
(1986) 01 BOM CK 0055

In the Bombay High Court

Case No : Special Civil Application No. 2268 of 1978

Madhukar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-01-1986

Acts Referred:

Citation : AIR 1986 Bom 436 : (1985) 50 FLR 411

Hon'ble Judges : V.A. Mohta, J;H.W. Dhabe, J;G.G. Loney, J

Bench : Full Bench

Advocate : R.N. and S.R. Deshpande, C.G Madkholkar, J.N chandurkar, M.N. Inle and A.M. Deshmukh, for the Appellant; B.P. Jaiswal and V.V. Naik, Asstt. Govt Pleaders, for the Respondent

Judgement

V.A. Mohta, J.—By consent of parties we have formulated the following three points for consideration in this reference:

(1) Whether the term "the object of the Amending Act, 1972" in S. 10(1) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 means the Amending Act as amended by Act No. 47 of 1975?

(2). whether s. 10(1) is attracted in respect of a transfer between 26-9-1970 and 2-10-1975 by a "member of family unit" who separately held land prior to 26-9-1970?

(3) Whether in case of a family unit in existence on 2-10-1975, S. 10(1) is attracted in respect of a transfer between 26-9-1970 and 2-10-1975 by a "member of a family unit " whose individual holding is below the ceiling limit but aggregate holding of the family unit is in excess of the ceiling limit on the commencement date?

2. The basic factual background : A "family unit" consisted of Madhukar Patil his wife Sau. Mandakini and a minor son Manoj all the three members of the family unit separately held, since before 26-9-1970. nearabout 116 acres, 56 acres and

57 acres of land respectively. considering the extent of Pot-kharab land of Mandakini and Manoj they held land below the ceiling limit. Manoj transferred sometime in 1973 nearly all of his land and before 2-10-1975 purchased 16 acres of land. Mandakini transferred 39.50 acres of land between 1971 and 1972.

3. the Legislative history:

The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (The Principal Act) was enacted on 16-6-1961. It provides for fixation of upper limit for holding land. On 26th September, 1970, a conference of Chief Ministers was held to review the actual working of such Ceiling Acts and to evolve a uniform national policy in this respect. On 7-8-1972, A Bill No. LVI of 1972 was introduced in the State Legislature which emerged as the Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings and (amendment) Act, 1972 - Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and (Amendment) Act, 1972 - Maharashtra Act No. XXI of 1975 the Amending Act, 1972). Somehow it received the assent of the President as late as on 7-8-1975. It was published in the Government Gazette on that very date and was brought into force on 19-9-1975. It brought drastic changes in the Principal Act. Chapters II and III were wholly substituted and ceiling limit was lowered. For dry crop land it is fixed at 54 acres. An artificial new concept of a family unit as holder of the land was introduced by S. 4 and defined under s. 2(11A) Section 4(1) was worded thus:

"S. 4(1): All land held by each member of a family unit, whether jointly or separately, shall for the purpose of determining the ceiling be as if the family unit, be deemed to be held by the family unit.

Provided that, if any person, who is a member of a family unit holds land which is possessed separately before the 26th day of September, 1970 as a result of acquisition by testamentary disposition or devolution on death or by operation of law or is acquired as a result of a transfer or partition effected prior to 26th day of September, 1970 then for determining the surplus land in any holding which is in excess of the ceiling shall not be deemed to be held by the family unit.

"Transfer" means transfer by act of parties (whether by sale gift, mortgage with possession, exchange lease or any other disposition made inter vivos) and includes transfer made under decree or order of a Court, Tribunal or Authority and partition has the same meaning as in S.11.

Explanation - A family unit" Means (a) a person and his spouse (or more than one spouse) and their minor sons and minor unmarried daughters, if any, or (b) where any spouse is dead, the surviving spouse or spouses, and the minor sons and minor unmarried daughter, or (c) where the spouses are dead, the minor sons and minor unmarried daughters of such deceased spouses. On 9-8-1975 a Bill No. XLIII of 1975 was introduced in the State Legislature. It was passed by the Assembly on 11th August and by the Council on 13th August 1975 and by the Council on 13th August, 1975. It received the assent of the President on 15th

September 1975 was published in the Government Gazette on 19th September 1975 and brought into force from 20th September 1975 . It is the Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and (amendment amendment Act, 1975 Maharashtra Act NO. XLVII of 1975 (the Amending Act, 1975) By this Act proviso to s. 4(1) and definition of Transfer below it was deleted and an Explanation to S. 10(1) was added Section 10(1) now reads:

"10(1)If-

(a) any person or a member of a family unit, after the 26th day of September 1970 but before the commencement date, transfers any land in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972. or

(b) any land is transferred in contravention of S.8 then, in calculating the ceiling area which that person, or as the case may be the family unit, is entitled to hold, the land so transfer shall be taken into consideration, and the land exceeding the ceiling area so calculated shall be, deemed to be in excess of the ceiling area for that holding, notwithstanding that the land remaining with him or with the family unit may not in fact be in excess, of the ceiling area.

