
(1995) 03 GUJ CK 0017
In the Gujarat High Court

Pannaben Rameshchandra Shethji

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 28-03-1995

Acts Referred:

Constitution of India, 1950 — Article 227

Gujarat Agricultural Lands Ceiling Act, 1960 — Section 35, 8(2)

Citation : (1996) 1 GLR 529

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—The order passed by the Mamlatdar and Agricultural Lands Tribunal at Savli (the First Authority for convenience) on 30th April, 1992 in Ceiling Case No. 115 of 1978 as affirmed in appeal by the order passed by the Deputy Collector at Vadodara (the Appellate Authority for convenience) on 23rd November, 1992 in Ceiling Appeal No. 4 of 1992 as further affirmed in revision by the decision rendered by the Gujarat Revenue Tribunal at Ahmedabad (the Tribunal for convenience) on 28th July, 1993 in Revision Application No. TEN B.A. 61 of 1993 is under challenge in this petition under Article 227 of the Constitution of India. By his impugned order, the Authority declared the holding of the petitioner to be in excess of the ceiling limit by 12 acres 07 gunthas for the purposes of the Gujarat Agricultural Lands Ceiling Act, 1960 (the Act for brief).

2. The facts giving rise to this petition move in a narrow compass. The husband (the deceased for convenience) of the petitioner was the owner of several parcels of land in village Sherpura Taluka Savli District Vadodara. His brother, named, Krishnavadan, was also a joint-holder of the lands in question. The deceased breathed his last on 18th July, 1971. It appears that partition of the family property was thereupon effected thereafter some time in 1971. Under the partition, some lands went to the share of the elder brother of the deceased, named, Krishnavadan, and one parcel of land bearing survey No. 177 admeasuring 7 acres 27 gunthas fell to the share of one daughter, named,

Bhavnaben, of the petitioner herein. The necessary mutation Entry No. 716 was effected in the revenue records some time on 23rd November, 1971. The family of the deceased no longer remained an Undivided Hindu Family upon such partition. It appears that thereafter a further distribution of lands was made and a new partition was made and it was effected in the revenue records by means of Entry No. 759 on 20th January, 1974. It appears that, with respect to the new partition, an application u/s 8(2) of the Act was made but it was rejected by the concerned authority and it was affirmed in revision by the Tribunal as transpiring from the impugned decision of the Tribunal in this case. It appears that the joint-holding of the petitioner with his son, named, Pankajkumar, and her daughter, named, Bhavnaben, was in excess of the ceiling limit prescribed for that area under the Act. Thereupon, the First Authority conducted an inquiry. The case came to be registered as Ceiling Case No. 115 of 1978. After hearing the petitioner, by his order passed on 30th April, 1992 in the aforesaid proceeding, the First Authority came to the conclusion that the holding of the petitioner as on 1st April, 1976 was to the tune of 84 acres 07 gunthas and the petitioner was entitled to two units, one for herself and one for her major son, and was as such entitled to retain 72 acres of land and thereupon the land to the tune of 12 acres 07 gunthas were declared surplus in her hands. Its copy is at Annexure-A to this petition. The aggrieved petitioner carried the matter in appeal before the Appellate Authority u/s 35 of the Act. It came to be registered as Ceiling Appeal No. 4 of 1992. By his order passed on 23rd November, 1992 in the aforesaid appeal, the Appellate Authority dismissed it. Its copy is at Annexure-B to this petition. The aggrieved petitioner thereupon unsuccessfully invoked the revisional jurisdiction of Tribunal by means of her revisional application. It came to be registered as Revision Application No. TEN B.A. 61 of 1993. By its decision rendered on 28th July, 1993 in the aforesaid revisional application, the Tribunal rejected it. Its copy is at Annexure-C to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition as further affirmed in revision by the decision at Annexure-C to this petition.

