

(1969) 09 BOM CK 0011

In the Bombay High Court

Case No : Special Civil Application No. 1435 of 1967

Madanlal Shankar Maliwal and Another

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 30-09-1969

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 16, 2, 2(20), 2(22), 3

Citation : AIR 1970 Bom 249 : (1970) 72 BOMLR 300 : (1970) MhLj 446

Hon'ble Judges : Vaidya, J;K.K. Desai, J

Bench : Division Bench

Advocate : A.V. Sawant, for the Appellant; M.B. Kadam, Asst. Govt. Pleader, for the Respondent

Judgement

K.K. Desai, J.—In this petition under Article 227 of the Constitution the petitioners challenge the correctness of the Commissioner's order and decision dated May 30, 1967 whereby in the suo motu enquiry held by the Commissioner under Sub-section (2) of Section 45 of the Maharashtra Agricultural Lands (Ceilings on Holdings) Act, 1961, the Commissioner held that six lands of the second petitioner Godavaribai, (being the wife of the first petitioner), consisting of the aggregate area of 83 acres 4 gunthas, were liable to be added to the 112 acres and 19 gunthas of the land-holding of the first petitioner for ascertaining the surplus lands held by the first petitioner in excess of the ceiling area fixed under the above Act.

2. On the return being filed by the first petitioner originally the Collector, Parbhani by his decision and order dated November 80, 1964 held that the first petitioner was the owner of lands of the aggregate area of 110 acres 32 gunthas. One hundred and eight acres was the ceiling fixed for the area. He, therefore, held that the first petitioner held 2 acres and 32 gunthas of land as surplus land and directed notice u/s 16 of the Act to issue in respect of that surplus holding. The Commissioner in the suo motu enquiry held by him held that the first

petitioner's lands aggregated to 110 acres and 19 gunthas. His wife, the second petitioner, owned six other lands of the aggregate area of 83 acres and 4 gunthas. In connection with that holding of the second petitioner, the argument before the Commissioner on behalf of the second petitioner was that these lands had been acquired by the second petitioner under registered deeds of gift executed after permission was granted in that connection u/s 47 of the Hyderabad Tenancy and Agricultural Lands Act, 1950, As these lands were of the separate ownership of and were held separately in exclusive possession by the second petitioner, these lands were not liable to be included under the above Act in the aggregate land-holding of the first petitioner for ascertainment of the surplus lands held by the first petitioner. The Commissioner rejected that contention by observing that the important point for consideration was as to whether Godavaribai (second petitioner) was joint or separate from land-holder (first petitioner) and mere omission of her name in the return made by the first petitioner did not establish that she was separate from the first petitioner. He stated:

"No substantial evidence has been produced to the effect that she is separate in estate from her husband. Under the Hindu Law wife is presumed to be joint in all respects with her husband, unless contrary is proved. As such the land held by her will have to be included while counting the holding of the land-holder" (first petitioner.)

For the above reason, he rejected the contentions made on behalf of the second petitioner and made the findings as already recited above.

2A. On behalf of the petitioners the main contention of law that is made is that on a true construction of the relevant provisions of the Act, lands held by members of a family separately from other members of the family cannot be considered as a single holding for ascertainment of surplus lands in excess of ceiling area held by the family, The submission was that even though having regard to the definitions contained in Section 2 of the Act, the second petitioner, as wife, must be held to be member of the family consisting of herself and her husband, (the first petitioner), her separate holding cannot be considered as holding of the family or the same person u/s 4 (1) of the Act. Her holding must be considered independently and separately in ascertainment of surplus lands held in excess of ceiling area by the first petitioner, her husband.

3. The first contention on behalf of the respondents was that a "person" was defined in Section 2 (22) of the Act to include a family and the language of Section 4 (1) has the effect of directing that holdings of all the members of a family must be considered holdings of a single person and the holdings of all members of the family were liable to be clubbed together for ascertainment of surplus lands held by the family in excess of ceiling area.

4. A separate and important second contention made on behalf of the petitioners was that the finding of fact made by the Commissioner that the second petitioner

was in respect of her properties not separate from the first petitioner was based on a presumption of Hindu Law which was not applicable in connection with findings to be made under the Act. The provisions of the Act excluded application of presumption of Hindu Law in respect of matters to be considered under the provisions of the Act, in connection with this finding the Commissioner failed to consider documentary evidence produced on behalf of the second petitioner by the first petitioner in the enquiry proceedings before the Commissioner.

5. In connection with the first contention the following provisions in the Act require to be noticed. The Act was enacted to impose a maximum limit (or ceiling) on the holding of agricultural land and to provide for acquisition and distribution of land held in excess of such ceiling and for matters connected with purpose aforesaid. The preamble as above quoted requires to be noticed because in. out view, the Act which provided for compulsory deprivation of properties which were surplus held by agricultural owners was liable to be strictly construed.

6. In the definition Section 2 clauses (11) (14), (20) and (22) run as follows:--

"(11). "Family" includes, a Hindu undivided family, and in the case of the other persons, a group or unit the members of which by custom or usage, are joint in estate or possession or residence.

