

(1996) 09 BOM CK 0019
In the Bombay High Court
Case No : Writ Petition No. 850 of 1989

Rajendra Pathare and others

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 25-09-1996

Acts Referred:

Evidence Act, 1872 — Section 101

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 2

Citation : (1998) 1 BomCR 548 : (1997) 2 MhLj 741

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Advocate : S.R. Deshpande, for the Appellant; S.G. Charde, Asst Govt. Pleader, for the Respondent

Judgement

V.S. Sirpurkar, J.—By this writ petition, the original landholders are challenging the orders passed by the Maharashtra Revenue Tribunal as also the original order passed by the Surplus Land Determination Tribunal. By the instant order, the Surplus Land Determination Tribunal had declared 14 acres and 13 gunthas of land as surplus land. The appeal against the same had tailed. The landholder has come up now in this writ petition before this Court.

2. The original landholder Marotrao Deorao Pathare is now no more and the petition is being continued by his legal representatives. He had filed a return and originally his 14 acres and 13 gunthas of land was found to be surplus by the Surplus Land Determination Tribunal. He filed an appeal before the Maharashtra Revenue Tribunal. The appeal was allowed and the matter was directed to be remanded to the Surplus Land Determination tribunal for fresh enquiry in respect of 9 acres and 21 gunthas of land which was transferred by the landholder. A writ petition came to be filed against this remand order being Writ Petition No. 1509/77 which writ petition came to be dismissed on 16-1-1985. It was, therefore, that the matter was tried by the Surplus Land Determination Tribunal all over again and the Surplus Land Determination Tribunal again passed an

order declaring 14 acres and 13 gunthas of land as excess by its order dated 29-10-1986. There was again an appeal filed by the landholder to the Maharashtra Revenue Tribunal being Appeal No. 166/87 and again the matter was remanded. It is thereafter that the present enquiry went on. The notices were issued and the Surplus Land Determination Tribunal passed the impugned order dated 13-7-1988. In short, present is the second round in this Court and third round in all.

3. Shri S.R. Deshpande, the learned Counsel for the petitioners, urged the following points :-

(i) that the Surplus Land Determination Tribunal was already abolished by notification of the State Government and thus there was no valid Surplus Land Determination Tribunal to pass the orders. According to him, though the order is purported to have been passed by the Surplus Land Determination Tribunal, Morshi, it is in fact passed by the Tahsildar which is clear, according to the learned Counsel, from the order-sheets. The learned Counsel goes on further to submit that the Tahsildar had no jurisdiction under the Act to deal with the matters and the said jurisdiction lay exclusively with the Collector and the definition of Collector does not include the Tahsildar and in fact by specific language excludes the Tahsildar,

(ii) that even if it is presumed that the Surplus Land Determination Tribunal was available, even then the Tahsildar did not notice the other two members if any and did not wait for half an hour as he was bound to wait at least for that period. The learned Counsel, therefore, urges that the order passed by the Tahsildar alone would not be an order passed by a Tribunal having full quorum and, therefore, it would be an order without jurisdiction,

(iii) the learned Counsel urged that the sales which have been held to be not justifiable were in fact for the legal necessity of the landlady and there was enough evidence on record. According to the learned Counsel, this evidence has not been taken into consideration at all,

(iv) the learned Counsel contended that there has been an erroneous observation by the Maharashtra Revenue Tribunal that the concerned sales were straightaway barred u/s 8. According to the learned Counsel, this error has crept in because of the faulty reading of section 10 of the Ceiling Act,

(v) Lastly, that though some land was compulsorily acquired, it was included in the holding of the landholder.

4. Considering the first point first, the learned Counsel for the petitioner invited my attention to the return and contended that the return was blissfully vague and complacently silent regarding the contention raised in the petition. He invited my attention to paragraph No. 5 of the return and pointed out that it was an admitted position that the Surplus land Determination Tribunal was abolished by the concerned notification. The said notification is on record and filed along With

