
(1984) 06 GUJ CK 0003
In the Gujarat High Court

Nathekhan Sojalkhan Bihari

APPELLANT

Vs

Mamlatdar and Others

RESPONDENT

Date of Decision : 18-06-1984

Acts Referred:

Gujarat Agricultural Lands Ceiling Act, 1960 — Section 6(1), 6(3)(b), 6(3B)

Citation : (1984) GLH 1066 : (1984) 2 GLR 1473

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

Bench : Single Bench

Judgement

A.M. Ahmadi, J.—The petitioners of these two petitions are real brothers. They inherited lands bearing Survey No. 73 Part, 74/1,75, 87, 115, 117, 171/3,172 and 173 of village Mepadaand Survey No. 137 of village Mengal totally admeasuring 87 acres and 37 gunthas. Each brother had one-half share in the said lands according to the Muslim personal law by which they were admittedly governed. Therefore, each brother owned 43 acres and 38.5 gunthas of land forming part of the aforesaid revenue survey numbers.

2. Both the brothers were living separately with their respective families at the relevant point of time. The petitioner Nathekhan's family consisted of himself, his wife, two minor sons, two minor daughters and a widowed mother. Petitioner Mojamkhan's family consisted of his wife, four un-married daughters and one minor son. Thus each brother had seven members in the family and both of them lived with their respective families under separate roofs. The ceiling area for Jirayat land was fixed at 39 acres. Thus each brother held 4 acres and 38.5 gunthas in excess of the normal ceiling area. These facts are not in dispute.

3. The authorities below including, the Revenue Tribunal came to the conclusion that the female members could not be included in the family for the purpose of deciding the unit under the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960, (hereinafter referred to as "the Act"). To be precise, the authorities came to the conclusion that Nathekhan's wife, widowed mother and two unmarried daughters had to be ignored for the purpose of deciding the family

unit to find out if the benefit of Section 6(3B) of the Act could be extended to them in view of there being two minor sons in excess of the total number of five members. Similarly, in the case of Mojamkhan, the authorities came to the conclusion that his wife and four unmarried daughters had to be ignored for determining whether the benefit of the aforesaid sub-section could be extended in view of there being a minor son.

4. Chapter III of the Act deals with fixation of ceiling on holding land, determination of surplus land and acquisition thereof. Sub-section (1) of Section 6 begins with a non-obstante clause and states that with effect from the appointed day no person shall, subject to the provisions of Sub-sections (2), (3), (3A) and (3B) be entitled to hold land in excess of the ceiling area, whether as owner or tenant or partly as owner and partly as tenant. Sub-section (3B) with which we are concerned reads as under:

(3B). 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 pro-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:

The two provisos are not relevant for our purpose. The expression "joint family" has been defined in Section 2(16) as an undivided 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 and the expression "person", according to Section 2(21) includes a joint family. There is nothing in the definition of the expression "joint family" to come to the conclusion that a widowed mother, wife or unmarried daughters are intended to be excluded from the group or unit, the members whereof are joint in estate or residence. Even Sub-section (3B) of Section 6 reproduced earlier does not permit the Court to reach the conclusion that such female members of the family are intended to be excluded from consideration while determining whether the size of the family is in excess of five members for the purpose of enlargement of the ceiling area in the event such family comprises a minor son, widow of a pre-deceased son, or minor son or unmarried daughter of a pre-deceased son, where his or her mother is dead. The expression "family" is not defined but the expression "joint family" includes in the case of persons not belonging to an undivided Hindu family a group or unit the members

whereof are joint in estate or residence by custom or usage. Sub-section (2) of Section 6 gives a positive indication that wife and unmarried daughters would be members of a family i.e., a group or unit if they are either joint in estate or residence. Even the learned Assistant Government Pleader frankly stated that he could not lay his finger on any provision supporting the view taken by the authorities below.

5. The Tribunal after referring to Section 6(3B) of the Act has concluded as under:

That sub-section clearly mentions three categories of persons who are entitled to be counted for getting additional area and if it was the intention of the legislature to include unmarried daughters or any other type of persons then this category would have been included in Sub-section 6(3B), otherwise it cannot be said that family is a joint family and also a person and therefore all the persons should be counted. It is, therefore, clear that both the courts below have rightly relied and interpreted the relevant provisions of law and there is no reason to interfere with that finding in revision.

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 member and (ii) it should have amongst it the categories of members mentioned in the three sub-clauses. If a family does not consist of more than five numbers 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.

6. Therefore, the benefit of enlargement of the ceiling area will enure 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 subsection 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.

7. I am, therefore, of the opinion that the family of Nathe Khan consisted of himself, his wife, widowed mother, two unmarried daughters and two minor sons at the relevant date. Similarly, the family of Mojam Khan consisted of himself, his

wife, one minor son and four unmarried daughters. In other words, the family size of each brother was of seven members. There were two minor sons in the family of Natbekhan and one minor son in the family of Mojamkhan. Since the family unit of each brother exceeded five in number so far as Nathekhan is concerned, he was entitled to hold land in excess of the ceiling area to the extent of two-fifth of the ceiling area and Mojamkhan with one minor son was entitled to hold land in excess of the ceiling area to the extent of one-fifth thereof. Since the excess land in the case of each brother was of 4 acres and 38.5 gunthas being less than even one-fifth of the ceiling area, it could not be held that their holding exceeded the permissible ceiling.

8. In the result both these petitions succeed. The order passed by the authorities below including the Revenue Tribunal are set aside and it is held that the two brothers did not hold land in excess of the permissible ceiling under the Act. The rule is made absolute with costs in both the petitions.