If by reason of such transfer, the holding of a person, or as the case may be of the family unit is less than the area so calculated to be in excess of the ceiling area, then all the land of the person, or as the case may be the family unit shall be deemed to be surplus land; and out of the land so transferred and in possession of the transferee (unless such land is liable to forfeiture under the provision of sub-s (3)), land to the extent of such deficiency shall, subject to rules made in that behalf, also be deemed to be surplus land, notwithstanding that the holding of the transferee may not in fact, be in excess of the ceiling area.

Explanation. - For the purposes of cl (a) transfer has the same meaning as in S. 8.

All transfers made after the 26th day of September 1970 but before the commencement date, shall be deemed (unless the contrary is proved) to have been made in anticipation of or in order to avoid or defeat the object of the amending act, 1972.

Explanation. - For the purposes of this subsection, a transfer shall not be regarded as made on or before 26th September 1970 if the document evidencing the transfer is not registered on or before that date or where it is registered after that date, it is not presented for registration on or before the said date."

The term "commencement date" mentioned under S. 2(6A) the date of commencement of the Amending Act, 1972 i.e 19-9-1975 but by Ordinance No. XIV of 1975 promulgated on 2nd October, 1975, it was altered to mean 2nd October 1975. the Ordinance in due course of time was replaced by Act No. II of 1976.

4. the judicial history leading to the reference.:

In the case of Abdul Bhai v. State of Maharashtra (Special Civil Appln. No. 3343

of 1976 decided on 13th August 1976 by the learned single Judge Sawnat, J.) it was held that if a family unit did not hold at any point of time between 26-9-1970 to 2-10-1975 land exceeding the ceiling limit the transfers effected during this period would not attract S. 10(1) On that very day, an important decision relating to the validity of the Principal Act as amended, was pronounced by a Division Bench of this Court (Masodkar & Dighe, JJ). in the case of Vithalrao Udhaorao Uttarwar and Others Vs. The State of Maharashtra, We would quote only the following lines from that Judgement as nothing else is relevant in the present case :

"129 Act No. 47 of 1975 was passed and gazetted on 19th September, 1975 i.e the day when Act No. 21 of 1975 was put into effect. That Act obviously was passed with reference to the provision of Act No. 21 of 1975 and purported to amend the provision of that Act. Instead of the Legislature itself declaring that this Act upon its passing would become a part of the Act No. 21 of 1975 it provided that it shall come into force on such date as the State Government may by notification appoint. In other words the latter Act, which was an amending act of earlier amending Act would not be effective unless so notified and enforced by the State Government. For the purpose of putting into effect the provisions of this Act, the legislature intended is always to keep the term of Act No. 21 of 1975 available so as to effectively amend the same from the date to be notified by the State government. Only because that date happens to be notified later on, the amendments enacted by the legislature cannot be said to have been rendered nullity or nugatory. Simple effect of the second enforcement would be to incorporate by pen and ink the terms of the provision in original Act as amended by Act NO. 21 of 1975 to the extent enacted by Act No. 147 of 1975.

130. the salutary doctrine of reference operates for the purpose of interpretation and construction of statutes. That emanates by the very exigencies to keep the statutes available for the legislative purposes, By reference to earlier amending Act, the second amending Act can effectively introduce further changes in the body of the original Act though the former has become part and parcel thereof. the power to make such amendment in this manner always exists and the matter is purely one of interpretation. Once this is granted wherever there occurs a reference to the Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and (amendment) Act, 1972 in Act No. 47 of 1975 it would mean the provision as contained in that Act and to that extent that would have to be read out and corrected by pen and ink in the structure of the original Act, Act NO. 47 of 1975 refers for the purpose of amendment to the Act No 21 of 1975 as the Amending act and provides by different sections ranging from 2 to 8 how the Amending Act shall stand amended upon the enforcement of Act No. 47 of 1975. that term is intended to mean clearly the provision of Act No. 21 of 1975 and by reference would operate with all force wherever Act no. 21 of 1975 is operative. No. anomaly is introduced nor any antilogy is raised. For it is perfectly permissible for the State Government to notify earlier or on simultaneous dates for effectuating the provision of Act No. 47 of 1975 which would have made this

Act that part of Act 21 of 1975 and thereafter notify the date of Act No. 21 of 1975 for the purpose of enforcement. For reason obvious it was left to the power of the State government so to give effect to Act no. 21 of 1975 and then to make effective Act No 47 of 1975 . The Legislature did not inject otherwise. It is common experience that the Legislature in its wisdom always follows such device of learn the matters of notifying enforcement dates to the State Government. That is clearly because of several good reasons including administrative and executive exigencies and knowledge thereof which executive Government better possesses. This power undoubtedly partakes in minor legislative function. The effect however of such a device merely is that from the date of enforcement the statute becomes operative and enforceable. As far as Legislature is concerned the law stands enacted reflecting the will of the legislature once the same is gazetted as an Act duly made. Thereafter there is no such state as non-existence of an Act enforceability of an Act of the Legislature and the existence of the Act are two independent matters. Even before enforcement and after such enforcement it is available as an act for the purposes of amendatory legislative process."

