(1981) 09 BOM CK 0066

In the Bombay High Court

Case No : Spl. C.A. No. 73253 of 1976

Shaligram Chandrabhan Bodkhe and another — APPELLANT

Vs

State of Maharashtra — RESPONDENT

Date of Decision : 11-09-1981

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 10, 12, 21, 3, 3(1)

Citation : (1983) MhLj 178

Hon'ble Judges : R.S. Padhye, J

Bench : Single Bench

Advocate : G.D. Patil, for the Appellant; B.T. Patil, Asstt. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

R.S. Padhye, J.—Section 3 (1) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short the ''Ceiling Act'') prohibits a person or a family unit from holding land in excess of ceiling area as determined in the manner provided in Chapters II and III of the Ceiling Act and subject to the provisions contained therein. Sub-section (2) provides that if a person or a member of a family unit dies after commencement date 2-10-1975 or after any date subsequent to the date on which the holding exceeds the ceiling area but before declaration of surplus land, the enquiry has to proceed as if such person had not died.

2. Section 12 of the Ceiling Act requires a person or a family unit, holding at any time between 26-9-1970 and the commencement date 2-10-1975 agricultural land exceeding ceiling area, to file a return within six months from the commencement date 2-10-1975. Second proviso to this section reads as under:

Provided further that where any person, or a member of a family unit, who is required to furnish a return dies, then such return shall be furnished by his heir, or as the case may be, any other member of the family unit.

It refers to death but does not refer to time of death.

3. The short question that falls for decision in this case is whether next heirs of a person who dies prior to the commencement date 2-10-1975 are required to file a return on behalf of the person who died or whether they have to file a return only if they or their family unit held land above ceiling area after the death of such person and upto the commencement date 2-10-1975.

4. Facts leading to this controversy may be briefly stated as under. Harnabai wd/o Tukaram was holding lands at Mouza Malegaon, taluq Kelapur, district Yavatmal. She died on 15-6-1972 i. e. prior to the commencement date 2-10-1975. At that time, she was holding land exceeding the ceiling area as contemplated by the Ceiling Act as amended in 1975. Earlier on 12-6-1972, it is alleged, she had executed a will bequeathing some fields to petitioner No. 2 Shaikh Hasan. Shaligram filed return u/s 12 of the Ceiling Act stating therein that he owned and possessed 70.20 acres of land. Shaikh Hasan did not file a similar return probably because his holding did not exceed the ceiling area even after taking into account the fields received by him under the Will executed by Harnabai. Surplus Lands Determination Tribunal, Kelapur held that the interested persons should have filed a return u/s 12 read with section 3 on behalf of the person who died between 26-9-1970 and 2-10-1975 i.e. on behalf of Harnabai. Accordingly, a direction was given to Shaligram and Shaikh Hasan to file a return on behalf of Harnabai. Feeling aggrieved by this direction, they preferred Ceiling Appeal No. ALC-A-241 of 1976. This appeal was dismissed by Maharashtra Revenue Tribunal, Nagpur on the 17th April, 1976 finding that the appeal was premature and untenable but at the same time making some adverse remarks against the petitioners and after holding that testamentary succession to the fields of Harnabai was itself a transfer covered by section 10 of the Ceiling Act. It is these two decisions which are under challenge in this petition.

5. Section 3 in Chapter II of the Ceiling Act, as amended in 1975, prohibits a person or a family unit to hold land in excess of the ceiling area as determined in the manner provided in Chapter II and Chapter III and subject to the provisions contained in these chapters. It further provides that in determining surplus land from the holding of a person on a family unit, the fact that the person or any member of the family unit has died on or after the commencement date, i. e. 2-10-1975, or any date subsequent to the commencement date on which the holding exceeds the ceiling area but before the declaration of surplus land shall be ignored and the surplus land shall be determined as if that person, or as the case may be a member of a family unit, had not died. Surplus Lands Determination Tribunal in the present case has sought to rely upon this provision for the purpose of arriving at a finding that the petitioners were liable to file a return on behalf of the deceased Harnabai. No argument is needed to point out that the provision speaks of death after the commencement date and, therefore, it is clearly inapplicable to the case of death prior to the commencement date.

6. The next provision which was relied upon is the second proviso to section 12

of the Ceiling Act. According to me, even a plain reading of this proviso is enough to conclude that it also contemplates death of a person after the commencement date 2-10-1975. The second proviso reads as under:

Provided further that, where any person, or a member of a family unit, who is required to furnish a return dies, then such return shall be furnished by his heir, or as the case may be, any other member of the family unit. (Emphasis supplied).

A person who dies prior to 2-10-1975 cannot be deemed to be a person who is required to furnish a return. It is only that person or family unit which is in existence on the commencement date 2-10-1975 which can be said to be a person or a family unit who is required to furnish a return. The expression will have to be interpreted in this manner it it has to be understood consistently with the provisions in section 3 of the Ceiling Act requiring ceiling authorities to ignore the death of a person who dies after the commencement date.

7. Shri Patil, the learned counsel for petitioner, placed reliance on a decision in the case of Dadarao Kashiram and another v. State of Maharashtra and others 1969 Mh. L J 813. This case concerned with the Ceiling Act prior to amendment in 1975. It was held,

The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 contemplates "a person" who is alive not only on 26-1-1962, the appointed day, but at the time of the filing of the return and till the date of the declaration made by the Collector u/s 21 of the Ceiling on Holdings Act. Where a holder of property dies after 26-1-1962 and before legatees are under an obligation to file a return in respect of the property which they may already hold as on 26-1-1962, and which they may get on the death of the deceased either by succession or under will, if these together are in excess of the ceiling area and it is only with respect to such property that the surplus has to be found. In such cases the surplus has to be found with respect to the property which deceased holder held on 26-1-1962 and would have held on the date of the declaration, had he been alive on that date. The return which can be called from the heirs or legatees in such cases will be their individual returns and joint returns.

It appears that probably as a result of this decision, the earlier requirement of the person concerned being alive at the time of the filing of return and till the date of declaration made by Collector u/s 21 of the Ceiling Act was removed by Legislature by inserting a provision in section 3 of the new Chapter II of the Ceiling Act for ignoring the death of such person after the commencement date 2-10-1975 and also by inserting second proviso to section 12. However, the requirement that the person, for being liable for filing return be alive on the commencement date has not been dispensed with by the amendments which were introduced by Act No. 21 of 1975.

5. The petition is allowed. The two impugned orders are quashed and set aside, and Revenue Case No. 548/60-A(5)/75-76 of Malegaon (Annexure A) is remitted back to Surplus Lands Determination Tribunal, Kelapur or equivalent ceiling

authority for decision according to law on the basis of return filed by petitioner No. 1. There will be no order as to costs. Rule made absolute in these terms.

