant was not a surplus holder. He also held that as the tenant was not a surplus holder the rights if any, of the landlord had become infructuous and hence he could not challenge the decision of the Revenue Tribunal. These are not the facts in the present case. Respondent No. 1 was declared a surplus holder. The petitioner was impleaded in the inquiry u/s 17 as well as u/s 20. He contended that the partition accepted by the Deputy Collector was not binding on him. What the Deputy Collector had to consider was the actual lawful possession of land by respondent No.1. the decision of Deshpande J., therefore, cannot be applicable to the facts of the present case. It must be, therefore, held other the Revenue Tribunal erred in law in not considering the appeal on merits.

5. In the result, the order of the Maharashtra Revenue Tribunal is quashed. The appeal filled by the petitioner before the Revenue Tribunal is restored to its file. The Tribunal shall hear and dispose of the said appeal in the light of the observations made hereinabove.

6. Rule made absolute. In the circumstances of the case there will be no order as to costs.

7. Petition allowed.