

(1995) 01 GUJ CK 0012

In the Gujarat High Court

Case No : Special Civil Application No. 1062 of 1982

Nadoda Ganesh Punjabhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 09-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Gujarat Agricultural Lands Ceiling Act, 1960 — Section 10, 13, 2(16), 6(3A), 6(3B)

Citation : AIR 1995 Guj 172

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Advocate : Harsha Devaxi, for K.G. Vakharia, for the Appellant; A.G.P., for the Respondent

Final Decision : Allowed

Judgement

M.R. Calla, J.—Heard learned Counsel.

2. This Special Civil Application is directed against the order dt. 12-1-82 passed by the Gujarat Revenue Tribunal in Revision Application No. TEN.B.A.1256/80 whereby the Revision Application, against the judgment and order dt. 8-10-80 passed by the Assistant Collector, Dhrangadhra in Ceiling Appeal No. 16/80-81 at dismissing the Appeal against the judgment and order dt. 1-2-80 passed by the Mamlatdar and Agricultural Lands Tribunal (Ceiling), Lakhtar in Ceiling Case No. 84(sic), was dismissed.

2A. The petitioner herein held agricultural lands at villages Adalsar. Kadu and Lilapur in Lakhtar Taluka of Surendranagar District. He furnished the particulars of the lands held by him as required u/s 10 of the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as "the Act"). The Agricultural Lands Tribunal prepared the list u/s 13 of the Act and after holding the inquiry, passed the order dt. 28-2-77 holding that the petitioner held lands in excess of the ceiling area to the tune of 14 Acres and 15 Gunthas. He also directed that Section No. 225 Paiki measuring 4 Acres 28 Gunthas of Adalsar and Section No.

73 measuring 3 Acres 17 Gunthas and Section No. 329 measuring 6 Acres 10 Gunthas of Kadu villages should vest in the State Government as excess land i.e. 14 Acres and 15 Gunthas. The petitioner preferred an Appeal No. 16/80-81 and the same was dismissed by the Assistant Collector, Dhrangadhra by his judgment and order dt. 8-10-80. Thereupon, the petitioner preferred a Revision Application No. TEN. B.A. 1256/80 before the Gujarat Revenue Tribunal and this Revision Application was dismissed on 12-1-82 confirming the order passed by the Assistant Collector, Dhrangadhra with regard to the quantity of the excess land and remanded the matter back to the Agricultural Lands Tribunal to give opportunity to the petitioner to select the land, which he wanted to retain out of the excess land so determined.

3. It is this order dt. 12-1-82 passed by the Gujarat Revenue Tribunal which is assailed before this Court through this Special Civil Application under Arts. 226 and 227 of the Constitution of India. The learned Counsel for the petitioner has invited my attention to the order sheet dt. 12-3-82, on which date the Rule was issued, and she has pointed out that this matter was ordered to be heard with Special Civil Application No. 1421 of 1978 and allied matters and that on that very date, an ad interim order had been passed not to disturb the petitioner's possession on the basis of the impugned orders and she has stated that the aforesaid ad interim order continues up till now. It was not vacated. The learned Counsel for the petitioner has submitted that the Special Civil Application No. 1421 of 1978 was decided with other allied matters way back on 10-7-84 and the judgment has been reported in (1985) 26 (2) GLR 824: (AIR 1985 NOC 209) (Chudasama Shambhaji Kalubha v. State of Gujarat). It has been argued that in the aforesaid decision, Section 6(3-B) read with Section 2(16) of the Act has been interpreted and according to the interpretation given by this Court in the aforesaid judgment, the view taken by the Gujarat Revenue Tribunal is wrong inasuch as once the family exceeds five members, the benefit of one-fifth of the ceiling area for each member in excess of five has to be given. She has contended before me that while there is no dispute that the total lands held by the petitioner are 68 Acres and 15 Gunthas and the ceiling area in this village is 54 Acres, the number of members in the petitioner's family, including himself, are eight in number viz. (1) the petitioner himself, (2) the petitioner's wife, (3) four unmarried daughters (wrongly mentioned in the impugned order of the Gujarat Revenue Tribunal as married daughters), and (4) minor son Krishnakumar and yet another minor son, who was born after the submission of the Form by the petitioner. Her argument is that even if the son, who was born after the submission of the Form, is excluded and even if the petitioner's mother, about whom the controversy had been discussed in the later part of the impugned order of the Gujarat Revenue Tribunal is excluded, there were seven members in the family i.e. the petitioner, his wife, four unmarried daughters and the minor son Krishnakumar and in this view of the matter, the petitioner's family was entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five and accordingly the

