

(1980) 09 BOM CK 0026

In the Bombay High Court

Case No : Spl. Civil Application No. 1519 of 1976

Shambusing Dhansing Jadhavrao

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 10-09-1980

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 2(1), 2(14), 2(16), 2(6A)

Citation : AIR 1981 Bom 331

Hon'ble Judges : Tulpule, J

Bench : Single Bench

Advocate : A.V. Savant, for the Appellant; S.G. Deshmukh, Assist. Govt. Pleader, for the Respondent

Judgement

1. In this petition, the petitioner challenges the orders holding that he is in possession of 9 Acres and 31 Gunthas which is surplus. The petitioner's total holding was compiled as 64 Acres and 06 Gunthas. The petitioner was entitled to hold in his possession 54 Acres of land as permitted under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961.

2. Two contentions were raised before the authorities below and also before me seeking exemption for two pieces of land from being considered as available for calculating the total holding of the petitioner at 64 Acres and 06 Gunthas.

3. The first contention was that the petitioner had sold on the 28th of February 1974, 14 Acres of land. This land was given subsequently Gat No. 807. The sale was for Rs. 45,000/- and it is the petitioner's contention that he was required to sell these lands to meet the marriage expenses of his sister which took place on 11th March, 1974. and that he had also given to his sister a sum of Rs. 10,000/- in cash at the time of the marriage by a cheque dated 9th March, 1974, with regard to which he produced evidence. His contention, therefore, was that the transfer of part of the land, Gat No. 807, was bona fide transfer and was not made in anticipation of, or in order to avoid or defeat the object of the amending

Act 1972, though made within the period 26th September, 1970 and 2nd October, 1975, the day of commencement.

4. The second contention which was raised was that a portion of land admeasuring 8 Acres and 20 Gunthas was "Chopanpad" land which was unfit for cultivation and could not be used for agricultural purpose, and therefore, was not land for the purposes of total holding of the petitioner. To that effect he also produced a certificate given to him by the Agricultural Officer, Panchayat Samiti, Baramati. He also relied upon the evidence and findings recorded by the Special Deputy Collector, Land Ceiling, in the earlier proceedings, for fixation of surplus land of the petitioner before the amended Act came into force.

5. Both these contentions were negatived by the authorities below and it was held that the petitioner was not successful in dislodging the presumption in respect of the transfer dated 28th February 1974, that it was not effected for the purposes of defeating or avoiding the object of the Amendment Act. It was also held, so far as the land of 8 Acres and 20 Gunthas which was alleged to be uncultivable that that land was not such as was incapable of being brought under cultivation "permanently", or that it could not be "brought under cultivation in future." The Surplus Land Determination Tribunal, therefore, held that this land had to be taken into account and the Tribunal agreed with that conclusion.

6. These two conclusions and findings are challenged by Mr. Savant appearing for the petitioner in this petition.

7. I do not think that there is any substance in the contention with regard to the transfer dated 28th February, 1974, or that the petitioner has succeeded in dislodging the initial presumption against him that the transfer must be deemed to be effected for the purposes of avoiding or defeating the provisions of the Act or in anticipation of that Amending Act. The petitioner has not shown by sufficient evidence that the marriage expenses were made out of this sum of Rs. 45,000/- as the sale price, nor has it been shown by proper evidence that the sum of Rs. 10,000/- could not have been paid and was not possible to be paid from the other sources of the petitioner. As pointed out, the petitioner was in possession of 64 Acres of land, some of which appears to be under sugarcane cultivation. It is difficult to think, unless adequate evidence was led, that the presumption by this scanty evidence was dislodged.

8. Turning to the second contention, however, it seems to be that the petitioner is entitled to the exclusion of 8 Acres and 20 Gunthas of land, which, according to him, was "Chopanpad" or fallow and non-cultivable.

9. Now, it cannot be disputed that the relevant date is the commencement date. The question as to whether the petitioner held land which was in excess of the ceiling area has to be found with reference to this date only and no other date. If the land is uncultivable and was not land as contemplated by the Act on the day of commencement date, and is incapable of being used for agriculture, the mere circumstance of a future possibility that it can be brought under cultivation or