this writ petition as Annexure "A". A glance at the notification does suggest that all Surplus Land Determination Tribunals in the State of Maharashtra have been abolished. Unfortunately, the criticism regarding the vagueness of the return is correct. The return seems to have been affirmed by an officer of the rank of Tahsildar and all that is said in the return and particularly in paragraph No. 5 is that inspite of the abolition of the Surplus Land Determination Tribunals, the powers of the Tahsildar to determine the surplus lands were kept unaffected. I am afraid, this sentence is absolutely senseless. One wonders as to how such sentences came to be included in the return filed on behalf of the State of Maharashtra. Shri Charde, the learned Assistant Government Pleader appearing on behalf of State of Maharashtra, candidly admitted that the return was hopelessly vague and silent. He, however, sought the permission of the Court to file on record a notification published on 28-2-1985 by which some Surplus Land Determination Tribunals were constituted u/s 2-A of the Ceiling Act. The said notification does show that the Surplus Land Determination Tribunal for Morshi has been constituted wherein three members are appointed, they being (i) The Tahsildar, Morshi, (ii) Shri Bhaskar Sheshrao Patil, Gandhi Chowk, Morshi and (iii) Shri Vijay Khodaskar, Ambada. The area of this Surplus Land Determination Tribunal, Morshi is shown to be of Morshi Taluka. Considering that this notification has already been published in the Government Gazette and, therefore, it has been duly published, the filing of the document was allowed. If this notification is to be taken into consideration, the contention that there was no Surplus Land Determination Tribunal available must be rejected.

5. Considering the second contention, the mainstay of Shri Deshpande is on the reported ruling of this Court in 1977 M.L.J. 689 : Awadoot v. State of Maharashtra, Relying on this decision and further more particularly on the language of the proviso to sub-section (5) of section 2-A of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, Shri Deshpande contends that there is a duty in the Tahsildar firstly to notice the other two members of the Tribunal and then to wait for them for half an hour and it is only when they fail to turn up for half an hour that the Tahsildar could proceed with the matter alone. In the said decision, firstly the validity of Rule 3, as it then was, was challenged. It was contended that the said Rule was ultra-vires the section. This Court in the said decision declared that the Rule 3(3) was only partly valid. The Division Bench held that even if the quorum was fixed at two, that did not necessarily take away the protection offered to the landholder as there was at least one member who was supposed to be conversant with the legal matters involved. The Division Bench went on to hold, therefore, that the first part of that rule was legal and valid by which the quorum was provided. It was further held that under a delegated legislation, the rule making authority could not override the provisions of the Act by exceeding its authority and making provisions inconsistent with the Act. In that the Division Bench went on to hold that since the second part of the rule was inconsistent with the provisions of the section and more particularly section 2-A, the rule was found to be ultra-vires and was

struck down. However, the State of Maharashtra then by amendment, has put the said rule in form of the proviso into the section itself. The proviso runs like this :

"Provided that where within half an hour of the time fixed for the meeting of the Tribunal, there is no quorum as may be so prescribed and if the Chairman alone is present, he shall be deemed to be the necessary quorum to constitute the meeting of the Tribunal. He shall proceed further with the meeting and record his decision in the proceedings as the decision of the Tribunal."

The learned Counsel has argued that in the said Division Bench decision the order was passed only by the Chairman and it was found to be without jurisdiction. This was because the rule which permitted the said course was itself found to be invalid and ultra vires the section. That is not the position here. We now have a Invalid provision in shape of a proviso to section 2-A(5). Shri Deshpande, however, further argues that even if the Chairman could be said to have a jurisdiction to pass order alone then he will have to go strictly in terms of the proviso. According to the learned Counsel, it will have to be shown that firstly the two members of the Tribunal were noticed and were given the specific time to attend and it will have to be further shown from the record that the Chairman of the Tribunal or the Tahsildar, as the case may be, waited for those two members for half an hour. According to the learned Counsel, the said position is not revealed from the record. The learned Counsel took me thoroughly through the order-sheets of the Surplus Land Determination Tribunal and contended that there was nothing in those order-sheets to suggest that firstly a notice was sent to the other two members of the Tribunal and the Tahsildar who was the Chairman of the Surplus Land Determination Tribunal had waited for half an hour after the time which was fixed for the purposes of hearing.

