

(2015) 01 BOM CK 0135

In the Bombay High Court

Case No : Letters Patent Appeal No. 69 of 2004 (Arising Out of W.P. No. 2380 of 1991), Letters Patent Appeal No. 199 of 2004 (Arising Out of W.P. No. 2446 of 1991) and Letters Patent Appeal No. 30 of 2006 (Arising Out of W.P. No. 2449 of 1991)

Narayanrao

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 10, 10(1), 18, 19, 20

Citation : (2015) 2 ABR 544 : (2015) 3 ALLMR 9 : (2015) 6 BomCR 616 : (2015) 4 MhLj 369

Hon'ble Judges : Mridula Bhatkar, J.;B.R. Gavai, J.

Bench : Division Bench

Advocate : V.S. Dhobe, for the Appellant; M.K. Pathan, AGP, Advocates for the Respondent

Final Decision : Allowed

Judgement

B.R. Gavai, J.

1. The appellants challenge the order passed by the learned Single Judge of this court dated 5.3.2004 in a bunch of Writ Petition Nos.2380/1991, 2446 of 1991 and 2449 of 1991, thereby allowing the writ petitions and remitting back the matters to the Surplus Land Distribution Tribunal, Yavatmal (hereinafter referred to as SLDT for the sake of brevity).

2. The facts in brief giving rise to the present appeals are as under:-

One Madhukar Yerawar, who is the respondent no.2 in the appeals was the owner of agriculture land situated at Ghatana and Lone. Since it was noticed that he was holding the land in excess of the area permissible as provided under the Maharashtra Agricultural Lands (Ceiling on Holding) Act, 1961(hereinafter referred to as the said Act) a Revenue Case no. 188/60-A(5)/75-76 was filed

against the said respondent. The said land owner filed a return as required under sub-section 1 of Section 20 of the said Act. On the basis of the return, the SLDT passed an order on 31.10.1984 thereby holding that an area admeasuring 111.17 acres was surplus i.e. in excess of the permissible land. Being aggrieved thereby the land owner went in appeal under the provisions of Section 33(1) of the said Act before the learned Maharashtra Revenue Tribunal. The learned Maharashtra Revenue Tribunal vide order dated 27.2.1985 partly allowed the appeal and thereby directed the SLDT to rework the determination of the surplus land. Rest of the claim of the landowner was rejected. Being aggrieved thereby the land owner preferred W.P. No. 933/1987. That petition came to be withdrawn. The SLDT on remand redetermined the surplus area to be 89.35 acres vide order dated 31.8.1989. However, the same was also challenged before the learned Maharashtra Revenue Tribunal. The learned Maharashtra Revenue Tribunal vide order dated 24.9.1990 again remanded the matter for violating the provisions of Section 10 and Rule 4 of the Maharashtra Agriculture Lands (Ceiling on holding) (Declaration and taking possession of Surplus Land) and Amendment Rules, 1975 (hereinafter referred to as the said Rules). In the proceedings before the learned SLDT the persons who had purchased the lands from the original land holder have also intervened. The learned SLDT vide order dated 7.1.1991, after taking into consideration the various transactions, directed that the land from the last purchaser should be taken first so as to make out a deficit in the surplus land as declared. The same was challenged by way of appeals by the respondents who were subsequent purchasers. The learned Maharashtra Revenue Tribunal vide order dated 24.7.1991 dismissed the appeals. Being aggrieved thereby the aforesaid three petitions came to be filed before this court. The learned Single Judge of this court by a detail and elaborate order dated 5.3.2004 came to the conclusion that the SLDT, so also the learned Maharashtra Revenue Tribunal have failed to take into consideration the purport of Rule 4 and as such remanded back the matter for following the provisions of Rule 4 of the said Rules. The learned Single Judge took a view that if the transferee of the land to whom the land is transferred in contravention of the provisions of Section 10 are more than one, then the procedure prescribed under Rule 4 is required to be followed. It is held by the learned Single Judge that the SLDT has fixed up the land for making the deficiency case by ignoring the provisions of Rule 4.