Constitutional validity of the Principal Act was upheld by the Supreme Court in (i) Dattatraya Govind Mahajan and Others Vs. State of Maharashtra and Another, and (ii) Waman Rao and Others Vs. Union of India (UOI) and Others,

5. then comes in order of time the case of Narayanibai v. State of Maharashtra 1976 MahLJ 865 decided by the learned Single Judge V.S. Deshpande J. as he then was. As major part of the controversy centres round the ratio of that case, detailed reference to its basis facts is inevitable. Since before 26-9-1970 Narayanibai the landholder separately held 55 acres and 245 gunthas of land out of which 4 acres 39 gunthas was pot-kharab. On 10-11-1971 she sold 25 acres 10 gunthas. her husband Rambilas who also separately held land.

bequeathed his land to her by a Will dated 15-2-1972. Rambilas died on 10th January 1975 leaving 35 acres 04-gunthas of land for Narayanibai to succeed. On 2-10-1975 her total holding was 65 acres 18 gunthas, out of which 8 acres 22 gunthas were pot-kharab and thus her effective holding was 57 acres 36 gunthas. the couple did not have any minor son or minor unmarried daughter as a result there was no family unit in existence on 2-10-1975. the ceiling authorities included the land sold by her on 10-11-1971 in her total holding on the ground that the said transfer was hit by Section 10. She filed a writ petition in the High Court contending that in the whole background presumptive provision of Section 10(1) were not attracted. This contention was upheld. On what ratio is a debatable point. The State throughout took the stand that on ratio of that decision is that Section 10(1) could not be pressed into service because on 2-10-1975 family unit itself was not in existence whereas the landholders took the stand that its further ratio is that Section 10(1) is not attracted when on the date of transfer the transferor holds land below ceiling limit. We reproduced the relevant extracts.

"Can any such presumption of transfer being in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972 ever be raised where on the date of the transfer the transferor holds lands up to less than the ceiling area? My learned Brother Sawant J. had occasion to consider this very question in *abdul Bhai v. State* (Spl C.A. No. 3345 of 1976 decided on 13-8-1976) . The learned Judge answered the question in the negative. Mr. R.R. Deshpande, the learned assistant government Pleader, could not dispute the proposition of law laid down in this judgement. It is thus clear that ordinarily the two sales of lands deed 10-110-1971 could not be deemed to have been made in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972 and the petitioner could not have been called upon to prove to the contrary as she was holding lands less than the ceiling area, namely 54 acres, on the date of the sale, namely 10-11-1971."

Whether the expression family unit referred to in Section 10 is referable to the family unit which existed on or after 2-10-1975 i.e. the commencement date as defined under the Act No. 21 of 1975 or to such group of persons like the petitioner and her deceased husband that existed prior to that date and answered the description of the words family unit as introduced in the Act by the Act No. 21 of 1975 but ceased to be such family unit even before 2-10-1975 because of the husband's death. It is obvious that when Section 10 seeks to invalidate transfers by a person or a member of a family unit even to a limited extent, it only refers to a member of the family unit which is prohibited from holding and in excess of the permissible area u/s 3 of the Act, and any person or a member of a family unit can only have reference in the context, to holders as such person or family units who are in existence of the commencement date namely. 2-10-1975"

"In other words, the sale of only such person will be hit by this section retrospectively who either is a holder of the land as such person, or who happens to be a member of a family unit which is assumed to be the surplus holder of the land on the commencement date. In cases where as here, the holder cannot be said to be the family unit on the commencement date, the fiction of any of its members having effected the transfer with the object of avoiding or defeating the object of the Amending Act 1972, cannot arise, much less the question of calculating the holdings of all members so the family unit together on the date of any such sale there being no inquiry into the holding of any family unit. The conception is not made so retrospective as to permit raising the contemplated fiction or presumption against the sale of any person as member of the family unit. which does not happen to be the holder because of not being in existence on 2-10-1975."

6. The following four judgments considered *Narayanibai* 1976 MahLJ 865.

(i) *Vithalrao Karekar v. State of Maharashtra* (Special Civil Appln. No. 429 of 1977 decided on 24th August 1981 by Palshikar J. as he then was)

(ii) *Vasantrao v. State of Maharashtra* (Special Civil appln. No. 3709 of 1976

decided on 23rd November 1981 by D.B. Deshpande J. as he then was).

(iii) Kantabai v. The State of Maharashtra (Special Civil Appln. No. 119 of 1977 decided on 27-7-1981 by Tulpule J. as he then was).

