

(1984) 08 BOM CK 0044

In the Bombay High Court

Case No : Special Civil Application No. 763 of 1977

Laxminarayan Pathak and Another

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 09-08-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 31B

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 2A(5)

Citation : AIR 1986 Bom 60

Hon'ble Judges : Dhabe, J

Bench : Single Bench

Advocate : S.R. Deshpande, for the Appellant; S.P. Patey, A.G.P., for the Respondent

Judgement

1. This is a writ petition arising out of the proceedings under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short "the Ceiling Act"). The S.L.D.T. held that the family unit of the petitioners held 28.06 acres of land as surplus land. The total holding of the petitioners is 85.28 acres. The pot kharab land belonging to the family unit of the petitioners was determined as 4 acres 02 gunthas. Being aggrieved the petitioners preferred an appeal before the learned Maharashtra Revenue Tribunal. The State also preferred its cross objection. The learned M.R.T. held that the total pot kharab land belonging to the family unit of the petitioners was 10 acres 4 gunthas and not 4 acres 02 gunthas as determined by the S.L.D.T. The M.R.T., therefore, accordingly modified the surplus land belonging to the petitioners. It held that the surplus land belonging to the petitioners would be 22 acres and 18 gunthas. There was also modification in regard to the delimitation of surplus land. Being aggrieved, the petitioners have preferred the instant writ petition in this Court.

2. The only argument urged on merits is in regard to the pot kharab land. It is urged that the learned M.R.T. erred in relying upon the crop statement for the year 1975-76, in regard to the Field Survey numbers in question referred to by it

when there were discrepancies in the crop statements for the year 1975-76 and the earlier years. So far as this question is concerned, it relates to the appreciation of evidence on record. It is urged that the M.R.T. had not considered the evidence of the retired Talathi Shri Joshi led by the petitioner. A perusal of para 7 of the order of the M.R.T. shows that the M.R.T. has applied its mind to the evidence on record and has arrived at its own conclusions. Since the finding is based upon the material on record, it is not open to me to disturb the same in my writ jurisdiction. The contention raised on merits in regard to pot kharab land is, therefore, rejected.

3. The next question raised on behalf of the petitioners is about the validity of the proviso to sub-section (5) of Section 2A of the Ceiling Act. Section 2A deals with the constitution of a tribunal known as surplus land determination tribunal constituted for determining the ceiling area, the surplus land and for other purposes in the Ceiling Act. Section 2A was inserted in the Act for the first time by the Maharashtra Act No. II of 1976. The said Act has received the assent of the President and is also included in the IX th Schedule of the Constitution of India and is, therefore, immune from any challenge on the ground of infringement of fundamental rights being protected by Article 31B of the Constitution.

4. In the original Act, sub-section (5) of Section 2A merely provided that the quorum to constitute a meeting of the Tribunal and the procedure to be followed by it should be such as may be prescribed. Rule 3 of the Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) (Declaration and Taking Possession of Surplus Land) and Amendment Rules, 1975 provided procedure of sittings of tribunals constituted u/s 2A. Sub-rule (3) of Rule 3 provided that the quorum for every meeting of the Tribunal should be two including the Chairman. It was further provided in sub-rule (3) of rule 3 that if within half an hour of time fixed for the meeting there was no quorum the Chairman alone should proceed further with the meeting and record his decision in the proceedings as a decision of the Tribunal. It is worthwhile to notice at this stage that this later part of sub-rule (3) of Rule 3 was challenged in this Court on the ground that it was beyond the powers of the rule making authority under sub-section (5) of section 2A of the Ceiling Act, to provide for the quorum of such tribunal and the procedure to be followed by it. This Court in the case of Awadhoot and Others Vs. State of Maharashtra and Others, , held that the later part of sub-rule (3) of Rule 3 empowering the Chairman to decide the case in the absence of the quorum for the meeting of the tribunal by himself was illegal and was beyond the rule making powers of the State Government under sub-section (5) of section 2A of the Ceiling Act.

5. It is with a view to overcome the decision referred to above that sub-section (5) of S.2A was amended by the Amending Act No.60 of 1977 and the proviso was added to the said sub-section under which it is provided that if within half an hour of the time fixed for the meeting of the Tribunal there is no quorum as may

be prescribed and if the Chairman alone is present, he shall be deemed to be the necessary quorum to constitute the meeting of Tribunal and further that he can proceed with the meeting as a decision of the Tribunal. This amendment to sub-section (5) of S.2A was given retrospective effect from the date of enactment of S.2A in the Ceiling Act. It is, however, pertinent to see that the Maharashtra Act No.60 of 1977, by which the proviso to sub-section (5) of the S.2A was inserted did not receive the assent of the President and was also not included in the IX th Schedule, by reason of which it did not have any protection of Art. 31A or Art. 31B of the Constitution of India, with the result that it was open to challenge on the ground of infringement of the fundamental rights. It is, therefore, that the petitioners are challenging the proviso to sub-sec.(5) of S.2A of the Ceiling Act on the ground that it infringes Art. 14 of the Constitution of India.