6. As regards the contention that the proviso requires a notice to be sent, it will have to be said that the learned Counsel is reading something which is not there in the language of the proviso. The proviso does not contemplate any such notice. If the notice is being insisted upon to be sent to the members of the Tribunal, there has to be a specific provision for the same. Reading the language of the proviso, I am afraid, no such inference is possible. The contention of the learned Counsel, therefore, that a notice should have been sent to the members of the Tribunal and that it should have been reflected in the record is, therefore, clearly incorrect and is rejected. Now as regards the other requirement, there does appear to be some force in the contention of the learned Counsel that the Tribunal should wait for half an hour. There is no doubt that the proviso requires the Tribunal to wait for half an hour. However, it will have to be shown factually that the Tribunal did not wait for half an hour. I am afraid, such factual contention is absent both before the Tribunal as also before the Maharashtra Revenue Tribunal. The learned Assistant Government Pleader took me through the writ petition. The writ petition also falls short of such factual contention. Whether the Tribunal waited for half an hour before starting would be essentially

a question of fact and the said question of fact essentially depends upon the contentions raised. Such contentions are not to be found either before the Tribunal or before the Maharashtra Revenue Tribunal and even before this Court in the writ petition. There being no factual justification, the contention of the learned Counsel that the Tribunal did not wait for half an hour is rejected.

7. Shri Deshpande then argued that the authorities below have wrongly included some lands which were sold after 26-9-1970 but before 2-10-1975. According to him, those lands were sold for the legal necessities and the sales were completely justifiable. He pointed out that voluminous evidence was produced to suggest that the land was required to be sold to meet the various situations like the payment of debts, to meet the expenditure made for medicines, to construct a house and for digging the well, etc. According to him, if the lands were sold for these purpose, then the landholder had rebutted the presumption raised by section 10 of the Act. Shri S.R. Deshpande then pointed out that both the authorities below had not considered the evidence as they should have. As regards the order of Surplus Land Determination Tribunal (hereinafter referred to as "S.L.D.T." for the sake of brevity), the contention of Shri Deshpande was that the S.L.D.T. had merely referred to the purposes and had not bothered to consider any evidence whatsoever. He has taken me through the order completely to show that there was a complete non-application of mind on the part of S.L.D.T. As regards Maharashtra Revenue Tribunal, he pointed out that the Maharashtra Revenue Tribunal had fallen in an obvious error of treating that these sales were barred by section 8. He has pointed out that the Maharashtra Revenue Tribunal has rejected all these sales as they were in contravention of section 8. According to Shri Deshpande and rightly in my opinion, the application of section 8 was not possible as all these lands have been sold prior to 2-10-1975. He, therefore, suggested that there was no active consideration of the evidence by any of the authorities.

8. Shri S.G. Charde, the learned Assistant Government Pleader, countered these arguments on the ground that there was no evidence to suggest that the landlord was compelled to sell his lands for the purposes as stated by him. He pointed out that the landlord had not led any evidence to suggest that he had no other money to meet these expenses as in fact the landlord was holding extensive acreage of lands with him and as such it could not be expected that he would be required to sell the lands that too during the grey period of 26-9-1970 and 2-10-1975. According to him, if it was not absolutely essential for the landlord to sell the lands for meeting these expenses, these sales will have to be presumed to have been made for the purposes of defeating the provisions of the Act and in anticipation of the same. It will have, therefore, to be seen as to what is the nature of evidence required and what is the standard of proof that the Courts would expect for justifying the sales if made by the landlord during the grey period. It will be seen that section 10 of the Ceiling Act specifically raises a statutory presumption in the following manner :

"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."

The Preamble of the Amending Act No. XXI of 1975 is as under :-

"WHEREAS, in the State of Maharashtra, the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 imposed for the first time, in the public interest the maximum limit (or ceiling) on the holding of agricultural land, and provided for the acquisition of land held in excess of the ceiling for distribution thereof amongst the peasantry of the State, and in particular, among landless persons; and for other purposes therein stated;

AND WHEREAS, it is now expedient to lower, in the public interest, the maximum limit (or ceiling) on the holding of agricultural land in the State for making available additional land as surplus, so as to secure a still more equitable distribution of land, and for the purpose of removing economic disparities, and thereby for assisting more effectively landless and other persons; and generally for the purpose of so distributing the agricultural resources of the community as best to subserve the common good, and also to prevent the concentration of the means of agricultural production and wealth to the common detriment;

AND WHEREAS, it is expedient further to amend that Act for those purposes, and other purposes hereinafter appearing; It is hereby enacted in the Twenty-third Year of the Republic of India as follows :"