capable of being used at some distant future for agricultural purpose would be of no avail. The expression "to hold land" has been defined in the Act under Sub-section (14) of Section 2, to mean to be lawfully in actual possession of land as owner or as tenant. Sub-section (16) of Section 2 of the Act defines land as "land which is used, or capable of being used, for purposes of agriculture." It is true that the definition of "land" also includes certain other kinds and types of land, of which Clause (b) says "land on which grass grows naturally". According to Clause (c) trees and standing crops on such land is also land which is within the definition and meaning of the Act. If the land, therefore, is such, on which grass grows naturally or where trees stand on agricultural land or capable of being used for agriculture whether naturally or otherwise, then it seems to be within the contemplation and definition of the word "land." In other words, apart from the land which is used or is capable of being used for agriculture, and also where upon such land there are trees will be agricultural land and also land on which grass grows naturally. The definition is illustrative as well as descriptive. Clause (c) however, which uses the expression "such land" with reference to trees clearly harks back to such land as is referred to in the early part of the definition namely "land used for agriculture or capable of being used for agriculture". The underlying idea seems to be that land which is used for agriculture and capable of being used for agriculture, but on the date of the commencement of amended Act or at the relevant date is not so being used, should be brought within the purview of the Land Ceilings Act. The question is in regard to Clause (b) lands on which grass grows naturally. In the present case, the question is whether this 8 Acres and 20 Gunthas of land which is described as "Chopanpad" or waterlogged, is capable of being used for agricultural purposes or comes within the category included in the illustrative definition of the word "land". If it is capable of being used for agricultural purposes it is clearly "land", and will also come within the first part of the definition.

10. In reaching this conclusion against the petitioner, the Surplus Lands Determination Tribunal rejected the certificate given by the Agricultural Officer. It felt that the certificate was given with reservation; that it is not suitable for cultivation at present. That certificate does not say that it is incapable of being cultivated in future. With regard to the earlier decision upon which reliance was placed by the petitioner, the Surplus Lands Determination Tribunal did not say anything. It seems to me that the Surplus Lands Determination Tribunal was bound to accept the conclusion reached by an authority with co-ordinate jurisdiction viz., the Surplus Lands Determination Tribunal under the unamended Land Ceiling Act, the Special Deputy Collector. He was inquiring into the question on the basis of an order of remand made by the Maharashtra Revenue Tribunal. The definition of word "land", as it stood then was the same as now. Therefore, that conclusion and determination was binding at least so far as the Surplus Lands Determination Tribunal was concerned. The Surplus Lands Determination Tribunal, however, further proceeded to say that from the inspection note and judgment, the waterlogged areas were varying from year to year and Babul trees

and grass were growing on the same. The Surplus Lands Determination Tribunal therefore felt that such land can be included as land within the definition in Section 2 Sub-section (16) Clause (4).

11. The Tribunal affirmed this finding. It said that grass and trees were seen growing on the land and that this was purely a question of fact of fluctuating nature. It also felt that the previous determination was not binding on the Surplus Lands Determination Tribunal and the certificate is not conclusive any way. It gave no reasons to say why the previous determination was not binding on the Surplus Lands Determination Tribunal.

12. It is true that the certificate given by the Agricultural Officer, Panchayat Samiti, Baramati, cannot be conclusive, but it is entitled to respect. The Special Deputy Collector's observations were based not only upon evidence, but also upon personal inspection at which he found that on about 3 acres of land not even grass was seen to be growing. This matter was decided on 31st August, 1974, and the inspection must have taken place some time before, though the date of inspection is not clear from the judgment.

13. Reverting once again to the definition of the word "land", apart from Clause (b) of Section 2 Sub-section (16) which speaks of land on which grass grows naturally, the other clause, viz. Clause (c) seems to have weighed on the mind of the authorities below. That clause says "trees and standing crops on such land." Now, the meaning to be attributed to this clause, to my mind, is clear from the use of the noun "such". Such land would therefore refer to land which has been referred to earlier, viz., land which is used or capable of being used for the purpose of agriculture. Therefore, it is not merely enough that there are trees growing on the land, but that the trees must be growing on "such" land, in other words on land which is capable of being used for agriculture purpose or is; being used for agriculture purposes. As well be seen from the definition of - "agriculture" in Section 2 Sub-section (1) agriculture includes, horticulture. It also includes the raising of crops, grass or garden produce or "singhara", the use by an agriculturist of land held by him, on part thereof, for grazing, the use of any land, whether or not an appendage to rice or paddy land for the purpose of rab-manure, dairy farming, poultry farming, breeding of live-stock, etc.