6. The first submission in regard to the challenge to the proviso to S.2A(5) on the ground of the infringement of Art. 14 is that the landlords whose cases are to be decided by the Tribunal do not get the benefit of the knowledge of the non-official members when their cases are decided by the Chairman alone. The second attack upon the proviso to S.2A (5) on the ground of Art. 14 is that the Chairman of the Tribunal, who is of the rank of the Tahsildar can alone decide the cases of the petitioners whose cases are to be heard by the Tribunals constituted under S.2A of the Ceiling Act whereas where no tribunals are constituted, the cases of such persons are to be decided by the Officers of the higher rank viz. the Collector as defined in S.2(6) of the Ceiling Act, a perusal of which shows that it includes any officer not below the rank of Assistant Collector or Deputy Collector. The learned counsel for the petitioner has brought to my notice S.44A of the Ceiling Act, according to which in the areas where the tribunals are constituted, the tribunals alone to the exclusion of the Collector, are empowered to exercise all the powers and perform all the duties of the Collector under any of the provisions of the Ceiling Act except section 2A(6) or section 45A(2) thereof. The submission is that the decision by the Chairman alone is not really speaking the decision of the tribunal and, therefore, in such cases but for the legal fiction created by the Proviso to S.2A(5), it is the Collector alone, who could have such cases where the tribunal under the Ceiling Act is incomplete in the absence of the members. The deprivation of the benefit of the decision by the officer of the higher rank, according to the learned counsel for the petitioners, constitutes discrimination within the meaning of Art. 14 of the Constitution of India.

7. So far as the first submission is concerned, there is no merit in the said submission on behalf of the petitioners. When a tribunal is constituted of more than one person, it is necessary to provide for its quorum, for its proper working and its decision. The Chairman of the Tribunal as provided in S.2A(3) of the Act is a person who holds or has held a civil post under the State not below the rank of a Tahsildar. He is thus a person who is conversant with the revenue law and the judicial procedure and, therefore, is appointed as a Chairman of such Tribunal. The constitution of the tribunal shows that there is no control over the non-official members under this Act and they are not bound to attend the

meetings of the Tribunal. It is because of this difficulty that the proviso to sub-section (5) of S. 2A was inserted in the Ceiling Act, so that by reason of their absence the working of the tribunal should not be hampered. Merely the fact that the non-official members are associated with the enquiry under this Act, it does not mean that the Chairman who is of the rank of the Tahsildar is not conversant with the local conditions and the matters required to be taken into consideration while deciding the cases under this Act. He being a person working as a Revenue Officer is fully conversant with the requirements of the Ceiling Act. Therefore, if for the smooth and speedy working of the Tribunal he is alone constituted as the quorum, it cannot be said that the case of the landholders would be affected because they do not have the benefit of the knowledge of the non-official members. At any rate on the above plea, the proviso to S.2A(5) cannot be struck down as arbitrary and unreasonable. The first limb of the argument on behalf of the petitioners under Art. 14 of the Constitution, therefore, must fail.

8. The second limb of the argument is that even though the non-official members are not present and the Tahsildar decides alone, there is discrimination in the procedure under the Act because in the cases where no tribunal is constituted under the Ceiling Act, the matters under the Ceiling Act are decided by the higher authority, viz. the Collector. According to the petitioner, the decision solely by the Tahsildar as Chairman of the Tribunal is prejudicial to them because in the cases where no tribunal is constituted the decision is by the higher officer, viz. the Collector. The learned counsel for the petitioners has relied upon the decisions of the Supreme Court in the case of *State of West Bengal Vs. Shyamapada and Others*, , *State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others*, and *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, in support of his contention.

9. It is well settled that the challenge under Art. 14 has to be examined in the facts and circumstances of each case on the twin tests whether there is a rational classification which means that the classification must be founded on an intelligible differentia which distinguishes the persons or things that are grouped together from others and that the differentia must have a rational relation to the object sought to be achieved by the Act, and secondly if there is a rational classification, whether there is any discrimination within such class. So far as the case of *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, is concerned, the view taken therein stands overruled by the decision of the Supreme Court in *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, . It is held by the Supreme Court in *Maganlal Chhaganlal's* case that if the two procedures are by themselves valid and do not violate Art. 14 or the Art. 19, the fact that one of the procedures is more onerous and harsher would not make that procedure void merely because the competent authority can resort to that procedure. A similar view is taken by the Supreme Court in the case of *Commissioner of Sales Tax, Madhya Pradesh, Indore and Others Vs. Radhakrishnan and Others*, . The cases relied upon by the learned counsel for the petitioners are of no assistance to him in the facts of the instant

case.

