

(1977) 07 BOM CK 0015

In the Bombay High Court

Case No : Special Civil Application No. 3594 of 1976

Namdeo Baliram Kathole

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 25-07-1977

Acts Referred:

Constitution of India, 1950 — Article 227

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 10, 10(1), 15, 8

Citation : AIR 1978 Bom 173 : (1977) MhLj 749

Hon'ble Judges : Gadgil, J

Bench : Single Bench

Advocate : G.D. Patil, for the Appellant; G.A. Paunikar, Asstt. Govt. Pleader, for the Respondent

Judgement

Gadgil, J.—This is an instance where a grave injustice, was likely to be caused to the petitioner on account of the incorrect and improper method adopted while determining the holding of the petitioner for the purpose of deciding as to whether any part of that holding is in excess of the ceiling area.

2. The petitioner Namdeo Baliram Kathole is an agriculturist residing at Jambhora in Darwha tahsil. He is holding agricultural lands in that village and also at Home other places. He submitted a return under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings Act, 1961 (hereinafter referred to as the Ceiling Act). That return was treated as Ceiling Case Mo. 466/60-A (5)/1975-76. The Surplus Land Determination Tribunal (S. L. D. T.) held an enquiry on a hypothesis that the petitioner was holding 94.37 acres of land on 20-9-1970. According to the Tribunal, this much area was from Section Nos. 7, 9/1, 9/3, 10/1, 10/3 and 14 of Sarangpur and Section No. 30/4, 36/2, 37/1 and 37/2 of Jambhora. There was also one more Section No; 36/1 of Ganori. It is not necessary to give the acreage of these lands but suffice it to say that the total, comes to 94.37 acres. The S: L. D. T. found that the petitioner has sold Section No. 7 (Sarangpur) on 26-4-1971 and Section No. 36/1 (Ganori) on 27-1-1974. A

finding was recorded that these sale-deeds have been executed in anticipation of or in order to avoid or defeat the objects of the Amending Act, 1972. Section 10 provides that, such transactions are to be ignored while determining the holding of a person. Thus, the S. L. D. T. ignored these two sale-transactions and held that the petitioner was holding 94.37 acres. Some portion was excluded as pot-kharab. The petitioner, under the Ceiling Act, was entitled to hold 54 acres. An order was, therefore, passed that petitioner held 34.23 acres as a surplus land and the said surplus land was delimited from, out of particular survey numbers, as mentioned in the order. Those details are also not necessary for deciding this writ petition. Against this order, the petitioner went in appeal to the Maharashtra Revenue Tribunal (M. R. T.). That appeal was numbered as Ceiling Appeal No. Alc-A-1193/1976. The Tribunal dismissed the appeal and the petitioner has filed this writ petition challenging these orders.

3. It was contended on behalf of the petitioner that the S. L. D. T. as well as the M. R. T. have committed error in recording a finding that the petitioner was holding 94.37 acres of land on 26-9-1970. As a matter of fact, on that day, the petitioner was holding 55.23 acres. This position could not be challenged on behalf of the State. The arithmetical calculations made on the basis of the revenue records makes this position clear. Mr. Patil for the petitioner submitted that the subsequent sales and acquisitions by the petitioner has not been correctly taken into account. He argued that the petitioner's holding on 26-9-1970, after excluding the pot-kharab, was less than 54 acres. Thus, for obvious reasons there could not have been any bar on any transfer of the land from his holding. According to him, neither Section 8 nor Section 10 would make any such transfer bad. This question has been considered in *Narayanibai v. State of Maharashtra* 1976 Mh LJ 865 in the following words:

