

(1971) 03 BOM CK 0016

In the Bombay High Court

Case No : Special Civil Application No. 1695 of 1968

Purnabai and Others

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 03-03-1971

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 19

Citation : AIR 1971 Bom 194 : (1971) 73 BOMLR 909 : (1972) MhLj 182

Hon'ble Judges : K.K. Desai, J;Deshpande, J

Bench : Division Bench

Advocate : B.R. Naik, for the Appellant; S.C. Pratap, Asst. Govt. Pleader, for the Respondent

Judgement

Deshpande, J.—Two lands bearing Survey Nos. 139 and 140 measuring in all 33 acres 11 gunthas of village Chandekasre belonged to Bapu and Pandu, nephew and uncle respectively. Major portions of these lands were irrigated and were in possession of one Bahiru Zagade as tenant. In the course of inquiry in the holdings of the said tenant u/s 14 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, hereinafter referred to as "the Ceiling Act", the tenant was found to be a surplus landholder. Before, however, his surplus lands were finally delimited, both Bapu and Pandu, appeared before the Deputy Collector in response to notices u/s 20 to claim resumption of these lands u/s 19 for personal cultivation. Bapu alone claimed entire two lands, alleging that on partition with Pandu in the year 1955-56 these lands were given to Bapu and he was entitled to claim so much more area of land as would make up the total of 108 acres which is the ceiling area for his Taluka under the Ceiling Act. Pandu supported Bapu's claim of partition and alternatively claimed resumption of his share for himself. The Deputy Collector, by his order dated 30-9-1965 rejected their case of partition for want of any evidence and held that Bapu and Pandu had each eight annas shares in the lands. Pandu himself was already declared a surplus land holder and as such was found disentitled to claim resumption of any area out of these lands. Bapu was found already to have been in possession of 37

acres 38 gunthas out of his eight annas share in survey No. 140. This area of 2 acres 20 gunthas is perennially irrigated land and the same is admittedly equivalent to 10 acres 2 gunthas of Jirayat land. Upon restoration of land as ordered, the total area possessed by Bapu for personal cultivation came to 48 acres of Jirayat land which is the prescribed ceiling area u/s 5 of the Bombay Tenancy and Agricultural Land Act of 1948 hereinafter referred to as "the Tenancy Act". Claim of Bapu to resume land to the extent of ceiling of 108 acres fixed by the Ceiling Act was rejected on the ground that the same would be contrary to the ceiling of 48 acres fixed under the Tenancy Act. Bapu having died, his four heirs and Pandu challenged but without success. The petitioners Nos. 1 to 4 being the heirs of Bapu, and petitioner No. 5 Pandu challenge the validity and the legality of the order of the Additional Commissioner, Poona dated 20-3-1968, in this special Civil Application under Art. 227 of the Constitution.

2. Dr. B. R. Naik, the learned advocate appearing for the petitioners, relies on the non obstante clause in Section 19(b) of the Ceiling Act and contends that the provisions in the Tenancy Act fixing the ceiling for the area that could be resumed by a landlord are irrelevant in the matter of resumption of land by a landlord under the Ceilings Act. Relevant parts of Section 19 may be conveniently quoted here :-

"Where, during any inquiry into the holding of any person x x x x x under the last preceding section, it appears that --

(a) the whole or any part of the surplus land delimited under the foregoing provisions, is held by that person from a landlord, and

(b) the landlord has a right of resumption for personal cultivation in respect of that land (or a part thereof) under the relevant tenancy law applicable to such land,

the Collector shall x x x notwithstanding anything containing in that tenancy law restore possession to the landlord of so much only of the surplus land, as he is entitled to resume; and the balance, if any, shall be surplus land".

3. Towards ascertaining the true meaning and effect of the above provisions, it is convenient to notice the following.

4. As appears from the preamble, the other scheme and particularly Section 3 thereof, the Ceiling Act was enacted for securing equitable distribution of agricultural lands to landless persons for personal cultivation and the ceiling and / or the maximum area to be continued in possession of the holders - whether landlords or tenants -- was fixed, so that the surplus land held by the holders could be acquired and distributed. Apparently, the main scheme of this law was not for enacting any provisions for resumption of lands from tenants - holders for redistribution thereof amongst any landlords. Towards fulfillment of the above purpose, ceiling area was fixed under Sections 4 to 7 and inquiries were directed to be held against landholders, whether landlords or tenants in