3. Shri Dhobe, the learned counsel appearing on behalf of the appellants, submits that the learned Single Judge has particularly erred in holding that Rule 4 was applicable to the facts of the present case. It is submitted that the conjoint reading of Section 8, 10 and 21 would reveal that reference to Rule 4 was not at all permissible in the present case.

4. Shri Pathan, the learned Assistant Govt. Pleader appearing on behalf of the State, also submits that the harmonious consideration of Section 10 would show that Section 10 is applicable only to the lands which are transferred between 26.9.1970 till the appointed date i.e. 2.10.1975 and between the date of coming

into effect till the order is passed by the SLDT under section 21. It is submitted that all the transfers made by the original land owners were after the order was passed by the SLDT on 31.10.1989 and as such, the transfers were itself non-est. It is, therefore, submitted that the learned Single Judge has grossly erred in remanding the matter. Shri Dhobe further submits that on account of the pendency of the present proceedings though the lands have been allotted to the appellants, who are the landless persons, they are being denied the fruits of such allotments inasmuch as the possession is not handed over to them of the land which was allotted to them.

5. Shri Kshirsagar, the learned counsel appearing on behalf of the subsequent purchasers, on the contrary, submits that the learned Single Judge has rightly passed the order. He submits that if the contention of the appellants is accepted then Rule 4 would be rendered redundant. He submits that the Legislative intent of enacting Rule 4 is that an equitable land is taken from the subsequent purchasers so that no single purchaser suffers, whereas the other purchasers enjoy the land on account of subsequent transfer.

6. Undisputedly, all the transfers in favour of the appellants before the court are after 31.10.1984. In this factual background, we will have to consider as to whether the learned Single Judge was justified in holding that rule 4 of the said Rules was applicable in the facts of the present case and in remanding the matter to the SLDT for decision afresh.

7. For appreciating rival controversy, it would be necessary to refer to certain provisions of the said Act.

Section 10 read thus -

10. Consequences of certain transfers and acquisitions of land.-(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 Section 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 transferred 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 persons, 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 provisions of sub-section (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 clause (a) "transfer" has the same meaning as in section 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 sub-section, 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.

(2) If any land is possessed on or after the commencement date by a persons, or as the case may be, a family unit in excess of the ceiling area or if as a result of acquisition (by testamentary disposition, or devolution on death, or by operation of la) of any land on or after that date, the total area of land held by any person, or as the case may be, a family unit, exceeds the ceiling area, the land so in excess shall be surplus land.

(3) Where land is acquired in willful contravention of section 9, then as a penalty therefor, the right, title and interest of the person, or as the case may be, the family unit or any member thereof in the land so acquired or obtained shall, subject to the provisions of Chapter IV, be forfeited, and shall vest without any further assurance in the State Government.

Provided that, where such land is burdened with an encumbrances, the Collector may, after holding such inquiry as he thinks fit and after hearing the holder and the person in whose favour the encumbrance is made by him, direct that the right , title and interest of the holder in some other land of the holder equal in extent to the land acquired in willful contravention of section 9, shall be forfeited to Government.

8. It can, therefore, clearly be seen that section 10 is applicable where any person or a member of a family unit transfers any land in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972 between 26.9.1970 till the commencement date i.e. 2.10.1975. Perusal of clause (1)(b) would reveal that the said is applicable when any land is transferred in contravention of Section 8.

9. It will be also necessary to refer to Section 8 of the said Act.

8. Restrictions on transfer. -Where a person or as the case may be, a family unit holds land in excess of the ceiling area on or after the commencement date, such person, or as the case ma be, any member of the family unit shall not, on and after that date, transfer any land, until the land in excess of the ceiling area is

determined under this Act.

Explanation.- In this section, "transfer" means transfer, whether by way of sale, gift, mortgage with possession, exchange, lease, assignment of land for maintenance, surrender of a tenancy or resumption of land by a landlord or any other disposition, whether by act of parties made inter vivos or by decree or order of a court, tribunal or authority (except where such decree or order is passed in a proceeding which is instituted in such a Court, Tribunal or before such authority before the 26th day of September, 1970), but does not include transfer by way of sale or otherwise of land for the recovery of land revenue or for sums recoverable as arrears of land revenue, or acquisition of land for a public purpose under any law for the time being in force.