"Mr. Marpakwar, the learned Advocate appearing for the petitioner, contends that the Courts below were in error in presuming that the sale of the two lands measuring 25 acres 19 gunthas on 10-11-1971 by the petitioner was hit by Section 10 of the Act as amended. According to Mr. Marpakwar, the ceiling area admittedly is 54 acres. After exclusion of the pot-kharab area of 4 acres 39 gunthas the petitioner held only 50 acres 25 gunthas on 26-9-1970. Her sale in all of 25 acres 10 gunthas on 10-11-1971, by no stretch of imagination, could be said to be within the mischief of Section 10 of the Act as amended. There appears to be considerable substance in this contention of the learned Advocate. All that Section 10 (1) of the Act as amended contemplates is that transfers made by "any person" or "a member of a family unit" after the 26th day of Sept. 1970 and before the commencement date, namely, 2-10-1975 in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972, should be so ignored as to take the same into consideration in calculating the ceiling area of the "person" or the "family unit", as the case may be. The Section then also raises a statutory fiction, of such transfers being 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. Any reference to other parts of the Section for

the purposes of the determination of the point under consideration is not necessary. The question that really falls for consideration is: Can any such presumption of transfer being in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972, even 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 D/- 13-8-1976) (Bom). 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 judgment. It is thus clear that ordinarily the two sales of lands dated 10-11-1971 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."

This legal position has been lost sight of and if a correct calculation is made, after bearing in mind the said legal position, it appears that the petitioner cannot be said to be holding any land in excess of the ceiling so as to make it necessary for delimiting the excess land.

4. From out of 55 acres and 23 gs. (which should really be treated as less than 54 acres if one has to deduct the pot-kharab area from the total acreage), the petitioner sold Section No. 7 admeasuring 25.32 acres on 26-4-1971. This sale is quite legal and proper and after this transaction, the petitioner was holding 29.31 acres. On 31-5-1971, the petitioner's wife's mother Tulsabai died leaving behind certain property, viz., Section No. 36 of Ganori. The property devolved upon two daughters of Tulsabai, viz., the petitioner's wife Vithabai and her sister in equal shares. This Vithabai's share came to 11.17 acres. The exact date of death of Tulsabai was not on record but the (petitioner has produced in this Court the relevant extract from the revenue records showing that date. If this land belonging to Vithabai is added to the holding of the petitioner, his total holding on 31-5-1971 would come to 41.08 acres. Thereafter the petitioner sold 6.05 acres from out of Section No. 36/1 of Ganori on 27-1-1974. This sale again is quite legal and valid inasmuch as the petitioner was not holding more than 54 acres of land on that date. After the sale, the petitioner's holding was reduced to 35.03 acres and it continued up to 2-10-1975 i. e., on the date on which the Amending Act came into force.

5. Thus, on the relevant date 2-10-1975, the petitioner was holding 35.03 acres but he has also inherited some more property thereafter, e.g., his mother Sonabai died on 10-10-1975 leaving behind the petitioner and his brother. "The petitioner thus got half share in the land of Sonabai and that share comes to 7.16 acres. Before her death, Sonabai had executed a will under which she had bequeathed Section Nos. 36/2 and 37/2 of Jambhora and the petitioner got these two Section Nos. under the will. The holding of the petitioner consequently was

raised on account of these acquisitions and at the time when the order was passed by the S. L. D. T., the total holding was 62.35 acres. From out of the same, pot-kharab area of 6.14 acres will have to be "deducted and there is no dispute on this count. Thus, the net holding of the petitioner on the date of the order was 56.21 acres and under the Ceiling Act, he was entitled to hold 54 acres. There would be ,a surplus of 2.21 acres. However, u/s 15 of the Ceiling Act, while delimiting the surplus land the care should be taken that fragment is not created. It is common ground that in the area an which the petitioner is holding land, the standard area is determined at 3 acres, and as such, the area of 2.21 acres would be a fragment. Creation of such a fragment has to be avoided. The result is that no surplus land can "be delimited and the petitioner would be allowed to retain the entire holding of 56.21 acres.

6. Thus, the petition succeeds. The rule is made absolute. The orders of the Surplus Land Determination Tribunal in Ceiling Case No. 466/60-A (5)/75-76 and the Maharashtra Revenue Tribunal in Ceiling Appeal No. Alc-A-1193/1976 are set aside and it is declared that the petitioner"s holding is 56:21 acres and that after taking into account the provisions of Section 15 of the Ceiling Act, there is no question of delimiting the excess land. On the basis of the impugned orders Section No. 36/1 of "Ganori has "been delimited as excess and thereafter distributed and allotted to the present respondent No. 2. The possession has been delivered to him. The possession of the said land should, therefore, be restored back to the petitioner. No orders as to costs of this petition.

7. Petition -allowed,