(iv) Shravan v. State of Maharashtra (Special Civil Appln No. 2919 of 1976 decided on 25th August 1981 by R.S. Pandhaye J. as he then was).

In Vithalarao Karekar it was held that if a family unit was in existence on 26-9-1970 as well as 2-10-1975 and held land below the ceiling limit, the transfers made by a member of a family cannot attract Section 10(1). It was observed that the principle laid down in Narayanibai will apply only where a family unit is in existence on 26-9-1970 but has ceased to exist on 2-10-1975. In Vasantrao also it was held that as the family unit was not in existence on 2-10-1975, the ratio of Narayanibai's case was not attracted. In Kantabai it was held that in view of proviso to Section 4(1) introduced by Amending Act, 1972 section 10(1) was not attracted as transfer by a member of family unit (which held land in excess of ceiling area) was of land separately held by him since before 26-9-1970. In Shravan conclusion was:

"As I understand the decision in the case of Narayanibai (supra) section 10 contemplates a family unit not as u/s 4(1) as amended by Act No. 47 of 1975 after deleting proviso to the said section, but a family unit as contemplated, prior to this amendment, by earlier Act NO. 21 of 1975.

7. In the case of Pandurang Narayanrao Namade v. The State of Maharashtra (Special Civil Appln. No. 1514 of 1977) R.S. Pandhaye J. as he then was found conflict in the above four decisions and hence made a reference to a Division Bench on three points formulated by him thus:

It is apparent that the object of enacting section 10 of the Ceiling Act by amendment Act 1972 was to set at naught all attempts to transfer lands in anticipation of or in order to avoid or defeat the object of Amending Act, 1972 the proposal for which was first mooted on 26-9-1970. Object of Amending Act, 1972 was to lower, in the public interest, the maximum limit (or ceiling) on the holding of agricultural land as surplus so as to secure still more equitable distribution of land and for the purpose of removing economic disparities, and thereby for assisting more effectively landless and other persons." While doing so concept of family unit was born and while deciding as to which land should be deemed to be land belonging to family unit. Lands separately acquired by members of a family unit prior to 26-9-1970 were excluded. That such exclusion was to be scrapped was not known until introduction and passing of amending Act, 1975. Therefore transfer of individually and separately owned lands acquired before 26-9-1970 by members of a family unit between 26-9-1970 and before 2-10-1975 on which day the exclusion of such separate lands from the holding of family unit was scrapped, could not even be imagined to have been effected for defeating the object of Amending Act, 1972. If this was true for Narayanibai (i) Who held landless than new ceiling area on 26-9-1975 and (ii) who individually

held land less than ceiling area on the date of transfer of her separate land in 1971 through (iii) on that date the total holding of herself and her husband, a group of persons which was to be later known as family unit was more than ceiling area and though (iv) who as an individual (since her husband died) held land in excess of ceiling are on 2-10-1975, why can it not be true for another person who transferee individual of such family unit on 2-10-1975?

II

Which of the four judgements which gave raise to this reference were not decided according to rati laid down in narayanaibai's case?

III

Fundamental right to property given to every citizen of india by Article 19(1)(f) of the Constitution of india until it was abolished by Constitution (44 th amendment) Act, 198. included right to dispose of property. though it is true that section 10 of the Ceiling Act introduced by amendment Act, 1972 is beyond challenge on account of the said Act having been placed at Sr. No. 157 in 9th Schedule of the Constitution of India, it is incumbent upon every Court of law to construe it reasonably because on law, if it is to stand the test of law can be unreasonable Moreover the we cannot forgot that the expression amendment Act, 1972 used in section 10 of the Ceiling Act was left unaltered by A amendment Act, 1975. The question that arises therefore is "whether the expression "Amendment Act 1972 used in section 10 of the Ceiling Act should be reas as "Amendment Act 1972 as amended by amendment Act 1975"?"

8. In the case of Vithalrao Ganpatrao Warhead v. State of Maharashtra 1983 Mah LJ 952 Puranik j. read the words "Amending Act 1972 is Section 10(1) to mean unamended Act 1972 and observed as under :

"This Explanation to section 10 regarding the deeming provision only relates to assuming an intention on the part of the Transferors of avoiding or defeating the object of the Amending act, 1972 and it does not relate to the Amending Act XLVII/1975. it is therefore, clear to my mind that such transfer effected by members of a family unit who were already holding lands separately and possessing them separately prior to 26th day of September, 1970 were permitted to transfer such land and not only that at the material time when they were transferred they could not be constructed even by deeming provision to have been effected with intent to defeat the provisions of the Amending Act, 1972. It is to be noted that the Amending Act, 1973, which is the Maharashtra Act No. XXI of 1975 has the commencement date 19th September 1975 while the next Amending Act which is the Maharashtra Act NO XLVII/75 has the commencement date 20-9-1975. An individual, therefore, holding the processing land separately before 26th day of September 1970 and even though a member of the family unit, his land could not be computed in the family unit and if each of such members were holding land within the ceiling limit their transfer during the period from 26th day of September, 1970 to 19th day of September 1975 could

not be said to have been effected in anticipation or in order to avoid or defeat the object of the Amending. Act, 1972 (Maharashtra Act NO. XXI of 1975) for the simple reason that such Act itself permitted such separate holdings"

