

(2002) 09 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No. 1423 of 1987

Narayan Govind Paricharak (since deceased through his LRs ,
Smt. Shakuntalabai Narayan Paricharak, Prakash Narayan
Paricharak, Sou. Shailaja Bhaskar Chaudhary, Sou. Rama
Govind Shingre, Sou. Rekha Mohan Bhosekar and Sou.
Sunita Dilip Rozekar), Vijaya Govindrao Divate, Rukmini
Govind Paricharak (since deceased by LRs Rekha Mohan
Bhosekar), Satyabhamabai Dattatraya Paricharak and
Prakash Narayan Paricharak

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-09-2002

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 13, 33

Citation : (2002) 09 BOM CK 0043

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : P.S. Dani and S.G. Karandikar, for the Appellant; C.R. Sonawane, AGP, for the Respondent

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—Hearing of both these writ petitions was deferred in view of the order dated 6-12-2000, as question involved in one of the petitions relating to the review jurisdiction of the M.R.T. was stated to be pending before the larger Bench of this Court. Mr. Dani appearing for the Petitioners in Writ Petition No. 1422 of 1987 submits that though that question was raised in his petition, he is not pressing that point. He submits that if that question is not pressed then both the writ petitions can be heard forthwith with regard to other issues. Accordingly, hearing of these writ petitions is proceeded forthwith, with regard to other questions, by consent.

2.Both these writ petitions can be disposed of together as it relate to the land situated at Shegaon, District Solapur, which was originally in the name of the

predecessor of the Petitioners in the respective writ petitions, Shri Govind Balkrishna Paricharak. It is not in dispute that the said Govind Balkrishna Paricharak was in possession of the said lands and the same belonged to joint family of which he was a member. The said Govind Paricharak died on 21-5-1966 without filing any return under the provisions of the Maharashtra Agricultural Lands Ceiling on Holdings Act 1961 (hereinafter referred to the said Act). In the circumstances, the Authority initiated action u/s 13 of the said Act. It is not necessary to advert to the various proceedings, except to mention that the Maharashtra Revenue Tribunal by its order dated 14-8-1979 held that the Petitioners in respective writ petitions to file fresh returns which will be decided in accordance with law. The Tribunal in the said order has accepted the fact that the Petitioner Satyabhamabai had half share in the suit land, whereas the Petitioners in the companion writ petition - Narayan and 2 others had 1/6th share each therein. It is on this premise the Petitioners were required to file fresh returns which was to be considered in accordance with law. Accordingly, the Petitioners in respective writ petitions filed four separate returns and, the same were considered by the Assistant Collector, Pandharpur together. The Assistant Collector Pandharpur by order dated 14-4-1991 held that share of Petitioner Satyabhamabai in the suit lands was to the extent of 162 Acres 10 gunthas, whereas the remaining land admeasuring 162 Acres and 10 gunthas was to be equally divided between the Petitioners in the companion writ petition i.e. Narayan, Vijaya and Rukmini which would come to about 54 Acres and 33 gunthas each. In the circumstances the Assistant Collector found that the holding of the Petitioners in writ Petition No. 1423 of 1987 was less than the ceiling limits and therefore the proceedings as against them came to be dropped, whereas, in so far as Satyabhamabai - writ petitioners in writ Petition No. 1422 of 1987 is concerned, the Assistant Collector held that the holding of Satyabhamabai was in surplus to the extent of 54 Acres and 10 gunthas then the ceiling limit. It is not in dispute that the earlier order passed by the Maharashtra Revenue tribunal dated 14-8-1979 as well as the order passed by the Assistant Collector on fresh adjudication of the matter dated 14-4-1981, have become final in so far as Petitioners in Writ Petition No. 1423 of 1987 - Narayan and 2 others are concerned. However, the Petitioners in writ petition No. 1422 of 1987, Satyabhamabai alone had to carry the matter in appeal, as authority declared her holding to be in excess of the ceiling limit. In that appeal, before the Maharashtra Revenue Tribunal, the said Petitioners challenged the declaration that she was holding surplus land essentially on the ground that calculation undertaken by the authority below was inappropriate. However, the Tribunal took the view that the entire action and the earlier orders which enured in favour of the Petitioners in writ petition No. 1423 of 1987, were not in accord with the enunciated of the Apex court in the case of Raghunath Laxman Wani and Others Vs. The State of Maharashtra and Others, . According to the Tribunal, what was required to be seen is the holding of the joint family of the deceased Govind B. Paricharak as on 26-1-1962. It is not in dispute that the said total holding of the said Govind B. Paricharak on that date was 387 Acres 3 gunthas or thereabout.

In the circumstances, the Tribunal by the impugned order dated 24-3-1986, was pleased to allow the appeal preferred by the Petitioners in writ petition No. 1422 of 1987, but at the same time set aside the orders passed in Ceiling case No. 1 of 1971 dated 14-4-1981 and remanded the case back to the first authority to decide the ceiling area of deceased Govind B. Paricharak as on the appointed day on 26-1-1962 by issuing notices to all the heirs of deceased Govind B. Paricharak and give an opportunity to them in deciding the ceiling area. The said judgment is challenged by Narayan and 2 others in writ petition No. 1423 of 1987.