14. In the present case, the finding is also based upon inspection to which we have made a reference above, that "in 6 Acres of land where babul and tarvad was seen, some patches of Lavala and Mol grass were seen." The Special Deputy Collector who inspected this site, also further observes that "this kind of grass is unfit for consumption by the animals" and that "there were also some patches of grass here and there." From the above inspection notes, it will be seen that on this 6 Acres of land or so, there were babul and tarvad trees of various ages which grow naturally and some patches of Lavala and Mol grass was seen which is unfit for consumption by cattle. In the context of the definition of the word grass which appears in Clause (b) of Subsection (16) of Section 2 of the Act, it is reasonable to think that such land which grows grass should grow grass fit for

consumption- by cattle. The object of the Act is to secure distribution of agricultural land and to ensure full and efficient use of the land for agriculture. If that is the object of the Act and it is well known that for the purposes of agriculture as it exists for the present, animals are used for the purposes of carrying on agricultural work, animal husbandry is also necessary for agriculture. It would, therefore, be appropriate to think that the land on which grass grows naturally contemplates such land, the grass on which grows naturally and is fit for consumption by at least animals. It is true that the word "grass" is capable of including any grass which grows, whether it is fit for consumption by cattle or otherwise. But in the context and the subject wide meaning of the word "grass" and its botanical application cannot be incorporated in the definition. It must have bearing on the subject of agriculture. The context of the subject matter of the legislation suggests that the word "grass" appearing in Clause (b) of Sub-section (16) of Section 2 is not entitled to be given its wide botanical and natural meaning as any grass, but grass which is at least fit for consumption, by animals.

15. If that is the correct and appropriate interpretation of Sub-clause (b) of Sub-section (16) of Section 2, then merely because Babul trees grow and were found on the land or such grass which is unfit for consumption by cattle is found growing on the land such land would not come within the definition. It is said water logging brings up to the surface minerals and chemicals in the land making it totally unfit for growing anything.

16. As pointed out, the Surplus Lands Determination Tribunal considered that the land which was such, as could not be used for agriculture in future was alone liable to be exempted. The Tribunal expressed surprise at the non-inclusion by the Special Deputy Collector of this land when he had observed during inquiry "Babul Trees and grass growing on the lands". The Tribunal seems to think that if Babul trees and grass were growing on the land then by virtue of the definition of the word "land" in Clauses (b) and (c) of Sub-section (16) of Section 2, such land had to be held to be agricultural land. As pointed out above, this understanding of the clause by the Tribunal is erroneous and incorrect. Merely because therefore the land which was so described as Chopanpad and Babul trees and patches of grass unfit for consumption by cattle grow on that land, or its area was varying between 6 acres to 9 acres, the claim cannot be thrown out of hand. The Special Deputy Collector has shown that the uncultivability of the land has been growing from about 5 acres to 9 acres. Till about the year 1961-62 it continued to be about 5 acres to 6 acres. From the year 1963-64 Up to 1968-69 it has risen to 8 acres and 28 gunthas and for the years 1970 and up to 1973 it has been shown to be about 6 acres and 39 gunthas. This variation has been explained by the Special Deputy Collector on the basis of the evidence recorded by the Village Officer who stated that the area was a visual estimate of the concerned Village Officer that year. Care only was taken to see that such estimate does not exceed the total area of the land. It is, therefore, possible to say that the extent of the uncultivable land was shown merely by estimate In the record of rights. If the landlord therefore claims that the land which is this

uncultivable and incapable of being used for agriculture which comes to 8 acres and 28 gunthas, there is no reason to think that that statement of his is not supported by evidence, though it may not be borne out by a process of meticulous calculation.

17. In this view of this matter, it must be held that 8 acres and 20 gunthas of land will not come within the definition of the word "land" for purposes of the holding of a person. For the purposes of computing his holding and to find out what is the surplus, it is the date of commencement of the Act which is material. The date of the commencement of the Act has been laid down u/s 2 Sub-section (6A) to be 2nd day of October, 1975. Therefore, it is on that date that the position whether the land is such "land" and answers the definition of the word "land" in the Act which is to be decided. If it is not used for agriculture or is not capable of being used for agriculture, the land must be left out of calculation. If the land is land on which grass grows naturally it must at least grow grass which is fit for animal consumption. If there are trees on the land the land must be either agricultural or capable of being used for agriculture.

18. In the present case, the total land found to be surplus including this land by the authorities below is 9 acres and 31 gunthas. If 8 acres and 20 gunthas out of this land are to be excluded and have to be excluded, then it leaves only 1 acre and 11 gunthas which becomes surplus. That being a fragment, it cannot be taken.

19. Consequently, the petitioner's petition has to be allowed. The orders passed by the authorities below are set aside and the proceedings quashed. Rule is made absolute with no order to costs.

20. Petition allowed.