In the case of Ramrao Deshkar v. State of Maharashtra (Letters Patent Appeal no. 2 of 1981 decided on 18th April 1984 a Division Bench of this Court (Walker & Paunekar JJ.)) relying on Narayanibai 1976 MahLJ 865 held that the sale of land held separately by a member of family unit prior to 26-9-1970 made in 1974 did not attract Section 10(1) though the total Holdings of the family unit had exceeded the ceiling limit on that day. In the case of Purushottam Deshmukh v. State of Maharashtra, Letters Patent Appeal No. 2 of 1982 decided on 7th July 1984 another division Bench of this Court (& Vaze JJ.) agreed with the registration in Vithalrao Warhead (1983 Mah LJ952).

. the reference made in Pandurang Nemade by R.S Pandhye J. was answered by a division Bench (Ginwala & Patel JJ) on 27th September 1984. It is apparent that the attention of that Bench was not drawn to any of the three decisions referred to in the above paragraph viz. Vithalrao Warhead, Ramrao Deshkar and Purushottam Deshmukh. However, that Division Bench did notice Vithalrao Udhaora Uttara and Others Vs. The State of Maharashtra, discussed various aspects thereof and in its exhaustive judgment arrived at the following conclusions:

(a) The only ratio of Narayanibai 1976 MahLJ 865 is that Section 10(1) is not attracted when the family unit is not in existence on 2-10-1975;

(b) Portion from para 3 in Narayanibai 9quoted earlier by us in this judgement) were mere observations with relation to Narayanibai as an individual holder of land and as a member of family unit holding land.

(c) Question NO. II of the reference was not correctly worded; however, if the learned single Judge meant was as to which of the four judgments lays down proposition of law in conflict with ratio of Narayanibai, the answer was "none"

(d) The expression "the object of Amending Act 1972 used in Section 10(1) and Explanation means as amended by Amending Act, 1975.

10. On 15th November 1984 Letters Patent Appeal No. 57 of 1982 arising out of decision of single Judge in Vithalrao Karekar (supra) came to be decided by a Division Bench (Paunekar & M.S. Deshpande JJ.) This Division Bench approved the view taken by the Bench of Ginwala & Patel JJ. in Pandurang. Nemade Pandurang Nemade's case was finally decided on 12-12-1984 by M.S. Deshpande J. on the basis of answers recorded by the Division Bench in a reference and the view taken by two other Division Bench in a reference and the view taken by two other division Benches in (i) Vithalrao Karekar and (ii) Vithalrao Udhaora Uttara and Others Vs. The State of Maharashtra,

11. During the Course of hearing of the present writ petition it was pointed out that two sets of judgements have taken conflicting views without noticing each

other's point of view as a result element of uncertainty and confusion was prevailing in the courts below and hence it would be in the interest of justice, that the points involved are decided by a Full Bench. The learned Chief Justice, who was here for hearing of other Full Bench matters, was approached by the learned counsel and this matter was deferred to a Full Bench.

12. By this time two more judgements again exhaustively dealing with the points have been delivered by a Single Bench (Dhabe J) *Nirmalabai and Others Vs. State of Maharashtra*, and *Arun Sanghai and Others Vs. State of Maharashtra and Others*, . In these matters, agreeing with the view taken by the Division Bench of *ginnwala and Patel, JJ.* the view taken by *Puranik J.* in *Vithalrao Warhead*, 1983 MahLJ 952 has been dissented to.

13. Point No. 1 is a pivotal point. The question is whether reference to the expression "the Amending Act 1972" in Section 10 of the Principal Act is to the Act as it stood amended by amending Act, 1975 or as it originally stood. Now the said expression occurring in section 10(1) will have to be read not in isolation but in the context of the preceding words "the object of and always bearing in mind that Section 10 aims at only drawing a presumption. the Legislature has design used the expression as against the expression the Provisions of as is used by similar other legislations say for example amended section 4(1) of the Madhya Pradesh Ceiling on Agricultural Holdings Act 190 Thus the Object cannot be mixed with the provisions as rightly pointed out by Shri Jaiswal, the learned Assistant government Pleader. The object of the Amending Act, 1972 quite obviously is to equally distribute the land to landless, to further reduce the ceiling limit so that more land is available for such distribution and also to plug the holes made by ingenious and strategically transactions by wealthy landholders in anticipation of the expected more and more and variety of legislative restriction on total holdings. the preamble of the Act broadly serves as object. It reads:

"Whereas, in the State of Maharashtra, the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 imposed for the first time, in the public interest the maximum limit (or ceiling on the holding of agricultural land, and provided for the acquisition of and held in excess of the ceiling for distribution thereof amongst the peasantry of the State, and in particular, among landless persons and for other purposes therein stated;