3. According to them, the order passed by the Tribunal on 14-8-1979 has become final and it is pursuant to that order that they had filed fresh returns before the ceiling authority which was examined and the authority has found that their holding was less than the ceiling limit and that the said order passed by the ceiling authority dated 14-4-1981 has also become final. It is, therefore, contended that since those orders have become final in favour of the Petitioners in that writ petition, the Tribunal could not have set aside the order which was in their favour and more particularly when they are not even party to the proceedings before the Tribunal.

4. Whereas, Satyabhamabai has filed independent writ petition being Writ Petition No. 1422 of 1987 making similar grievance that since the earlier proceedings had attained finality, in particular the order passed by the Tribunal dated 14-8-1979, the question of reopening the entire proceedings would not arise. Moreover it is contended that the limited challenged before the Tribunal in the appeal preferred by her was with regard to the calculation and surplus area declared by the first authority, therefore, the appellate authority could not have decided the matter beyond the said contention especially when the earlier proceedings have become final and binding between the parties. It is contended that even assuming that earlier orders passed in favour of the parties was inappropriate because of changed legal situation, but that cannot be the basis for reversing those decisions which have attained finality. It is, therefore, contended that the Tribunal has completely exceeded its jurisdiction while considering the appeal u/s 33 of the Act. Moreover, it is argued on behalf of Satyabhamabai that main grievance which was made in the appeal filed by her has remained unexamined, as Tribunal, thought that the entire proceedings were vitiated because of the changed legal position. It is therefore, contended that it would be necessary to remand that matter to the appellate authority for re-examining the case on its own merits in accordance with law limited to the question of surplus holding of the Petition and not the wider question as is indicated in the impugned order.

5. On the other hand, Mr. Sonawane, learned A.G.P. for the Respondents submit that there is not infirmity in the view taken by the Tribunal. According to him the legal position as stated by the Tribunal is settled position as would appear from the decision of the apex Court in Raghunath Laxman Wani and Others Vs. The State of Maharashtra and Others, in Raghunath Wani's case (supra). He submits

that no interference is warranted with the decision of the Tribunal.

6. Having considered the rival submissions and having regard to the admitted facts, it is seen that the Tribunal on the earlier occasion in its order dated 14-8-1979 held that the Petitioners in the respective writ petitions were entitled to file fresh returns and those returns will have to be examined in accordance with law. It is pursuant to that liberty the Petitioners had filed returns in which have been considered by the Assistant Collector, Pandharpur holding that Satyabhamabai holds 162 Acres 10 gunthas of land, whereas the remaining Petitioners Narayan and 2 others hold 162 Acres and 10 gunthas of land equally. The authority had held that so far as Petitioners in writ petition No. 1423 of 1987 - Narayan and 2 others are concerned, they were holding less than the ceiling limit. Both the above said orders have attained finality. If that be so, it was not open for the Tribunal to question the correctness of the said decisions merely because there has been change in the legal position on account of some subsequent decision of the apex Court in Raghunathan Wani's case. Moreover, what is relevant to note is that, that the Petitioners in Writ Petition No 1423 of 1987 Narayan and 2 others are concerned, they are not even party before the Tribunal in the Appeal preferred by Satyabhamabai, which was limited to the question of exemption of surplus holding. It is well settled that even if order passed by the court is nullity, the same would still bind the parties to those proceedings so long as it has not been challenged. It will, therefore, not be open for the Respondents herein to contend in the present round of proceedings that order passed on the earlier occasion by the Tribunal was nullity and as a consequence of which fresh proceedings initiated on the basis of returns filed by the Petitioners in respective writ petitions were not valid in law. Therefore, the decision passed by the Assistant Collector in favour of the Petitioners in writ petition No. 1423 of 1987 ought not to have been interfered with by the Tribunal in appeal preferred by Satyabhamabai - petitioner in the companion writ petition.

7. Understood thus, the appeal which has been decided by the Tribunal on the premise that the earlier decisions were inappropriate in view of the changed legal position in Raghunath Wani's case (supra) cannot be sustained because the earlier decisions between the parties had become final and the Respondent was bound by those orders, as it remained unchallenged.

8. In the circumstances, the only question that ought to have been considered by the Tribunal was regarding the determination of surplus holding on exclusion of certain lands, as contended by Satyabhamabai. For that reason the impugned orders deserves to be reversed and the appeal preferred By Satyabhamabai is restored to the file of Maharashtra Revenue Tribunal, Pune for reexamination of the limited question of calculation relating to her surplus holding. That be done as expeditiously as possible preferably within six months from receipt of writ of this court. Accordingly, both these petitions succeed on the above terms. No costs.

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