(14) "To hold land", with its grammatical variations and cognate expressions, means to be lawfully in actual possession of land as owner or as tenant and "holding" shall be construed accordingly.

(20) "Members of a family" means a father, mother, spouse, brother, son, grandson, or dependent sister or daughter, and in the case of a Hindu undivided family a member thereof and also a divorced and dependent daughter.

(22). "Person" includes a family."

The relevant provisions in Sections 4 and 0 are as follows:--

"4 (1) Subject to the provisions of this Act, no person shall hold land in excess of the ceiling area, as determined in the manner hereinafter provided.

x x x x x

6. Where a family consists of members which exceed five in number, the family shall be entitled to hold land exceeding the ceiling area to the extent of

Provided that for the purpose of increasing the holding of a family in excess of the ceiling area as aforesaid, if any member thereof holds any land separately, he shall not be regarded as a member of that family for such purpose."

7. The main contention of the parties must arise on the provisions of Section 4 whereunder no person can hold land in excess of ceiling area as determined under the Act, The phrase "hold" as contained in this Act must be construed in accordance with the language in clause (14) of Section 2 and must, therefore, mean "to be lawfully in actual possession of the land as owner". The contention

on behalf of the respondents, after relying upon the definitions of "member of a family" and "family" in clauses (20) and (11) of Section 2, is that the phrase "person as contained in Section 4 means "ah the members of a family whether joint or separate". In the present case, therefore, the phrase "person" includes the first petitioner and his wife, the second petitioner. Between both of them, in the submission of the respondents, if they hold lands as "owners in possession" in excess of ceiling area, the surplus lands held could be acquired from them and distributed in accordance with the provisions of the Act.

8. In our view, there is no justification in accepting the above submission of the respondents. In spite of the fact that under clause (20) a father, son and daughter and mother would be members of a family and in spite of the fact that a husband and wife would be members of a family and a brother and brother would be members of a family, there is nothing in the provisions in Section 4 to warrant a finding that separate holdings of these members of a family were liable to be clubbed together and held to be a single holding in connection with ascertainment of lands held by these individuals as being in excess of ceiling area determined under the Act. Now, this finding can be justified by the language in the proviso of Section 6 which clearly indicates in respect of the single unit of a joint Hindu family that if any member of such family holds any land separately, he shall not be regarded as a member of the family for the purposes of Section 6. The language of the proviso indicates that under the Act, separate holdings of coparceners of a joint Hindu family were not liable to be included in the holding of the joint family u/s 4 for ascertainment of the land held by such family in excess of the ceiling area determined under the Act. This construction can be justified also by noticing that under Hindu Law as well as Muslim and other Laws, members of families having joint holdings are permitted to have and can own separate individual properties of their own ownership. These separate properties could be agricultural lands and provisions in Section 4 could not be held to mean that separate holdings of members of a family were liable to be clubbed into a single holding for ascertaining excess land held by the family as a unit.

9. These findings have the consequence of setting aside of the Commissioner's order which was made on the footing that separate holdings of a female, being a wife of a landholder, were necessarily liable to be clubbed with the holding of her husband u/s 4 for ascertaining land in excess of ceiling area held by him. The Commissioner was liable to proceed to decide the questions which arose before him on the footing that the true construction and effect of the provisions in Section 4 was as stated above.

10. Mr. Sawant for the petitioners is right in his submission that along with the written statement filed by the first petitioner, documentary evidence in the shape of sanctions for alienation granted u/s 98A (2) of the Tenancy Act and the registered deeds of gifts dated 2-4-1953 and February 21, 1953 executed by the first petitioner in favour of the second petitioner in respect of the aforesaid lands mentioned in the Commissioner's order and the VII-XII extracts in respect of

these lands showing separate individual possession of the second petitioner of these fends since the date of the deeds of gift in her favour were produced. But in making his findings, the Commissioner has failed to look into these documents. It is quite clear that in connection with the separate ownership of these land; as claimed on behalf of the second petitioner, the Commissioner should not have proceeded to decide the question merely on the presumption of Hindu Law as he did. The Commissioner should have examined these documents which were on the record before him for finding out as to the transfer of physical possession of all these lands by the first petitioner to the second petitioner and in that connection to ascertain as to how from the dates of the deeds of gifts executed in her favour, the second petitioner had dealt with these lands in her own right. Upon examining all these documents, the Commissioner was at liberty to hold that in fact that the second petitioner had never acquired possession or separate ownership of these lands. Without making such a finding, it was impossible for the Commissioner to bold that the second petitioner was not in separate divided possession of these lands or that these lands were in possession of and held by the first petitioner as his own lands, as was necessary u/s 4 (1) of the Act. It is necessary to remand the matter of the enquiry proceedings under, Sub-section (2) of Section 45 of the Act to the Commissioner to enable him to look into all the relevant documentary and oral evidence that may be produced before him on behalf of the petitioners. The Commissioner will proceed to decide the questions which will arise before him in the above enquiry in accordance with law including as declared above.

11. Rule absolute. Directions as above mentioned. There will be no order as to costs.

12. Rule made absolute.