10. Section 8 provides that where a person or as the case may be, a family unit, holds land in excess of the ceiling area on or after the commencement date, such person, or as the case may be, any member of the family unit shall not, on and after that date, transfer any land, until the land in excess of the ceiling area is determined under the said Act.

11. Perusal of sub-section (1) of Section 10 would reveal that if any transfer either under clause (a) or (b) is made and 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 lands 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 provisions of sub-section (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. The harmonious consideration of Section 8 and Section 10 would, therefore, show that when a transfer is between 26.9.1970 and the commencement date i.e. 2.10.1975 and in the case where a member of family unit holds land in excess of ceiling area and a transfer is executed between the commencement date i.e. 2.10.1975 until conclusion of proceedings for determination of the excess of the ceiling area then entire land of the original land holder or family unit shall be deemed to be surplus land. It further provides that in case of such land falling short of area declared to be ceiling area, then such land so transferred in favour of the transferee, unless such land is liable to be forfeited under the provisions of sub-section 3, the land to the extent of deficiency shall be, subject to the rule, deemed to be surplus land.

12. It can, therefore, be concluded that section 10 would be applicable only in case where the transfer is either between 26th September, 1970 and the date of commencement i.e. 2.10.1975 or when the land is transferred between the commencement date i.e. 2.10.1975 till the conclusion of the proceedings for determination of excess of the ceiling area under section 21. Undisputedly, in the present case, the determination of the surplus land is on 31.10.1984.

Undisputedly, none of the transfers in favour of the appellants who were the petitioners before this court are between 26.9.1970 and the date of commencement i.e. 2.10.1975 or prior to 31.10.1984. We are, therefore, of the considered view that the provisions of Section 10 are not applicable to the case of the appellants whose transfers were not covered either by clause (a) or clause(b) of sub-section (1) of Section 10 of the said Act.

13. It will be also relevant to refer to Section 21 of the said Act.

21. Collector to make declaration regarding surplus land etc., and consequences thereof.-

(1) As soon as may be after the Collector has considered the matters referred to in section 18 and the questions, if any, under sub-section (3) of section 20, he shall make a declaration stating therein his decisions on -

(a) the total area of land which the person or family unit is entitled to hold as the ceiling area;

(b) the total area of land which is in excess of the ceiling area;

(c) the name of the land to whom possession of land is to be restored under section 19, and area and particulars of such land;

(d) the area, description and full particulars of the land which is delimited as surplus land;

(e) the area and particulars of land out of surplus land, in respect of which the right, title and interest of the person or family unit holding it is to be forfeited to the State Government.

The Collector shall announce his declaration in the presence of the holder and other persons interested who are present at the time of such declaration.

(2) After a declaration under sub-section (1) is made the Collector shall prepare a statement in the prescribed form giving details of the area description and full particulars of the land which is delimited as surplus land, and also of the land therefrom, the right, title and interest in which is to be forfeited to the State Government. The Collector shall affix a copy of the statement at the village chawdi or any other prominent place at the village and shall also despatch a copy of the statement to the person or to the member of the family unit interested in the and delimited as surplus. On the date of the announcement of the declaration mentioned in the preceding sub-section the right, title and interest in the land which is liable to forfeited shall stand forfeited to and vest in the State Government. On an after the date of announcement of the declaration no sale, gift, mortgage, exchange, lease or any other disposition including any transfer in execution of a decree or other of a court, tribunal or authority shall be made of the land which is delimited as surplus land. If any of such disposition or transfer is made, it shall be invalid, and of no effect. Explanation Declaration of any land as surplus shall not be deemed to be invalid merely on the ground that the

statement giving details of the land is not affixed as aforesaid or has not been dispatched to the person or member of the family unit as provided in sub-section (2):

Provided that, if -

(a) Any right of resumption under the relevant tenancy law in respect of, or

(b) possession of, or right to possession of, any land delimited as surplus, is subject to proceedings under any other law in any court or tribunal, or before any authority, then so much only of the land as the holder of the surplus land in such proceedings is finally held -

(i) not to be entitled to retain, or

(ii) not to be in possession of, or not to be entitled to possession may be transferred in pursuance of such proceedings.