And whereas, it is now expedient to lower, in the public interest, the maximum limit (or ceiling) on the holding of agricultural land in the State for making available additional land as surplus, so as to secure a still more quotable distribution of land, and for the purpose of removing economic disparities, and thereby for assisting more effectively landless and other persons; and generally for the purpose of so distributing the agricultural resources of the community as best to subserve the common good, and also to prevent the concentration of the means of agricultural production and wealth to the common detriment;"

The object can be gathered also from the scheme of the Act. It became well known quite in advance to the rich landholders generally a resourceful class that land holdings are in the offing and in times to come reduction of the ceiling limit from time to time is inevitable. With a view to sabotage the expected restrictions they hurriedly started transferring their lands. In many cases non-genuine transfers in favour of near kith and kin were also effected. In the process working of the original Principal Act its function futility occasioned on account of such transactions was noticed. Thus to make the Principal Act result oriented, presumptive Section 10(1) and fictional concept of "Family unit" were introduced by Amending Act 1972. Amending Act, 1975 does not make any departure from the object of Amending Act, 1972 which continues to remain the same even after amendment. Viewed from that standpoint the controversy has only academic value.

14. whole controversy relating to the point has arisen because the Amending Act, 1972 was brought into force a day earlier to the bringing into force of Amending Act, 1975. We are unable to see how this factor alone will make the difference. Amending Act, 1972 was passed and gazetted on 7-8-1975 and was thus in existence since before Amending Act 1975 was passed and gazetted on 19th September 1975. The Bill was introduced in the Legislature on 9-8-1975. The Bill was introduced in the Legislature on 9-8-1975. quite obviously that Bill was prepared and the Act was passed with reference to the provisions of Amending Act, 1972. Can then, there be any doubt about legislative intention of the Amending Act 1975? On the question what the effect of an amendment is useful reference to the following of quoted passage from the case of *Shamrao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, which has been rightly noticed in *Vithalrao Udhaora Uttara and Others Vs. The State of Maharashtra*, and *Arun Sanghai and Others Vs. State of Maharashtra and Others*, may be made.

"The rule is that when a subsequent act amends an earlier one in such a way as to incorporate itself or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (Except where that would lead to a repugnancy inconsistency or absurdity as if the altered words had been written into the earlier Act with pen and ink and the holder words scored out so that thereafter there is no need to refer to the amending Act. at all."

Shamrao relates to an order of detention dated 15-11-1951 issued under the Preventive detention Act, 1950 which was to expire on 1-4-1952 as per the first amendment made in 1951. By Act No. 34 of 1952. its life was further extended up to 1-10-1952. The Act of 1952 provided inter alia that the detention orders which had been confirmed previously and which were in force immediately before the commencement of the Amending Act, "shall continue to remain in force so long as the Principal Act is in force so long as the Principal Act is in force". The Principal Act was defined by the Act 1952 as meaning the Act of 1950. The contention that detention order expired on 1-4-1952 and that the extended date

did not apply to such detention was expelled on the ground that the Act of 1950 has to be understood after the amendment, the Act of 1950 as amended.

15. Mr. Chandurkar contended that ratio of the decision would not be attracted in this matter. We fail to know how. In this connection our attention was drawn to the case of *Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited*, in which the ratio in *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, has been considered and held not applicable in the context of overriding effect of (i) the Banking companies Act, 1949 and (ii) the Displaced Persons (Debt Adjustment) Act, 1951. Such is not the case here. Equally inapplicable is the ratio in the case of *Thakorelal Amratlal Vaidya Vs. Gujarat Revenue Tribunal and Others*, in which section 40 of the Bombay Tenancy and agricultural Lands Act, 1948 came up for consideration. Under the said provisions, tenancy of a deemed tenant came to an end on his death and the rights were not heritable. By 1956 amendment the rights were made heritable. Question arose whether in case of a deemed tenant who had died before amendment the new right accrued or not answer was "no" on the ground that otherwise would amount to given retrospective operation to the amendment which was not given either expressly or by necessary implication.

