

(1976) 08 BOM CK 0001

In the Bombay High Court

Case No : Special Civil Application No. 2817 and 3731 of 1976

Rajesaheb Karbhari Kupkar

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 17-08-1976

Acts Referred:

Constitution of India, 1950 — Article 227
Land Acquisition Act, 1894 — Section 23, 4, 6

Citation : (1978) 80 BOMLR 175

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vaidya, J.—The only question, which arises in these two identical petitions, under Article 227 of the Constitution of India, is whether the Surplus Land Determination Tribunal and the Maharashtra Revenue Tribunal erred in law including in the holding of the petitioners the lands which were acquired in each of these cases under the provisions of the Land Acquisition Act.

2. The facts in Special Civil Application No. 2817 of 1976 were briefly as follows:

The petitioner filed a return on November 26, 1975, u/s 12 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. A public notice was given u/s 17(1). Individual notices were also issued. u/s 17(2) no objection was received. Thereafter an enquiry was made before the Surplus Land Determination Tribunal, Kaij. There was no dispute that the petitioner's land, approximately 47 acres, was being acquired for Manjara Irrigation Project.

3. The Tribunal held that as the action of acquisition was not completed even at the time of hearing of the matter, mere publication of the notification u/s 4 of the Land Acquisition Act, on August 21, 1975, or of the notice u/s 6, on March 6, 1976, did not justify the exclusion of the land from the holding of the petitioner for purposes of determining the ceiling under the Ceiling Act.

4. The petitioner filed an appeal against the said decision before the Maharashtra Revenue Tribunal, which, on April 13, 1976, confirmed the decision of the Surplus Land Determination Tribunal. The Revenue Tribunal concurred with the view of the Surplus Land Determination Tribunal that the land of a holder even if subsequently acquired must be considered as held by the holder on October 2, 1975, the "commencement date" as defined in the Ceiling Act.

5. Similarly, the facts in Special Civil Application No. 3731 of 1976, which is for admission, were briefly as follows:

The petitioner had filed a return u/s 12 and after notices were issued, it was pointed out to the Surplus Land Determination Tribunal that the entire lands held by the petitioner admeasuring 90 acres 32 gunthas were going to be submerged under the Irrigation Project; and she would be left without any land; and, therefore, her lands should not be considered as the lands "held" for the purpose of determining the ceiling under the Ceiling Act.

6. The Tribunal overruled this contention observing that the petitioner did not care to remain present before it or express her option and declared 36 acres 37 gunthas as surplus. The decision was confirmed by the Maharashtra Revenue Tribunal on March 20, 1976, on the ground that the lands were still to be acquired.

7. The decisions of the Tribunals were challenged in the above Special Civil Applications by the petitioners on the ground that having regard to the undisputed fact that the lands of the petitioners which were going to be submerged under the Irrigation Project were acquired under the Land Acquisition Act and were not available for distribution as surplus lands, the Tribunals ought to have held that they had no jurisdiction to declare any lands surplus.

8. Mr. Kanade, the learned Counsel for the petitioners, relied on the preamble to the Ceiling Act and contended that availability of surplus land for distribution is the *dine qua non* of declaring lands in excess of the ceiling area as surplus land. He argued that both the petitions must be allowed as it was admitted that in Special Civil Application No. 2817 of 1976 there could be no surplus land, if the lands submerged were to be excluded; and in Special Civil Application No. 3731 of 1976 there would be no holding at all as the lands were going to be submerged.

9. There is undisputedly a great deal of force in the contention raised on behalf of the petitioners; and I hope the Government will take into consideration the need for remedying the injustice resulting to the petitioners, when they are left without the lands acquired under the Land Acquisition Act. However, I have to construe the Act as it is.

10. u/s 2(6A), "commencement date" is defined as meaning "the 2nd day of October 1975". u/s 3, "subject to the provisions of chap. II and chap. III, no person or family unit shall, after the commencement date, hold land in excess of

the ceiling area, as determined in the manner provided." There was no dispute before the Tribunals that on the "commencement date" and even thereafter, when the Tribunals decided the matter, the petitioners were "holding" the land.

11. "To hold" is defined in Section 2(14) as being lawfully in actual possession of the land as owners or as tenants. Section 4 of the Land Acquisition Act, 1894, has not the effect of dispossessing the petitioners nor has Section 6 that effect. The Tribunals were, therefore, right in including the lands in the "holding" of the petitioners though they were going to be submerged under the Irrigation Project.

12. It was next argued by Mr. Kanade that great injustice will be done to the petitioners if the lands are taken out under the Land Acquisition Act; and compensation is given for the surplus land declared by the Tribunals not on the basis of the market value, but on the basis of the compensation provided under the Ceiling Act.

13. The argument is untenable because even under the Land Acquisition Act the market value must be determined u/s 23, Clause (1) with reference to the prevailing laws as well as with reference to the demand and supply for the lands and the use to which the lands can be put, having regard to the fact that the petitioners' surplus land was liable to be compensated after the "commencement date" only under that Act. There is no likelihood of the market value being determined in respect of that land except in terms of the compensation payable under the Ceiling Act.

14. However, that question will be considered when the proceedings under the Land Acquisition Act are taken. So far as the present proceedings are concerned, they are confined to the question of surplus land. I do not find any error of law in the impugned judgments of the two Tribunals, which would justify an interference by this Court under Article 227 of the Constitution of India.

15. Rule in Special Civil Application No. 2817 of 1976 is discharged. But in the circumstances of the case, there shall be no order as to costs. Special Civil Application No. 3731 of 1976 is rejected summarily.