It will have, therefore, to be seen that the objective of the Act was to secure a furthermore equitable distribution of the land, for the purpose of removing economic disparities and for assisting the landless and other persons more effectively. The further object of the Act appears to be to prevent the concentration of the means of agriculture production and to subserve the common good of the community by distributing the agricultural resources. The object of the Act was sought to be achieved by lowering down the maximum limit or ceiling which was fixed by the earlier Act. In short, what was aimed at by the Amending Act was the lowering down of the ceiling limit for the above mentioned purposes. The Legislature has, therefore, armed itself with a statutory presumption in law that all the transfers made during the two dates would be deemed to have been made for avoiding or defeating the objects of the Act. It is clear that this statutory presumption is rebuttable and the landholder might show to the authorities concerned that the transfers have not been made in anticipation of the Act or for avoiding or defeating the objects of the same. Shri Deshpande submits that the said presumption raised can be discharged by showing that there was a reason or a purpose for that transfer and if the landholder shows that the consideration of such transfer has been spent for that purpose, then the presumption is successfully rebutted. The learned Assistant Government Pleader, however, counters this argument by contending that merely

by showing that there was a purpose for transfer would not absolve the landholder and he will have to further show that there was an element of necessity for that transfer which was of such a nature that the transfer of land for that purpose would have been inevitable. It is argued that unless that factor of inevitability is proved, the statutory presumption could not be said to have been discharged. In short, therefore, the question is as to whether the authorities under the Act can enquire into the reasonableness of the purpose and whether such purpose could be tested on the grounds of reasonableness or not. Shri Deshpande submits that the authorities cannot question the reasonableness of the purpose. Once a purpose is shown to be existing and further it is shown that the consideration earned out of the transfer is spent for that purpose then, according to the learned Counsel, it will have to be held that the statutory presumption arising under the Act has been rebutted.

9. In support of his contention, Shri Deshpande relies on *Brijendra Singh Vs. State of Uttar Pradesh and Others*, That case is based on U.P. Imposition of Ceiling on Land Holdings Act and more particularly on sections 5(1) and (6) proviso (b). Shri Deshpande more particularly relies on the observations in paragraph 19 to the following effect :

".....once a transfer is shown to be bona fide and further satisfies all the other positive and negative conditions laid down in the Proviso (b) to section 5(6), there is no justification in law to stretch the legal fiction further and to spell out from the expression "good faith" an additional requirement of proving pressing necessity for the transfer before the tenure-holder is entitled to the benefit of the aforesaid proviso (b)."

There a tenure-holder who was a Brigadier in Army had sold part of his land in August, 1971, i.e. after the relevant date as he had required money for building his own house in Delhi and it was held by the High Court that the transfer was not for pressing need and as such was not justifiable and, therefore, the sale was directed to be ignored by the High Court. The Apex Court allowing the appeal has held that the aspect of the pressing need could not be gone into by the concerned authorities and it was enough if it was proved that the transfer was bona fide and complied with the conditions laid down in section 6. The observations quoted above were made in that context. This case was followed by the Apex Court in another case, namely, *Bhupendra Singh Vs. State of U.P. and Others*, . There the lands were sold for raising the funds to construct a residential house in Delhi. There also the petitioner was in the Army service and had obtained permission for sale of lands in order to raise funds for building a residential house for himself in Delhi. There also the High Court had rejected the sales on the ground that they were not for valid compelling necessity. The Supreme Court again reiterated the law laid down in *Brijendra Singh*'s case cited *supra* and held that the aspect of compelling necessity could not have been gone into. The third case relied upon by Shri Deshpande is *Jagmal Singh Vs. State of U.P. and others*, . This case also follows the earlier referred two cases. In this

case the land was sold for payment of loan and purchase of tractor. Here also the sale was found to be not benami and a valid out and out sale. Here also the authorities below had held that the sales were made to evade the provisions of the Act. The authorities had held that in fact the appellant had transferred two other plots one in 1964 and another in 1970 and, therefore, the loans could have been paid out of those monies which were received from the said two sales and as such there was no necessity for selling the land again in 1971 particularly after the concerned date. Same thing was found about the tractor. It was held that there was no necessity to sell the old tractor and purchasing a new one and, therefore, the land sold for purchasing a new tractor could not be justified. The Supreme Court again in paragraph 6 reiterated in the following words :

".....As has been pointed out by this Court, it is not further necessary under the provisions of the said proviso (b) that the landholder/tenure-holder should prove a compelling necessity for the transfer of the land."