respect of the lands in their possession and u/s 27 a scheme for distribution of the surplus land amongst parties mentioned therein in order of the priority fixed thereby was enacted. Under subsection (2) of S. 27, land resumed by a landlord under the Tenancy Act was directed to be redistributed amongst his tenants. The ceiling area fixed under this Act was entirely irrelevant to the purpose and object of the Tenancy Act. As appears from the preamble and different sections thereof, the Tenancy Act was enacted with the main purpose of improving the economic and social conditions of peasants and in that connection to assume management of estate held by land holders. Towards that object, provisions relating the ceiling area and economic holding were enacted in Sections 5 to 7. The normal rights of landlord to terminate tenancy were curtailed by provisions in Sections 14 and 15. Right of pre-emption was conferred on tenant u/s 31. u/s 32, from appointed day, the protected tenants were deemed to have purchased the lands in their possession. The Chapter III enacted provisions conferring special rights and privileges of tenants, and for distribution of land for personal cultivation. It requires to be noticed that apart from certain special provisions in Chapter III-A and Chapter III-AA, the Sections in Chapter III are the only sections providing for the rights of a landlord for resumption of lands let to tenants for personal cultivation by landlords. Apparently, the provisions in this Chapter III are the only permanent provisions that the Legislature intended to enact for conditions on and in which landlords should be entitled to resume possession of lands let out to an agriculturist tenant. One of the conditions mentioned in S. 31-A (b) is "x x x, the landlord shall be entitled to take possession of so much area of the land leased as will be sufficient to make up the area in his possession to the extent of a ceiling area". The substance of the contention made by the petitioners is that the provisions in Section 19 of the Ceiling Act have rendered the above condition in Section 31 - A (b) of the Tenancy Act nugatory. Some of the other conditions prescribed by Chapter III are : The landlord must require the land in question for cultivating personally. Notice of termination should have been given before December 31, 1956. At the date of the above notice, the landlord should not be in possession of lands to the extent of the prescribed ceiling area. The income by cultivation must be the principal source of income for a landlord's maintenance. u/s 32, in cases in which notice of termination of tenancy was not served u/s 31, which must be before December 31, 1956, the tenant became deemed purchaser of lands in his possession. u/s 32-P, in cases in which purchase of any land by maintenance became ineffective, the Tribunal prescribed was empowered to resume the land and dispose of the same in accordance with the scheme of priorities prescribed in sub-section (2). It is significant that lands were not allowed to be resumed by and / or to continue in ownership of the landlord and were directed to be distributed amongst third parties mentioned in the section. It is essential to remember what is discussed above whilst reading the provisions of Section 19 of the Ceilings Act on which reliance is placed by the petitioners.

5. In connection with the inquiries for resumption of surplus land u/s 18 of the

Ceilings Act, the Collector is directed to consider matters mentioned in clauses (a) to (l) of the section. The clauses (h) and (k) run as follows :-

"(h) whether any land is held by the person as tenant, and if so, whether, his landlord has a subsisting right of resumption of the land for personal cultivation, under the relevant tenancy law applicable thereto?"

"(k) which particular lands out of the total land held by him, should be delimited as surplus land?"

6. The clause (a) of sub-section (3) of S. 20 runs as follows :-

"(3) x x x, the Collector shall, after hearing the landlord or his agent and any other person interested in the surplus land x x x, ascertain -

(a) whether the landlord is entitled to restoration of the possession of the whole or any part of such surplus land, and if so, the area and other particulars of such lands; and

x x x x x x"

Apparently, the contents of clause (h) in Section 18 and clause (a) of sub-section (3) of S. 20 have reference to the right of resumption of land by the landlord that is referred to in Section 19. In that connection, under the above clause (h), the inquiry is directed to ascertain if the right of resumption which must be for personal cultivation is subsisting under the Tenancy Act. The result of that inquiry must be declared in the order to be passed in accordance with the contents of clause (a) of sub-section (3) of S. 20. All that is discussed above throws considerable light for ascertaining the true meaning of the provisions in Section 19. For the Collector to exercise power under the last part of Section 19 for restoration of possession of any surplus delimited land to the original owner landlord, the first essential finding required in Clause (h) of Section 19 is that "the landlord has a right of resumption for personal cultivation in respect of that land (or a part thereof) under the relevant tenancy law x x x". If an affirmative finding can be made as regards the above matter, the second part of the section provides that "the Collector shall x x x x notwithstanding anything contained in that tenancy law x x x, restore possession to the landlord of so much only of the surplus land, as he is entitled to resume; and the balance, if any, shall be surplus land". The language in the above part of the section is unambiguous and clear. The landlord is entitled to restoration of possession of so much of the land as he is entitled to resume. The question is, under what law and / or in what right? The limitation is apparently as regards the area. That is clarified by the use of the phrase "so much". The Ceiling Act does not provide for and / or prescribe any ceiling as to the area which could be restored in possession of the landlord. The Ceiling Act in fact is not enacted for restoration of possession of the lands let out by him to a landlord. It is absolutely clear that the ceiling of area for restoration of possession to the landlord must be found in and in fact is as prescribed by the Tenancy Act. This is so in spite of the phrase "notwithstanding" as appearing in

the last part of Section 19.

7. It is not in this connection necessary for us exhaustively to find out why the non obstante clause is included in Section 19. Possibly, this clause has the effect of nullifying some of the conditions necessary to be fulfilled for granting restoration of possession to the landlord of his land under the scheme of Chapter III of the Tenancy Act, contained in Sections 31 to 43 as also in Chapters III-A, III-AA and III-B. We do not find it necessary to ascertain and / or specify the conditions which were intended to be nullified.

7-A. The contentions of Dr. Naik thus fail.

8. Rule is, therefore, discharged. In the circumstances of the case, there will be no order as to costs.

9. Rule discharged.