16. It was contended that to hold that expression "Amending Act 1972" means as amended by Amending Act, 1975 would amount to given retrospective effect is not intended to be given either expressly or impliedly. Mr. Deshpande also brought to our notice in this connection the case of *State of Kerala and Another Vs. Philomina and Others*, dealing with the Kerala Land reforms Act, 1963. u/s 81 of the said Act lands known as kayal lands were exempt from certain provisions Section 84 declared as invalid all voluntary transfers of lands covered by the Act between 15-9-1963 and 1st January 1970. By amending Act No. 35 of 1969 exemption to Kayal land granted u/s 81 was withdrawn. The said amendment was brought into force on 1st January 1970. It was held that in the absence of amendments to Section 81 transfer of exempted land during the relevant period was not brought in the net, In so holding the scheme of that Act was considered. It was held that Section 84 had neither retrospective effect nor an overriding effect over section 81. Now the said enactment is entirely different and its provision and the provisions of section 10(1) are not at all in pari materia as a result ratio of that case has no application here. It is one thing to say that the Act has retrospective operation and quite another to say that it operates on antecedent facts. It may be seen in this regard that the Amending Act, 1972 as amended by the Amending Act, 1975 operates prospectively from the date of the enforcement of the Amending Act 1975, operates prospectively from the date of the enforcement of the the Amending Act, 1975, with effect from 20-9-1975. In fact it operates upon the events or transactions on and after the commencement date i.e 2-10-1975 as per the provisions of Section 3 of the Ceiling Act. But by the nature of the provisions of section 10(1) of the Ceiling Act, which takes into consideration antecedent facts in an enquiry for determination of surplus land the said Amending Act, 1972 as amended by the Amending Act, 1975 has to act

upon the said antecedent facts which would not make it retrospective in operation.

17. Our conclusion, therefore, is on 2-10-1975 when applicability of section 10(1) was to be seen, the Amending Act, 1972 stood amended by Amending Act, 1975. thus the expression "Amending Act 1972" occurring in Section 10(1) has to be construed as Amending Act 1972 as amended by Amending Act 1975 because the latter Act stood incorporated in the former Act, as a result proviso to Section 4(1) stood deleted and it will have to be assumed for the purposes of Section 10 that the said proviso was not on the statute book on 2-10-1975 and no rights can be derived from this aid proviso. Any other interpretation would render the Amendment nugatory. Canons of construction mandate to avoid interpretations leading to such absurd results. After all we are concerned with a welfare legislation interpretation of and approach to which has always to be purpose oriented and keeping in view national goals enshrined in part IV of the Constitution.

18. A debate was raised by Shri Madkholkar about the real meaning of the expression "in anticipation of or in order to avoid or defeat" in S. 10. From Black's law Dictionary, the meaning of the word "anticipation" was read over to us. Principal contention was the landholders had no idea of the incoming legislation, till Bill No. LVI of 1972 was introduced on 7-8-1972 in the State Legislature and hence even if transactions from 26-9-1970 up to that date may be construed as being in anticipation of the Amending Act 1972 the same could not be said about transactions after the date as the provisions were well known and nothing was in anticipation. In our judgement all this is jugglery of words and the submission ignores the stark realities of the situation. These realities noticed in the case of *Ambika Prasad v. State of U.P.* : [1980] 3SCR 1159 are that in 1970-1971 new agrarian policy for reducing the ceiling limit was announced. Many landholders were resourceful enough to know what the thinking of the powers that be was. They also could imagine that with increasing population and area of land available for cultivation decreasing because of their conversion to non-agricultural use, repeated lowering of the ceiling limit was unavoidable. They very well anticipated what was in stock for them and planned their transactions with a view to paralyse the future move of the government. Thus the words "in anticipation of" will have to be interpreted in the whole context and not in isolation merely keeping the dictionary meaning in view. A transfer is in anticipation of an Act when it is made with a view to defeat or delay the object of the Act which is likely to be passed in future as rightly held in the case of *Narbada Prasad Vs. State of Madhya Pradesh and Others*, The legislative object behind Section 10 was to outwit the landholders' maneuverings to the extent possible and so viewed the language used presents no interpretative difficulty.

19. The other two points are but different shades of point No. 1. We take up point No. 2 first. Once it is held that the Amending Act, 1972 means the Act as amended by Act of 1975 it follows that on 2-10-1975 the proviso to section 4(1)

was not in existence as a result even transfer by a member of family unit holding land separately prior to 26-9-1970 attracts presumption contemplated u/s 10(1) In this connection it may also be noticed that first Explanation to Section 10(1) creates a legal fiction about nature of transactions between the two periods. In Arun rightly dealt with in the following manner. We have nothing new to add.

"14. The above construction of the Amending Act, 1972 is of great assisting properly interpreting the legal fiction created in the first Explanation of section 10(!) of the Ceiling Act that all transfer made after the 26th day of Sept . 1970 but before the commencement date, shall be deemed (unless the contrary is provided) to have been made in anticipation of or in order to avoid of defeat the objection of Amending Act, 1972. If the expression "Amending Act 1972" in Section 10(1) meant the Amending Act, 1972 as amended by Act No. 47 of 1975 as it stood on or after the commencement date, then giving full effect to the legal fiction it will have to be understood that all transfers made after the 26th day of Sept. 1970 but before the commencement date shall be deemed to have been made in anticipationn of or in order to avoid or defeat the object of Amending Act, 1973 the proviso to S. 4(1) of which stood deleted by the Amending Act 47 of 1975.

