
(1980) 10 BOM CK 0005

In the Bombay High Court

Case No : Writ Petition No's. 1494, 1527, 1725, 1726, 1894, 1931, 2115, 2131, 2132, 2197 and 2199/75 and 5, 266, 267, 606, 637, 986, 1072, 1033, 1078, 1080, 1103, 1104, 1106, 2172, 2476, 2477, 2533, 2990, 3410 and 3438/76

Shankarrao

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-10-1980

Acts Referred:

Constitution of India, 1950 — Article 245, 286
Government of India Act, 1935 — Section 99

Citation : (1980) 82 BOMLR 622 : (1980) MhLj 888

Hon'ble Judges : B.N. Deshmukh, C.J.;C.S. Dharmadhikari, J;B.C. Gadgil, J

Bench : Full Bench

Judgement

B.N. Deshmukh, C.J.—The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, (hereinafter referred to as "the Ceiling Act of 1961") received the assent of the President of India on June 16, 1961. It came into force on January 26, 1962. This Act was amended by the Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and (Amendment) Act, 1972, which came into force on September 19, 1975 as Maharashtra Act No. XXI of 1975 (hereinafter referred to as "Act No. 21 of 1975"). This Act introduced two very important changes, like the definition of "family unit" and requiring a landholder in this State to declare the agricultural land-holding in any other State or States in India for the purpose of clubbing together in order to determine the ceiling on holdings. The Ceiling Act of 1961 was further amended by the Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and (Amendment) Act, 1975, which came into force on September 20, 1975 as Maharashtra Act No. XLVII of 1975 (hereinafter referred to as "Act No. 47 of 1975"). It added the concept of classification of land and further made some changes in Sections 4 and 6. Thereafter, two Ordinances were issued, being Ordinance No. XII of 1975 and Ordinance No. XIV of 1975. These Ordinances came into force on September

22, 1975 and October 2, 1975 respectively. These Ordinances were ultimately codified in Act No. VI of 1976. Two important changes were made in the Ceiling Act of 1961 by adding Section 40-A and introducing the concept of "commencement date" as being October 2, 1975.

2. With these amendments and the commencement date as declared, viz. October 2, 1975, a lower ceiling of land began to operate. This obliged the land-holders, who had land below the original larger ceiling but above the new proposed agricultural ceiling to file Returns within the specified time. In the cases of land-holders, who had already filed the Returns with the larger holdings, the basis of determining their limit and declaring the surplus was to continue, to the end under the old Act, and thereafter fresh Returns were to be filed within the specified time under the amended Act. This is so far as the lowering of the ceiling is concerned. As land in all other States in India was required to be included in the Returns for being clubbed together for the purpose of deciding the ceiling in Maharashtra, persons owning land in Maharashtra and some other States had to file Returns within the prescribed time. A large number of petitions were filed by persons owning properties in Maharashtra alone, because of the lowering of the ceiling, and some persons who owned lands in Maharashtra as well as in other States of India. Several challenges were raised in these petitions. The whole group of such petitions were heard together by a Division Bench of this Court, which decided all other challenges which were common to all the other petitions, but the Division Bench separated the cases of persons holding lands in Maharashtra as well as in Andhra Pradesh and Madhya Pradesh. Even these petitioners had raised challenges to the new definition of family unit, and the lowering of limits. These challenges were heard and disposed of by a common judgment delivered in Special Civil Application No. 1394 of 1975, decided on August 13, 1976. That judgment was reported as *Vithalrao Udhaorao Uttarwar and Others Vs. The State of Maharashtra*, In para. 235 of the report the learned Judges observed :

At this stage we direct the group of 30 cases (with the numbers being notified) should be separated, as the only question that survived in these 30 petitions related to the extra-territorial operation of the law.

3. Having thus disposed of all the petitions and other points, the learned Judges kept these 30 matters aside, out of them 17 matters are for final hearing and 16 other matters are awaiting admission. It appears that when the list was prepared by the learned Judges, "-while dictating the judgments some matters remained to be added through oversight.

