
(1988) 02 BOM CK 0005

In the Bombay High Court

Case No : Writ Petition No. 2671 of 1987

Rukhminibai Shinde and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 01-02-1988

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 3(1), 4(1)

Citation : (1988) 4 BomCR 432 : (1989) MhLj 969

Hon'ble Judges : H.W. Dhabe, J

Bench : Single Bench

Advocate : R.R. Deshpande, for the Appellant; V.V. Naik, Asstt. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

H.W. Dhabe, J.—This is a writ petition arising out of the proceedings under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short the Ceiling Act). Holding that there was family unit in the instant case, the surplus Land Determination Tribunal (for short the S.L.D.T.) determined the total holding of the family unit as 82.34 acres and after excluding the post-kharab land allowing the family unit to retain the land to the extent of the ceiling limit, the learned S.L.D.T. determined the surplus land belonging to the family unit as 26.25 acres. The Maharashtra Revenue Tribunal (for short the M.H.T.) affirmed the aforesaid order of the learned S.L.D.T. Feeling aggrieved the petitioners have preferred the instant writ petition in this Court.

2. The first question raised in this writ petition is that there was no family unit on 2-10-1975 i.e. the commencement date and, therefore, the surplus land cannot be determined in the instant case on the basis of the total holding of the family unit. To appreciate the above contention, it may be seen that Govindrao, the husband of the petitioner No. 1 died on 17-2-1975, i.e. before the commencement date. Therefore, in the absence of any restrictions under any law his property, whether joint or separate, would be inherited by his legal heirs i.e.

the petitioners on his death on 17-2-75 i.e. prior to 2-10-1975. His sons, i.e. the petitioners 2 to 4 were admittedly major on 2-10-1975. It is therefore, clear that on 2-10-1975, there was no family unit in existence in the instant case. The surplus land could not therefore, be determined on the basis of the total holding of the alleged family unit by clubbing the individual holding of the petitioners as is done by the learned Ceiling Authorities.

3. The learned Counsel for the State has, however, urged that even though Govindrao died prior to 2-10-1975, his holding could still be taken into consideration and could be clubbed with the holding of his wife, the petitioner No. 1, for the purpose of determining the surplus land under the Ceiling Act. In other words, what is in substance urged is that the husband and wife would still form a family unit for the purpose of the Ceiling Act.

4. In appreciating the above contention urged on behalf of the State it may be seen that the Explanation to section 4(1) provides for the artificial definition of a "family unit" for the purpose of the Ceiling Act. It does not appear from section 4 of the Ceiling Act that the said definition is given any retrospective effect. The scheme of section 4(1) of the Ceiling Act shows, that it provides for clubbing of the property of the members of the family unit for the purpose of the determining the ceiling area of the family unit. However, the principal provision under which the land cannot be held in excess of the ceiling area is section 3 of the Ceiling Act. It provides that no person or the family unit shall after the commencement date hold land in excess of the ceiling area as determined in the manner hereinafter provided. The injunction not to hold land beyond the ceiling area is thus u/s 3(1) which operates after the commencement date i.e. 2-10-1975 and not prior to it. It is true that in determining the total holding on the commencement date certain past transactions i.e. transactions between 26-9-70 to 2-10-75 can be ignored by virtue of the provisions of section 10 and 11 of the Ceiling Act. However, the fact remains that the injunction against the family unit not to hold land beyond the ceiling area u/s 3(1) is after the commencement date and, therefore, what is contemplated thereunder is the existence of the family unit on that date.

5. As already pointed out, the property of Govindrao is already inherited by his legal representatives prior to 2-10-1975. In this regard the second part of section 3(1) can be usefully referred to. It may be seen that under the second part of section 3(1) the death of any person or any member of the family unit on or after the commencement date i.e. 2-10-1975 or subsequent the date on which his holding exceeds the ceiling area, has to be ignored. It does not, however, provide that the death of any person or any members of the family unit on or after 26-9-1970 and prior to 2-10-1975 should also be ignored. If that is so, no property can be said to be still held by Govindrao after his death prior to 2-10-1975 for the purpose of determining the ceiling area on or after 2-10-1975 by clubbing it with the property of his wife.

6. I may now briefly examine the scheme of the other relevant provisions of the

ceiling Act. Section 8 of the Ceiling Act prohibits any transfer of land belonging to the person of the member of the family unit holding land in excess of the ceiling area or on after the commencement date. Section 10(1) then ignores any transfer made by any person or a member of the family unit between 26-9-1970 to 2-10-1975 in calculating the ceiling area which the said person on the family unit is entitled to hold under the Ceiling Act if the said transfer is in anticipation of or is order to avoid or defeat the object of the Amending Act 1972. Section 11 deals with similar restrictions on partition effected after 26-9-70. Section 12 of the ceiling Act casts an obligation upon any person or family unit to disclose land which he or it held between 26-9-1970 to 2-10-1975. Section 18 provides for an enquiry in the ceiling case on all the relevant matters enumerated in the said section.

7. Although u/s 10 to certain transactions between 26-9-1970 to 2-10-1975 can be ignored in calculating the total holding of any person or a family unit it is clear from its scheme particularly when read with the principal provisions of section 3 (1) and the other relevant provisions of the Ceiling Act that such a person or a member of a family unit whose transfers can be ignored thereunder must exist on 2-10-1975 i.e. the commencement date. None of the provisions of the Ceiling Act thus detract from the principal provision in section 3 of the said Act that the person concerned or the family unit whose surplus land is being determined must be in existence on 2-10-1975 i.e. the commencement date in this view of the matter, since Govindrao, the husband of the petitioner No. 1 had died long back on 17-2-1970 and was no more alive on 2-10-1975 and since his sons were major, there was no family unit in existence on 2-10-1975, in the instant ceiling case. The above contention raised on behalf of the State that the property held by Govindrao should be clubbed with the property of the petitioner No. 1 for determining their ceiling area, therefore, deserves to be rejected.

8. It may then be seen that in the instant case the holding of the petitioner No. 1 as an individual holder alone has then to be taken into consideration for the purpose of finding out whether she held land more than the ceiling area. Since the petitioners 2 to 4 were major on 2-10-1975, there were also separate holders for the purpose of the Ceiling Act. It is worthwhile to notice that there was a family partition in 1949 and all the petitioners were holding their shares separately thereafter.

9. Turning to the holding of the petitioner No. 1 who was required to file a return in the instant case, and as such whose surplus land can alone be determined in this case, it is not in dispute that she was holding 29.31 acres to which even if the share which she would inherit on the death of her husband were to be added, her total holding would not exceed the ceiling limit of 54 acres of land under the Ceiling Act. It may be seen that the total holding of her husband itself was 53.3 acres out of which he made certain transfers between 26-9-1970 to 2-10-1975 and even assuming that these transfers could be ignored still after addition of her share in her husband's property, her total holding would not be more than

54 acres. The learned ceiling Authorities have fallen in error in assuming that there was a family unit of the petitioner No. 1 and her husband in the instant case and then determining the surplus land belonging to the said family unit. Their orders are, therefore, liable to be set aside.

In the result, the instant writ petition is allowed. The orders impugned in this writ petition are set aside and the instant ceiling proceedings are dropped. There would, however, be no order as to costs of this petition.