credit of 10.8 Acres per member in excess of five was to be given and had such a credit been given to hold land in excess, the petitioner's family could have held the land to the extent of 75.6 Acres, which was more than 68 Acres and 15 Gunthas and thus, there is no question of finding any land in excess of the ceiling area with this family.

4. No return has been filed.

5. I have gone through the decision in the case of Chudasama Shambhaji Kalubhha (AIR 1985 NOC 209) (supra). Section 2(16) and Section 6(3-B) of the Act are reproduced as under:

"2(16). "Joint family" means an undivided Hindu family and in the case of other persons a group or unit the members of which by custom or usage are joint in estate or residence.

6(3-B). Where a family or a joint family consist of more than five members comprising a person and other members belonging to all or any of the following categories, namely -

(i) minor son,

(ii) widow of a pre-deceased son,

(iii) minor son or unmarried daughter of a pre-deceased son, where his or her mother is dead.

such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five, so however that the total holding of the family does not exceed twice the ceiling area and in such a case, in relation to the holding of such family, such area shall be deemed to be the ceiling area:

Provided that if any land is held separately also by any member of such family, the land so held separately by such member shall be grouped together with the land to such family for the purpose of determining the total holding of such family:

Provided further that where, in consequence of any member of such family holding any land in any other part of India outside the State, the ceiling area in relation to the family is reduced as provided in Sub-section (3A) to the one-fifth of the ceiling area as aforesaid shall be calculated with reference to the ceiling area as would have been applicable had no such land been held by such member in any other part of India."

Para 6, para 27, para 30, para 31, para 34 and para 35 of the Judgment reported in (1985) 26 GLR 824 : (AIR 1985 NOC 209) are reproduced as under:

"6. Being aggrieved by the said decision of the Mamlatdar, the petitioner filed an appeal, being Ceiling Appeal No. 75 of 1977, before the Deputy Collector, Dholka, who by his order dated 18-5-1977 (Annexure "B") was pleased to reject the

claim of the petitioner for excess land on the ground that the petitioner has not proved that in the family unit there were qualified members exceeding five and, therefore, he was not entitled to the benefit of enlargement of ceiling area.

27. Even if the narrow meaning given by the Tribunal is accepted, it is significant to note that the Tribunal has not explained as to what is the meaning of a "person". A person cannot only be an individual. The only satisfactory way in which this provision can be interpreted is that a family or a joint family must consist of five members comprising a person, and a "person" must necessarily mean a "family", or a "joint family" and include other members belonging to all or any of the three categories specified therein, because the words used are "a person" and not "an individual".

30. In the aforesaid view of the matter, the true and correct interpretation of Sub-section (3-B) of Section 6 of the Ceiling Act would be that a family or a joint family which consists of more than five members including a person and other members belonging to all or any of the categories specified therein will be entitled for the enlargement of the ceiling as provided under that sub-section itself. This view of mine is in consonance with the scheme of the Ceiling Act and will not lead to absurd results, as stated above. It is also in consonance with the intention of the legislature to provide one ceiling unit to a family consisting of five members; especially when the ceiling area has been drastically reduced to approximately half and applied to pending proceedings, persons whose cases have been disposed of, had the benefit of having larger area, while the persons whose cases were pending without any fault on their part and entitled to some reliefs which the legislature has granted and should not be denied to them by construing the provisions of Section 6(3-B) of the Ceiling Act in such a way that they would be deprived of such benefit.

31. Again, the provision of Section 6(3-B) of the Ceiling Act itself provides excess of 1 / 5th of a ceiling for each additional member read with words "a family or a joint family consists of more than five members". This clearly shows the legislative intent that the ceiling limit fixed in Schedule I to the Ceiling Act is enough for a family of five members only, and for each additional member the requirement will exceed at the same rate of one-fifth of a ceiling, subject, of course, to the maximum of twice the ceiling area.