Explanation.- For the purposes of this proviso, the proceedings means proceedings for acquisition of land for a public purpose or for the sale of land for realization of land revenue or sums recoverable as arrears of land revenue, and any other proceedings instituted before the 26th day of September, 1970 and pending on the commencement date in any court, or tribunal or before any authority.

3) The declaration made under this section, subject to the decision of the Maharashtra Revenue Tribunal in appeal under section 33, or of the State Government in revision under sub-section (2) of section 45, shall be final and conclusive, and shall not be questioned in any suit or proceeding in any court.

4) As soon as may be after the announcement of the declaration referred to in sub-section(2), the Collector, shall take, in the prescribed manner, possession of the land which is delimited as surplus and in the case of land which the landlord is entitled to resume, restore possession of the land to the landlord named in the declaration. The surplus land shall, with effect from the date on which the possession thereof is taken as aforesaid be deemed to be acquired by the State Government for the purposes of the Act and shall accordingly vest without further assurance and free from all encumbrances in the State Government.

Provided that, in the case of surplus land referred to in the proviso to sub-section (2), the Collector shall, after the proceedings are finally decided, take possession of so much only of the land which the holder of the surplus land is in such proceedings finally held,-

(a) to be entitled to retain, or

(b) to be in possession of, or to be entitled to possess, and with effect from the date of taking over possession, the land shall vest in the State Government as aforesaid.

Explanation.-For the purposes of this proviso, "proceedings" has the meaning

assigned to it in the explanation to the proviso to sub-section(2) of this section.

(5) Where possession of any land delimited as surplus is handed over by the holder in pursuance of an undertaking given by him in any court, and the appeal filed by the holder against the declaration of that land as surplus has been subsequently withdrawn or dismissed, the land, notwithstanding any contained in sub-section (4), shall with effect from the date on which the possession thereof is taken by the Collector, be deemed to be duly acquired by the State Government for the purposes of the Act, and shall accordingly be deemed to have been validly and effectually vested without further assurance and free from all encumbrances in the state Government from the date of taking over possession thereof.

Provisions of section 21 would show that after the Collector considers the matters which are required to be considered by him under section 18 and the questions if any, under sub-section 3 of Section 20, he shall make a declaration stating therein his decision on the total area of the land which the person or family unit is entitled to hold as the ceiling area, the total area of the land which is in excess of the ceiling area, the name of the landlord to whom possession of land is to be restored under section 19, and area and particulars of the such lands, the area, description and full particulars of the land which are delimited as surplus land and the area and particulars of lands out of surplus land, in respect of which the right, title and interest of the person or family unit holding it is to be forfeited to the State Government. The Collector is required to announce his decision in presence of the holder and other persons interested who are present at the time of such declaration.

14. Perusal of sub-section 2 would reveal that after such a declaration is made under section (1), the Collector shall prepare a statement in the prescribed form giving details of the area, description and full particulars of the land which is delimited as surplus land and also of the land therefrom, the right, title and interest in which is to be forfeited to the State Government. The Collector is required to affix a copy of the statement at the village Chawdi or any other prominent place at the village and shall also dispatch a copy of the statement to the person or to the member of the family unit interested in the land delimited as surplus. It is specifically stated that on the date of the announcement of the declaration mentioned in the preceding sub-section, the right, title and interest in the land which is liable to be forfeited shall stand forfeited to and vest in the state Government. It has further been provided that on and after the date of announcement of the declaration, no sale, gift, mortgage, exchange, lease or any other disposition including any transfer in execution of a decree or order of a court, tribunal or authority shall be made of the land which is delimited as surplus land. It further provides that if any such disposition or transfer is made, it shall be invalid, and of no effect. The explanation to the sub-section (2) provide that declaration of any land as surplus shall not be deemed to be invalid merely on the ground that the statement giving details of the land is not affixed

as aforesaid or has not been dispatched to the person or member of the family unit as provided in subsection (2). The proviso to the said subsection would not be relevant for the purpose of the present proceedings.