10. Shri Deshpande relies on these decisions to suggest that once the reason is given or once a purpose is disclosed for which the transfer is made, it would not be possible for the authorities to test the said purpose or the reasonableness thereof and all enquiries in that behalf would be barred and it will have to be accepted that the landlord had rebutted the presumption. Shri Deshpande is at pains to point out that this decision was followed by the learned Single Judge of this Court Padhye, J., in Special Civil Application No. 4867/76 decided on 19-2-1982, Keshav Shridhar Munshi v. State of Maharashtra. Though Shri Deshpande is fair enough to submit that present was not the controversy and the learned Judge there was not called upon to decide whether a "compelling necessity" would be required for the transfer of the fields in order to get over the transfers made by the landholder. In Special Civil Application No. 4867/76 the transactions were directed to be ignored by the authorities on the ground that they were not for compelling necessity (emphasis mines). The learned Judge went on to hold that the authorities were not right in applying the test of compelling necessity to the transactions and in so holding the learned Judge had relied upon the decision by another Single Judge of this Court Dharmadhikari, J., in Special Civil Application No. 1804/76 as also the decision in Brijendra Singh's case cited supra. The learned Judge went on to hold on the basis of these decisions that to apply the test of a compelling necessity on all the cases would not be proper and on that ground he directed a remand holding that the authorities below had erred in law in applying the test of compelling necessity to the transactions. The question involved here-in is still different. Shri Deshpande goes further and avers more particularly relying upon the three Supreme Court decisions cited supra that once the purpose of a transaction is displayed and once it is shown that the consideration flowing out of those transactions was actually spent for that purpose, there would be no jurisdiction in the authorities to enquire into the reasonableness, let apart the compelling necessity for such transaction. It is, therefore, to be tested as to whether this proposition argued by the learned Counsel can be spelt out from the language and more particularly in

context of section 10 of the Ceiling Act. The learned Counsel argues that in all the three Supreme Court cases cited supra the Supreme Court has in unmistakable terms declared the law that once the conditions laid down in Section 5 of the U.P. Act were followed, then the authorities concerned would not be in a position to enquire into the reasonableness or otherwise of the purpose for which the said transfers were made. It will have to be, therefore, seen as to whether the observation of the Supreme Court are applicable mutatis mutandis to the language of the present Act also. In the U.P. Act, section 5(1) was as under :-

" (1) On and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land -Holdings (Amendment) Act, 1972, no tenure-bolder shall be entitled to hold in the aggregate throughout Uttar Pradesh, any land in excess of the ceiling area applicable to him.

Explanation I--In determining the ceiling area applicable to a tenure-holder all land held by him in his own right whether in his own name, or ostensibly in the name of any other person, shall be taken into account."

The Amendment Act, 1972 being Act No. 18 of 1973 there came into force with effect from 8-6-1973 itself. The sub-section (6) thereof provided as under :-

(6) In determining the ceiling area applicable to a tenure-holder, any transfer of land made after the twenty fourth day of January, 1971, which but for the transfer would have been declared surplus land under this Act, shall be ignored and not taken into account:

Provided that nothing in this sub-section shall apply to-

(a)

(b) a transfer proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a benami transaction or for immediate or deferred benefit of the tenure-holder or other member of his family,

Explanation I.....

Explanation II--The burden of proving that a case falls within Clause (b) of the proviso shall rest with the party claiming its benefit."

The Supreme Court went on to hold that firstly the burden to prove that the main sub-section (6) was not applicable to the transaction remained throughout on the tenure-holder and that the further burden to prove that his case fell under Clause (b) and thereby his transaction was not hit by that sub-section also was that of the tenure-holder and in paragraph 14 the Supreme Court went on to hold that in order to being his case within the purview of proviso (b) the tenure-holder had to show (i) that the transfer has been made in "good faith"; (ii) that it is a transfer for adequate consideration; (iii) that it has been made under an irrevocable instrument; and (iv) that it is not a benami transaction or for

immediate or deferred benefit of the tenure-holder or other members of his family. In Paragraph 7 the Apex Court explained the term "good faith" and went on to observe as under :-