10. There is a fallacy in the submission advanced on behalf of the petitioners in regard to the decision rendered by the Tahsildar as Chairman in the absence of the members of the Tribunal. The decision rendered by the Tahsildar as Chairman in the absence of the members is nonetheless the decision of the Tribunal. There are two legal fictions created in the proviso to section 2A(5) of the Ceiling Act. The first is that within half an hour if there is no quorum as prescribed, the Chairman shall be deemed to be the necessary quorum to constitute the meeting of the tribunal. Therefore, after waiting for half an hour, the Chairman himself functions as a tribunal under S.2A in the absence of the non-official members. The second legal fiction which is created under the proviso to S.2A(5) is that the Chairman is empowered to proceed further with the meeting of the Tribunal and record his decision in the proceedings as the decision of the Tribunal. Thus the decision rendered by the Chairman is the decision of the Tribunal which in other words would mean that it has the same efficacy if the non-official members had remained present at the meeting of the Tribunal. It is thus clear that the Tahsildar deciding as a Tribunal belongs to a different class from the Collector who decides the case where no tribunal is constituted. Since the constitution of the tribunal itself is not challenged or cannot be challenged in view of the protection of Art. 31B of the Constitution to the Maharashtra Amending Act No. II of 1976, by which S.2A and in particular section 2A(3) providing for appointment of the officer of the rank of Tahsildar as the Chairman of the Tribunal was originally introduced, the classification of the Tribunal as authority under the Ceiling Act has to be held good and any decision given by the said tribunal cannot be challenged on the ground that if the tribunals are not constituted, it would be the Collector, the higher officer who would be able to decide the said cases. In this regard I may observe that the existence of a fortuitous circumstance that in the absence of the members, the Chairman alone constitutes the Tribunal and decides the case does not attract Art. 14 to render the constitution of the Tribunal under the Ceiling Act as arbitrary or discriminatory. In this view I am supported by the decision of the Supreme Court in the case of V.C. Shukla and Others Vs. State (Delhi Administration), which in turn has relied upon for its view upon its earlier decisions in the case of Khandige Sham Bhat v. The Agricultural Income Tax Officer, AIR 1963 SC 591 and in the case of Dantuluri Ram Raju and Others Vs. State of Andhra Pradesh and Another,

11. Even otherwise as already stated, the Tahsildar is a Revenue Officer conversant with the requirements of the Ceiling Act and if the legislature had chosen to do so, he could have been equally included within the definition of the Collector under the Ceiling Act. The decision rendered by him cannot be said to be arbitrary only because he is an officer subordinate to the Collector which as per its definition in S.2(6) includes the Assistant or the Deputy Collector. Moreover there are procedural safeguards provided in this Act because the decisions of the Tribunals are subject to appeal to the M.R.T. under S.33 or the revisional power of the Commissioner u/s 45 of the Ceiling Act. The said proviso,

therefore, cannot be said to be arbitrary or discriminatory.

12. The next submission on behalf of the petitioners to show that the proviso to S.2A(5) is arbitrary is based upon sub-section (6) of S.2A of the Ceiling Act. According to the petitioners, when there are non-official members present in the meeting of the Tribunal, then if the Chairman differs from the majority of the non-official members, the matter has to be heard by the Collector. In my view, this circumstance has no relevance in considering the validity of the proviso to sub-section (5) of S.2A of the Ceiling Act. However, the substantive provisions of sub-section (6) of S.2A show that if the opinion amongst the members is equally divided. The decision of the Chairman is the decision of the Tribunal. The proviso also shows that if the Chairman differs from the opinion of the majority, still the opinion of the majority is not the decision of the Tribunal but in that case the Chairman has to make reference to the Collector. Thus the unique position held by the Tahsildar as Chairman, his knowledge and the status of the Chairman is recognised by sub-section (6) of S.2A of the Ceiling Act. Instead of, therefore, assisting the petitioners, sub-section (6) of S.2A reinforces the construction that the proviso to S.2A(5) is not arbitrary or discriminatory. In the circumstances, the contention raised on behalf of the petitioners that the proviso to sub-sec. (5) of S.2A infringes Art. 14 of the Constitution is devoid of any merit and is rejected.

13. The learned counsel for the petitioners also urged that as the record of the lower Court is not available to him in this Court he is not able to substantiate his submission about the finding of the learned M.R.T. in regard to Pot Kharab land. The learned counsel for the petitioners wants to show that there are discrepancies in the crop statements for various years. As already stated above, even assuming that there are discrepancies in the crop statements, it is a piece of evidence, which is available on record and it is open to the learned M.R.T. to arrive at its finding after taking into consideration all the crop statements on record by accepting the entries in the crop statement of the particular year i.e. 1975-76. In doing so, it cannot be said that it acted without jurisdiction. I do not, therefore, think it necessary that the records should have been made available to the petitioners to substantiate their case. The said submission of the petitioners is, therefore, rejected.

14. In the result, the writ petition fails and is dismissed. However, in the circumstances, there will be no orders as to costs. Petition dismissed.