15. Sub-section 3 of Section 21 provides that once the declaration is made under the said section, subject to the decision of the Maharashtra Revenue Tribunal in appeal under section 33 or of the State Government in revision under sub-section(2) of section 45, it shall be final and conclusive, and shall not be questioned in any suit or proceeding in any court. Sub-section 4 of the said section provides for taking the possession in the prescribed manner of the land which is delimited as surplus. It further provides that the surplus land shall be deemed to be acquired by the State Government for the purposes of the said Act and accordingly vest without further assurance and free from all encumbrances in the State Government. Provisions of Section 5 would also be not relevant for the propose of the present proceedings.

16. It can thus be clearly seen that the legislative intent is very clear. Once a declaration regarding a retainment area by a holder and an area in excess of the ceiling area is made by the Collector under sub-section 1 of Section 21, the land which is delimited or surplus vests in the State Government. From the date of such declaration no sale, gift, mortgage, exchange, lease or any other disposition including any transfer in execution of a decree or order of a court, tribunal or authority is permissible in case of land which is delimited as surplus land. It is patently clear that if any such disposition or transfer is made, it shall be invalid and of no effect. Explanation to subsection (2) also provides that a declaration of any land as surplus shall not be deemed to be invalid merely on the ground that the statement giving details of the land is not affixed as aforesaid or has not been despatched to the person or member of the family unit as provided in sub-section(2).

17. The perusal of section 21 would thus clearly show that any transfer after the declaration by the Collector under sub-section (1) of Section 21 would be non-est as it will be having no effect in law. Undisputedly the transfer in favour of the respondents/subsequent transferees is after 31.10.1984 i.e. after the declaration made by the Collector under sub-section (1) or (2) of Section 21. The effect of such transfer is that the transfer is made by the land owner of the property which is already vested in Government on 31.10.1984. The transactions thus made are non-est without having any effect in law.

18. The conjoint reading of sections 21 and 10 would reveal that Section 10 makes provision only in case of transfers which are made between 26.9.1970 and the date of commencement of the Act i.e. 2.10.1975 and all such transfers which are made during the pendency of the determination of the surplus lands by the Collector under section 21. The legislative intent appears to give some solace to such of the transfers which were made during the pendency of the determination of the surplus land proceedings till they attain finality. The purport of Section 10 appears that in case of such transfers which are covered under sub-

section (1)(a) and (b) of Section 10 and when the land of the original land holder is not sufficient enough to make out the surplus land declared, then the land of the transferee in whose favour the land has been transferred by the original land owner, which are covered under clause (a) and (b) of Section 10(1) should be taken so as to meet the deficiency. However, the legislative intent is clear that once a determination is made under sub-section(1) of Section 21 then no transfer of any type is permissible. The legislative intent is more than clear that any such transfer after determination would be as if having no effect and non-est in law.

19. In that view of the matter, since the transfer in favour of the respondents/ subsequent purchasers were after 31.10.1984, they were having no effect and non-est in law. In that view of the matter the provisions of section 10 would not be applicable to the said transfers as they were not covered either under clause (a) or (b) of Section 10(1). Thus, we find that the Maharashtra Revenue Tribunal while passing order dated 24.9.1990 and the learned Single Judge while passing the order impugned herein above dated 5.3.2004 have not taken into consideration the provisions of Section 8, 10 and 21 in the right perspective.

20. In the result, the appeals are allowed. The impugned order passed by the learned Single Judge is quashed and set aside. The orders passed by the learned SLDT dated 7.1.1991 is restored. The SLDT is directed to handover possession of the lands to the allottees to whom the possession is not yet handed over within a period of 8 weeks from today.