"The expression "good faith" has not been defined In the Ceiling Act. The expression has several shades of meanings. In the popular sense, the phrase "in good faith" simply means "honestly, without fraud, collusion, or deceit; really, actually, without pretence and without intent to assist of act in furtherance of a fraudulent or otherwise unlawful scheme. (See Words and Phrases, Permanent Edition, Vol. 18-A, page 91). Although, the meaning of "good faith" may vary in the context of different statutes, subjects and situations, honest intent free from taint of fraud or fraudulent design, is a constant element of its connotation. Even so, the quality and quantity of the honesty requisite for constituting "good faith" is conditioned by the context and object of the statute in which this term is employed. It is a cardinal canon of construction that an expression which has no uniform, precisely fixed meaning, takes its colour, light and content from the context."

11. Considering the language of section 5(1), the Apex Court went on further to explain the term "good faith" in paragraph 18 and held that a transfer made after the prescribed date which is designed to serve as a cloak for retention of a right or interest of the transferor in the ostensibly transferred land in excess of the ceiling area would be patently not in "good faith". It further held that the language of section 5(6)(b) extended the negative aspect of the concept of "good faith" a little further by indicating that even if the transfer was not an ostensible transfer and the transferor divests himself of all interest and rights in praesenti but reserves some benefit in future for himself or other members of the family, then also the transfer will not be in "good faith". It further went on to hold that a transfer solely for the purpose of converting surplus land into cash without any kind of need (not to be confused with legal necessity) may also lack good faith. Considering these aspects, the Supreme Court held that in order to be entitled to the benefit of proviso (b), a transfer made in good faith must satisfy the further conditions, namely, (ii) to (iv) enumerated in the proviso (b). Those conditions being that the transfer should be for adequate consideration; that it should have been made under an irrevocable instrument and the further negative conditions that it must not be a benami transaction; that it must not be for immediate or deferred benefit of the transferring tenure-holder or other members of his family. The Supreme Court further went on to hold as under :-

This being the position once a_ transfer is shown to be bona fide and further satisfies all the other positive and negative conditions laid down in the proviso (b) to section 5(6), there is no justification in law to stretch the legal fiction further and to spell out from the expression "good faith", an additional requirement of proving pressing necessity for the transfer before the tenure-holder is entitled to the benefit of the aforesaid proviso (b)."

The reason why the judgement is being quoted extensively is to show the total

difference in the language of U.P. Act and present section 10. It will be seen that though in paragraph 13 the Supreme Court reads a presumption on the basis of a transfer made and though it holds that the burden to rebut the same is on the tenure-holder, it is implicit that under the U.P. Act, there is no specific presumption which is predominantly and directly present in section 10. There is a major difference in the language of U.P. Act and the present Act. Under the U.P. Act, a specific provision is made via sub-section (b) by which it is provided as to how the operation of section 5(6) would be avoided. Sub-section (b) provides definite situations which are required to be proved for avoiding the operation of section 5(6). They being that the transfer should be in good faith, it should be for the adequate consideration and under irrevocable instrument which is not a benami transaction or for immediate or deferred benefit of the benami-holder or other members of his family. There are, therefore, specific defences provided by the Act itself to get out of the clutches of sub-section (6) of section 5. It is in the colour of that language that the Supreme Court held that once all the conditions as provided in section 5(6)(b) are satisfied, then there could be no further insistence for proving anything beyond what was provided in section 5(6)(b). It is for this reason that the Supreme Court says that there is no justification in law to stretch the legal fiction further and to spelt out from the expression "good faith" an additional requirement of proving pressing necessity. The Supreme Court has very specifically interpreted the term "good faith" and has restricted this interpretation to the U.P. Act only and more particularly in the context of the language that has been used. The term "good faith" was interpreted more particularly in the context of the realness or the genuineness of the transfer where it was required to see whether the transfer was complete whereby the transferor had divested himself of the interests or it was only a facade and further whether it was only a subterfuge to retain the own interests of the tenure-holder. The language of the Apex Court as relied upon by the learned Counsel would be, therefore, of no help in interpreting the provisions of section 10 and the presumption raised thereunder. It will have to be seen and appreciated that a specific modality is made available in the U.P. Act vide section 5(6)(b) whereas no such modality nor any principles have been so demonstrated in the language of section 10 and the Act merely says that the presumption would be that any such transfer between the two dates would be deemed to have been made in anticipation of or to avoid to defeat the provisions of the Act unless the contrary is proved. All the three cases cited supra would be, therefore, of no help to the learned Counsel for the reasons stated above that the scheme as also the language of the concerned provisions is entirely different from the present provision u/s 10.

