
(1980) 08 BOM CK 0022

In the Bombay High Court

Case No : Special Civil Application No. 1543 of 1977

Ramkrishna Barbhade

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 21-08-1980

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 10, 18

Citation : (1982) 1 BomCR 771

Hon'ble Judges : S.C. Pratap, J;P.B. Sawant, J

Bench : Division Bench

Advocate : R.M. Agarwal, for the Appellant; S.G. Deshmukh, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

S.C. Pratap, J.—This petitioner under Articles 226 and 227 of the Constitution challenges the order dated 14th July, 1977, passed by the Maharashtra Revenue Tribunal, Aurangabad in Case No. 142/A/77, which was an appeal preferred to the said Tribunal under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holding) Act, 1961, hereinafter the Ceiling Act.

2. The petitioner Ramkrishna was the original holder. In pursuance of return filed by him, an inquiry was held in that behalf by the Surplus Land Determination Tribunal. By its decision dated 17th May, 1977, the said Tribunal came to the conclusion that the petitioner was surplus holder to the extent on 11 acres and 3 gunthas. The said surplus land was delimited from Gat No. 43 to the tune of 9 acres and 27 gunthas situated at village Dahegaon and 2 acres and 16 gunthas out of Gat No. 6 situated at village Lakhmapur. The petitioner himself was aggrieved by the said order and hence he did not challenge the same by an appeal therefrom. However, one Gangupat Karbhari Wagh, respondent No. 2 herein, preferred an appeal against the aforesaid order before the Maharashtra Revenue Tribunal, and the Revenue Tribunal, by its order dated 14th July, 1977, partly allowed Gangubai's appeal and while holding Gat No. 43 admeasuring 8

acres and 27 gunthas to have been rightly included in the holding of the petitioner Ramkrishna, nevertheless directed that while exercising choice u/s 18 of the Ceiling Act, Ramkrishna should not exercise the said choice in respect of the aforesaid land but should exercise the same from out of his other lands. It is against this part of the order that the present petitioner has filed this petition.

3. In support of the petition, we have heard Mr. R.M. Agrawal, the learned Advocate for the petitioner. The State was represented by the learned Assistant Government Pleader Mr. S.G. Deshmukh. Respondent No. 2 Gangubai, though served, has not chosen to appear either personal or through any Advocate of her choice.

4. Mr. Agrawal, the learned Counsel for the petitioner, did not press the contention in the petition relating to the Constitutional validity of the Ceiling Act in view of the recent decision of the Supreme Court holding the said Act to be legal and valid and ultra vires the Constitution.

5. Mr. Agrawal, though initially sought to contend that the order of the Surplus Land Determination Tribunal was a nullity, in view of the fact that it was only a judgment of the Chairman and not the other two members of the Tribunal was unable to pursue the said contention any further when Mr. Deshmukh, the learned Assistant Government Pleader, showed the original proceedings which revealed that the actual hearing took place with all the members of the Surplus Land Determination Tribunal present.

6. Coming to the merits, the contention of Mr. Agrawal was that the Revenue Tribunal erred in calculating Gat No. 43 in the holding of the petitioner Ramkrishna. We find no substance in this contention. The record clearly indicates that the petitioner Ramkrishna was undisputedly tenant of Gat No. 43 from Laxmibai, the original owner thereof, who in turn had succeeded to the said property was widow of her husband the late Asruba. Though the submission was that the petitioner had surrendered his tenancy rights, even, the record of rights did not support the same, the said record continuing to show the name of the petitioner Ramkrishna Jagannath as tenant of the said land even after the alleged date of surrender. The Talathi examined in the original proceedings has also stated that the petitioner's name continued to be shown as tenant in respect of the said land Gat No. 43 right upto the year 1972-73. Under the provisions of section 10 of the Ceiling Act, transfer effected between the period 26th September, 1970 and the commencement date 2nd October 1975 has to be ignored. In the first place, on facts itself it is difficult to conclude that there was any surrender of this tenancy right by the petitioner Ramkrishna in respect of Gat No. 43 and even assuming in favour of any such surrender, the same being during the aforesaid period, will have to be ignored. The said Gat No. 43 was rightly included in the holding of the petitioner both by the Surplus Land Determination Tribunal as also by the Revenue Tribunal in appeal.

7. The contention of Mr. Agrawal next, however, was that if Gat No. 43 was to be

included in the holding of the petitioner Ramkrishna, then the petitioner, cannot be debarred or prevented from exercising his choice to have the said land Gat No. 43 delimited from his holding. We find considerable substance in this submission even the learned Assistant Government Pleader Shri Deshmukh was unable to successfully controversy this submission. If a particular property has been held to be part of the holding of the petitioner holder, the State cannot prevent the holder then and thereafter from exercising his choice so as to have the said disputed land included in his holding to be delimited therefrom as a result of the surplus. The Revenue Tribunal was not right in preventing the petitioner from exercising his choice as aforesaid. Having come to the conclusion that Gat No. 43 was part of the Petitioner's holding, consistently the Revenue Tribunal should have then Permitted the petitioner, if he so desired, to have the said land delimited as a result of the surplus holding. We are, therefore, of the view that the aforesaid contention of the learned Advocate deserves to be upheld and the Petitioner Ramkrishna will have to be permitted to exercise his choice so as to have, if he so desires, Gat No. 43 delimited from his holding in consonance with the surplus against him. Mr. Agrawal states that in the exercise of such choice, he would as held by the Surplus Land Determination Tribunal have Gat No. 43 delimited.

8. In this view of the matter and in the result, we allow this petition, set aside the final order of the Revenue Tribunal and restore the order dated 17th May, 1977 of the Surplus Land Determination Tribunal under which order delimitation has been directed inter alia and in respect of Gat No. 43, admeasuring 8 acres and 27 gunthas situated in village Dehegaon. Rule earlier issued on this petition is made absolute but, in the circumstances of case, with no order, as to costs.