15 It is well settled that full effect must be given to the statutory fiction and it should be carried to its logical conclusion (see The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others, It is also necessary for giving full effect to the legal fiction to assume all those facts on which alone the fiction can operate 9See CIT Delhi v. S. Teja Singh, Air 1959 SC 3520 The classic oft quoted passage of Lord Asquith from East End Dwelling co. Ltd. v. Finsbury Borought Council (1951) 2 All ER 587, can be usefully rddeferred to in this regard :

If you are bidden to treat an imaginary state affairs as real, you must surely, unless prohibited form doing so imagine as real the consequence and incidents which, if the ffurtive state of affairs had in fact existed, must inevitably have flowed from or accompanied it".

Our attention was invited to Narayanibai 1976 MahLJ 865 and it is contended that it has accepted the submission that presumption u/s 10 would apply to transfer of lands which were separately held by an individuals as a member of family unit. We do not agree. As rightly held by a division Bench in Pandurang Nemade "this question was not agitated in Narayanibai"s case and the Court was not called upon to answer this question. As a mater of fact, such a question could have arisen in this cae since the lands which was sold by Narayanibai was owned and separately possessed by her even prior to 26-9-1970. If the learned Judge deciding Narayanibai"s case was of the view that the presumption u/s 10 of the Act was not attracted to lands held and separately possessed by member of a family unit prior to 26-9-1970, that case could have been disposed of on this ground alone and it was not necessary to enter into the questions which we have stead above.

20. Point No. 3 now In fact this point has to be answered in the affirmative in view of what we have held earlier, To hold that only because a member of family unit had land less than ceiling limit at the time of transfer, Section 10 is not attracted despite family unit's limit exceeding the limit would introduce anomalies, make the provisions unworkable and frustrate the very object. Our attention is drawn to observations in para 3 of *Narayanibai* (quoted earlier). In these observations here in reference to *Abdul Bhai's* (supra) ratio of which we have already explained. A Division Bench in *Pandurang Nemade* has rightly held that obviously this part of the decision relates to *Narayanibai* 1976 MahLJ 865 as an individual holder of land and not as a member of family unit holding land". Indeed various shades of *Narayanibai* have been exhaustively considered by that Division Bench and we have respectful concurrence with the conclusions drawn therein about what *Narayanibai* decides and what it does not. We reiterate that *Narayanibai* decides only one point and it is this Section 10(1) is not attracted when family unit is not in existence on 2-10-1975. We have already quoted relevant passages in *Narayanibai*. Earlier part of para 5 in *Narayanibai* formulates the question of consideration in the context of the submission of the State that on the date of transfer of her land by *Narayanibai*, she and her husband constitute a family unit the holding of which exceeds the ceiling limit and hence those transfers must be taken to be transfers of a member of family unit and thus attract Section 10. is retrospective and the conception of family unit must also be deemed to have been deliberative and the conception of family unit must also be deemed to have been deliberately made effective retrospectively.

21. Thus in our view *Narayanibai* has not held that Section 10(1) is not attracted in cases of a transfer by a member of family unit whose individual holding is below ceiling limit at the time of transfer. By any chance if ratio of *Narayanibai* is construed as being contrary to what is construed as its correct ratio by a Division Bench in *Pandurang Nemade*, that would be an erroneous view of the legal position. In this connection our attention was invited to the fact that aggrieved by the decision rendered in *Narayanibai* the State of Maharashtra had filed SLP in the Supreme Court being SLP (Civil) No 3095 of 1977 decided on 24-10-1977 in which the following order was passed.

"Special Leave petition is rejected because we find that on the facts of the case of respondent has proved that the sales made on 10th November, 1971 were not in anticipation or for the purpose of defeating the object of land ceiling legislation."

why the Supreme court has not granted leave in clear form the order. It has not decided any point as such and hence this aspect of the matter can have no impact on our view.

22. *Ramrao Deshkar* has not given any reasons as how ratio of *Narayanibai* 1976 MahLJ 865 applies. Basic facts therein indicate that ratio is erroneously applied in our view. ratio of *Narayanibai* is also erroneously applied in *Vithalrao Warhead* 1983 MahLJ 952 which even otherwise does not lay down the correct legal

position about proviso to Section 4 of the Amending Act 1972 vis-a-vis section 10(1) of the Act, Purushottam Deshmukh endorses the view in *Vithalrao Warhead* without giving any additional reasons. Hence in our judgment the above three decisions and others taking similar views do not lay down correct legal position. True it is that *Pandurang Nemade* has not noticed the above three cases though they were decided earlier, but the aspect of the matter now has only academic value. We may mention that *Vithalrao Arun Sanghai and Others Vs. State of Maharashtra and Others*, and *Smt. Nirmalabai* (All of which are decided after reference in *Pandurang Nemade* was answered) have fully endorsed the view taken by the division Bench in *Pandurang Nemade* by giving additional weighty reasons and we concur with them.

23. To conclude, we answer all the three points in the affirmative.

24. The writ petition be placed before the learned single Judge for its disposal according to law. Reference answered in affirmative.