34. In view of the above facts, circumstances and the legislative intent, I hold that for grant of benefit of Section 6(3-B) to the members of a joint family, as defined in Section 2(16) of the Ceiling Act, the members who are joint in estate and who are residing with the landholder and also dependant for their livelihood (excluding the major son and his family) including the members belonging to all or any of the three categories specified in Section 6(3-B) of the Ceiling Act had to be included as members of the family of the landholder, and such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five, but the total holding of the family shall not exceed twice the ceiling area.

35. Mr. Suresh M. Shah, learned Advocate for the petitioners in some of the petitions, has drawn my attention to the decision of the learned single Judge (A. M. Ahmadi, J.) of this Court in Special Civil Applications Nos. 2037 of 1978 and 2038 of 1978, decided on 18th June, 1984, wherein it has been observed:

"With respect, the Tribunal's thinking is confused. Sub-section (3-B) of Section 6 merely lays down that where a family consists of more than five members comprising a person and other members of the categories mentioned therein, namely, (i) minor son, (ii) widow of a pre-deceased son, (iii) minor son or unmarried daughter of a pre-deceased son, where his or her mother is dead, such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five provided the total holding of the family does not exceed twice the ceiling area. A bare perusal of this sub-section makes it clear that in order to avail of the benefit of enlargement of the ceiling area, two conditions must be satisfied, namely, (i) the family should consist of more than five members, and (ii) it should have amongst it the categories of members mentioned in three sub-clauses. If a family does not consist of more than five members but has amongst it any of the members mentioned in the three sub-clauses, it will not be entitled to the benefit of enlargement of the ceiling area. Therefore, the benefit of enlargement of the ceiling area will ensure to only that family where the total number of members is more than five and amongst them are members belonging to the categories mentioned therein. However, there is nothing in the sub-section wherefrom it can be inferred that the wife, widowed mother and unmarried daughters were intended to be excluded from the family, that is, group or unit constituting the family. I am, therefore, of the opinion that all the authorities including the Tribunal were wrong in coming to the conclusion that the aforesaid female members of the family had to be excluded for the purpose of determining the size of the family."

In my opinion, that decision of the learned single Judge of this Court clearly supports the view which I have taken."

It appears to be the settled position of law that once the number of members in the family or joint family exceeds five with inclusion of all or any of the categories of members mentioned in Section 6(3B), the number of members in excess of five would be entitled to the benefit to the extent of one-fifth of the ceiling area for each member in excess of five. In the instant case, at least one person (minor son --category 6(3B)(I)) is duly included in the petitioner's family and, therefore, the family in question was entitled to this benefit u/s 6(3B) and in my considered opinion, the Agricultural Lands Tribunal (Ceiling), Assistant Collector, Dharangadhra and the Gujarat Revenue Tribunal have wrongly decided the controversy on incorrect interpretation of Section 6(3B) and the view taken by the abovereferred authorities while passing the impugned orders is contrary to the law laid down by this Court.

6. Once the credit of one-fifth of the ceiling area is given to the two members,

who are in excess of five in the petitioner's family, the argument of the learned Counsel for the petitioner deserves to be accepted that there will be no land in excess in the instant case as admittedly the total land held by the petitioner's family is 68 Acres and 15 Gunthas and the ceiling area at the village in question is 54 Acres and, therefore, each of the two members in excess of five will be entitled to 10.8 Acres and in that case the family could hold the land to the extent of 75.6 Acres whereas the total lands held by the family is only 68 Acres and 15 Gunthas. In this view of the matter, the impugned order passed by the Gujarat Revenue Tribunal, which is under challenge in this Special Civil Application, cannot be sustained in the eye of law and there is no need for giving any opportunity to the petitioner to select the lands, which he may like to retain, as it has already been found that in the case at hand no land in excess of ceiling area is available so as to take care of such a necessity.

7. Accordingly, the impugned order dt. 12-1-82 passed by the Gujarat Revenue Tribunal, as also the order dt. 1-7-80 passed by the Agricultural Land Tribunal (Ceiling), Lakhtar and the order passed by the Assistant Collector, Dhrangadhra in Ceiling Appeal No. 16/80 are hereby quashed and set aside. This Special Civil Application is allowed and the Rule is made absolute accordingly with no order as to costs.