12. Shri Deshpande further argues that if the authorities are allowed to peep into the reasonableness of the purpose and if a discretion is read in favour of the authorities to question the wisdom of the purpose, then devastating results would follow. According to the learned Counsel, in that case the authorities under the Ceiling Act would have an untrammelled discretion to test the wisdom of the

tenure-holder in disposing of his land. The learned Counsel submits that that could never be the scope as contemplated by the provisions. According to the learned Counsel, if there was a need and if in meeting the said need a transfer was deemed necessary by the tenure-holder, his judgment should be allowed to reign supreme and the authorities under the Ceiling Act would have no jurisdiction to question the said judgment. The learned Counsel, therefore, submits that once a need is stated and it is shown that the consideration of the transfer has been utilised for that purpose, then there would be absolutely no scope for the ceiling authorities to question the wisdom of the purpose or to question the wisdom on the part of the tenure-holder to effect the transfers. Now such an extreme proposition can never be accepted. By the very nature of the presumption, what is contemplated is that the approach of the tenure-holder should be that of a reasonable man. If a fantastic purpose is stated and for that purpose the lands are shown to have been sold, even if the consideration is spent for that fantastic purpose, it could not be said that such sales would be justifiable particularly in the light of the language raising a presumption. The approach will have to be that of a reasonable man and the test which could be indicated would be as to whether the need was such as really prompted the tenure-holder to transfer the land. In that event, if the need is not realistic or reasonable, then the presumption as contemplated by the Act would always spring up. The approach of the ceiling authorities would have to be to see as to what was the real object. In the light of the provisions, there is already a presumption working. Therefore, it will have to be seen as to whether the need as stated by the landlord was really such as would have justified him to sell the land even in the wake of the presumption. In this behalf, in case of *Keshav v. State of Maharashtra* : Special Civil Application No. 1867/76, this Court has held that the absence of a justification for transfer or a totally unacceptable or unnatural justification will certainly render the transfer of the land subject to the presumption of dishonesty but suspicion regarding the objective of the transfer must end somewhere by adopting a reasonable and common to our experience approach. The learned Judge further goes on to hold that while doing so it is not possible to forget the uncertainty of dry cultivation agriculture in Vidarbha and long history of various debt relief measures taken from time to time by Government and Legislature. Obviously, the examples given by the learned Judge are not exhaustive but enumerative. There could be still more reasons in which case the transfers could be held to be justified. However, the standard of evidence required to rebut the presumption in each case would differ in each case based on the facts of that case. All the same, what would be required to be seen is as to whether any reasonable man would have sold his lands for the purposes stated by the tenure-holder, more particularly in the light of the presumption raised by the statute. There would have to be, therefore, a balance maintained by the authorities under the Ceiling Act between the need or the purpose which is stated by the tenure-holder and the fact of transfer of the agricultural land in the light of the presumption. The nature of the evidence would undoubtedly have to be so much convincing so that an inference could be

drawn that a reasonable person would certainly have sold the land to meet the contingency as pointed out by the tenure-holder.

13. The learned Counsel then proceeded to argue that in the present case there is no such need displayed. It is shown from the records that the tenure-holder had purchased a field at Kavthala being Survey No. 3/2 area 2.2 for Rs. 4,100/-. One fails to follow as to why this purchase of the field has been taken note of or relied upon by the learned Counsel. A purchase of the field would be irrelevant. The learned Counsel submits that the fact that the field was purchased would show that the tenure-holder had no desire to defeat the objects of the Act, otherwise he would never have purchased the field. The argument is totally unacceptable. The contention, that merely because the landholder had purchased field Survey No. 3/2 area 2.2 acres and that would show the normal frame of mind of the tenure-holder that he did not want to avoid or defeat the provisions of the Act has, to be rejected.