3. It clearly transpires from the impugned orders and the decision that the partition of the lands left behind by the deceased and in the hands of the petitioner was effected some time in 1971 and it was reflected in mutation Entry No. 716 made on 23th November, 1971. It appears that it was in the nature of division of shares in accordance with the relevant provisions contained in the Hindu Succession Act, 1956. The share given to Bhavnaben, daughter of the petitioner, was 7 acres 27 gunthas. It appears that the division was made in accordance with the notional partition u/s 6 thereof and division of shares in accordance with Section 8 thereof. It may be mentioned that this partition was not actually by volition of the parties but it was effected on account of the death of the deceased husband of the present petitioner. In that view of the matter,

Section 8 of the Act would not be applicable in the instant case so far as the partition of the properties left behind by the deceased in the hands of the petitioner in 1971 was concerned.

4. It appears that the parties thought of redistribution of their holding but that did not detain this Court as the application u/s 8(2) of the Act was rejected by the concerned officer and it was affirmed by the Tribunal in the proceeding arising therefrom. That would restore the original position of the holding arising from the partition or division of the properties in the hands of the petitioner in 1971. Bhavnaben's share therein was 7 acres 27 gunthas. That was her independent holding. It could not be clubbed with her mother, that is, the petitioner herein.

5. As rightly submitted by Shri Dave for the respondents, it is true that the word "person" as defined in Section 2(21) of the Act includes a joint family. However, the term "joint family" is defined in Section 2 (16) thereof inter alia to mean an undivided Hindu family. A Hindu family can be said to be undivided if the properties are not partitioned. As transpiring from the records of the case, the properties in the hands of the petitioner were partitioned or divided in 1971 in accordance with the principles of succession embodied in the Hindu Succession Act, 1956. In that view of the matter, the holding of Bhavnaben could not have been clubbed with or included in the holding of the petitioner for the purposes of the Act.

6. The binding ruling of the Supreme Court in the case of State of Maharashtra Vs. Narayan Rao Sham Rao Deshmukh and Others, deserves to be distinguished on the ground that in that case the properties on the death of the concerned coparcener were not partitioned and the family continued to remain undivided even after the death of the concerned coparcener. Even at the cost repetition, it may be reiterated that, soon after the death of the deceased in the present case, the properties left behind him were partitioned and divided in accordance with the principles of succession as embodied in the Hindu Succession Act, 1956.

7. In view of my aforesaid discussion, I am of the opinion that the holding of Bhavnaben to the tune of 7 acres 27 gunthas could not have been clubbed with or included in the holding of the petitioner for the purposes of the Act. To that extent, the impugned order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition as further affirmed in revision by the impugned decision at Annexure-C to this petition cannot be upheld in toto. The total holding of the petitioner was found to be 84 acres 07 gunthas including the holding of her daughter Bhavnaben. That holding will have to be excluded from the petitioner's holding. That would reduce her holding to 76 acres 20 gunthas. Since she had a major son in the family, the lower authorities and the Tribunal were justified in accepting her entitlement of two units. The ceiling limit prescribed for the area under the Act is 36 acres. The petitioner was thus entitled to retain 72 acres of land. In that view of the matter, her holding was in excess of the ceiling limit by 4 acres 20 gunthas. The

impugned order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition as further affirmed in revision by the impugned decision at Annexure-C to this petition deserves to be modified to that extent by declaring the holding of the petitioner to be in excess of the ceiling limit by 4 acres 20 gunthas. The matter now deserves to be remanded to the First Authority for restoration of the proceedings to file for the limited extent of declaring the excess land to be surrendered after giving an opportunity to the petitioner for her selection for the purpose.

8. In the result, this petition is accepted to the aforesaid extent. The impugned order passed by the Mamlatdar and Agricultural Lands Tribunal at Savli on 30th April, 1992 in Ceiling Case No. 115 of 1978 at Annexure-A to this petition as affirmed in appeal by the appellate order passed by the Deputy Collector at Vadodara on 23rd November, 1992 in Ceiling Appeal No. 4 of 1992 at Annexure-B to this petition as further affirmed in revision by the decision rendered by the Gujarat Revenue Tribunal at Ahmedabad on 28th July, 1993 in Revision Application No. TEN B.A. 61 of 1993 at Annexure-B to this petition is modified by declaring that the holding of the petitioner is in excess of the ceiling limit by 4 acres 20 gunthas.

9. The matter is now remanded to the Mamlatdar and Agricultural Lands Tribunal at Savli for restoration of the proceedings to file and for his decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.