14. The next questionable sale is of field Survey No. 5/3, area 3.10 acres sold to Shriram Ratiram Dhurve for Rs. 2,925/- on 24-3-1972. According to the landholder, this field was sold for digging of the well. It is submitted by the landlord that the deceased Marotirao had purchased Kotha adjoining the house for consideration of Rs. 1,000/-. He had also purchased a residential house for Rs. 2,500/- and it was thereafter that the petitioner had sold Survey No. 5/3 of mouza Jaitpura. The only reason stated in the sale-deed is that Marotirao wanted to construct a well in the other field and for development of this field. However, there is nothing on the record to suggest that Marotirao was short of cash or he did not have an insignificant amount like this for digging a well. There is no evidence on record as to how much exactly was the expenditure which was required for digging the well. There is further no evidence on record to suggest that Marotirao did not have that much of insignificant cash to dig the well though he was owning extensive acreage of land which was more than about 70 acres. Under such circumstances, it cannot be stated that there was any justification for Marotirao to sell Survey No. 5/3 of Jaitpura.

15. The next sale is Survey No. 1/2 to one Krushnasal for Rs. 4,000/-. The justification as argued by the learned Counsel for this sale is for construction of a house on land which was purchased on 30-5-1973. There appear to be documents on record for the purchase of timber, cement, wood, tin, etc. Those documents are to be found from serial Nos. 12 to 22. The petitioner, therefore, justifies the sale on this ground. Again the amount of Rs. 4,000/- is extremely insignificant. It does not stand to the reason that a person like the petitioner did not have Rs. 4,000/- and had to sell substantial land of 4 acres and 15 gunthas for raising just an insignificant amount of Rs. 4,000/-. That does not stand to the test of reasonableness. It may be that the petitioner might have spent some amount for the construction of the house but nothing has been brought on record to suggest that but for this sale the house would not have been possible or at least that the sale was essential if not imperative for raising the kind of money

that was required for the construction of the house. The Surplus Land Determination Tribunal has mentioned this aspect in its order and has held that the landlord could not justify the sale for this purpose. Shri Deshpande very strenuously argues that there is no discussion of the evidence. However, the fact remains that the Surplus Land Determination Tribunal has referred to this aspect in its order. It is not as if the Surplus Land Determination Tribunal has not referred to the evidence on record. Pages 2 & 3 of the order would show that there is a specific reference to these aspects. The next sale is the sale of land Survey No. 3/2 area 2 acres at Jaitapur for Rs. 1500/-. Shri Deshpande suggests that this land was sold for the exchange of Survey No. 126/1 area 27 gunthas which was purchased from the said person on the same day. According to Shri Deshpande, had the landlord an intention to defeat or avoid the provisions of the Act, then he would not have purchased the land to the extent of 27 gunthas on the same day, i.e. on 16-6-1974. Here Shri Deshpande is undoubtedly correct. It is clear from the record that the case of the landlord was that the 27 gunthas of land purchased by the petitioner was more convenient to him and it was because of that the said land was purchased. If really the idea would have been to avoid the provisions of the Act, the landlord would not have ventured to purchase the additional land particularly after 26-9-1970. The consideration also seems to be almost identical. This sale will have, therefore, to be ignored. The Maharashtra Revenue Tribunal as well as the Surplus Land Determination Tribunal have not considered this aspect at all. In fact, the approach of the Maharashtra Revenue Tribunal as has already been shown by me is wholly incorrect for the simple reason that the Maharashtra Revenue Tribunal has recorded the finding that the lands have been sold in contravention of section 8. It has not considered the evidence at all in order to see as to whether the evidence was sufficient to rebut the presumption u/s 10. It is for this reason that that task had to be taken upon by this Court.

16. Lastly Shri Deshpande submitted that there was some land acquired which should have been ignored by the concerned authorities. The said land is Survey No. 9/1 area 40 arcs (one acre). Considering the law laid down by this Court in *Hanumant Yeshwant Deshmukh and others v. State of Maharashtra and others*, 1983 M. L.J. 38 that land will have to be ignored.

17. In the result, the petition succeeds partly. It is directed that Survey No. 3/2 area 2 acres at village Jaitapur sold on 16-5-1974 will be ignored so also Survey No. 9/1 area 1 acre Mouza Kavthala shall be ignored. With these modifications, the matter will proceed as per the order of the Surplus Land Determination Tribunal. The rule is made absolute in the terms stated above without any orders as to the costs.

18. Petition partly allowed.