4. So far as these thirty matters are concerned, when they " were being heard, the Division Bench of this Court found that by a judgment dated June 22, 1976 in Special Civil Application No. 49 of 1976 the challenge on the ground of extra-territoriality was rejected by the Division Bench at the main head quarters of the High Court at Bombay. *Madanlal Roopchand v. State* reported in ILR (1979) Bom. 1401 . The Division Bench hearing this group of matters at Nagpur found that

they were unable to agree with the conclusion reached in the judgment delivered at Bombay. As a matter of fact, the two Judges differed in their conclusion. One Judge in express terms said that the Act seems to operate in an extra-territorial manner, and this is beyond the jurisdiction of Maharashtra State. He is unable to agree with the decision at Bombay. The second Judge has his own doubts, and so wonders whether it was extra-territorial in its operation. In this state of record, the proper course was to refer the matter to a third Judge, who would hear the parties to the extent necessary and then decide as per earlier judgment or agree with the judge who differs from the entire judgment. If he agrees with the differing judgment, the legal position that would develop would be that there would be two Division Bench decisions taking differing views. In the circumstances which course to adopt was a question raised before us -- whether the matter should be referred to a third Judge and await the decision, or should be heard by a larger Bench. As the point seems to be capable of holding differing views and being an important point, a larger Bench could do full justice to the matter. Taking an overall situation of the matters and the effect it will have in these thirty odd matters, we think the better course to adopt is to accept the Reference, and it should be answered by the Full Bench. We would make it clear at this stage that the appeal filed in Special Civil Application No. 1394 of 1975 to the Supreme Court was confined to other points, "and the question of extra-territoriality of the operation of the Act was not the subject-matter of the earlier judgment. We are unable to agree with the written submissions of the learned Advocate General that the Supreme Court judgment reported in Dattatraya Govind Mahajan and Others Vs. State of Maharashtra and Another, should be deemed to have upheld the constitutionality of Sections 3 and 4 with the consequences that the challenge to the extra-territorial operation is not open before us. That is a question which is specially reserved and never decided before. Having heard the learned Additional Government Pleader, we are satisfied that the question is still open to be decided by this Court.

5. Since the other challenges are negated by the judgment of the Supreme Court, the referring judgment framed as many as three points. With the consent of the learned Counsel on either side, we have re-framed the questions as below :

(1) Whether the scheme of Section 3(1), (2) and (3) read with Section 4(1) and (2) as well as Section 6 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, is extra-territorial in operation?

(2) Whether the provisions of Chapter III regarding the restrictions on transfers, acquisitions, partitions and consequences ensuing as well as the penalties or liabilities provided for by Sections 10(3), 21-A, 40-A and Section 43-A have extra-territorial operation?

(3) Whether there exist nexus which is sufficient and pertinent for the purpose of the present law?

6. There is no dispute that the Ceiling Act of 1961 relates to land which falls

under Entry 18 of the List II in the 7th Schedule. The piece of legislation before us deals with agricultural land as well as rights in and over that land, transfers and alienations of agricultural land as also acquisition by the State of the land which may be found surplus according to the provisions of that Act. Entry 42 in List III of the 7th Schedule may also be relevant. Prima facie a piece of legislation dealing with agricultural land, and the rights in and over those lands with the consequences of acquisition by the State would be covered by Entry 18 of List II of the 7th Schedule and Entry 42 of List III of the 7th Schedule. It cannot be gainsaid that the Legislature in Maharashtra has absolute right to pass legislation extending over the entire territory of Maharashtra which relates to the subject matter which falls within their jurisdiction. However, there is a difference between the Indian Legislature, viz. the Parliament, which is sovereign in the real sense of the term, and the State Legislature which has undoubtedly full life within the field of operations provided for it by the provisions of the Constitution. Ordinarily, the law made by the State belongs to the defined territory in the sense it applies to all persons, things and events within the territory, and does not attract persons, things and events elsewhere. A Sovereign State does possess the power to make a law which can be extra-territorial in its operation, but such a power is not available to a small division of Sovereign State, which is the creature of the Statute. So long as India was a part of the British Commonwealth of Nations, none of the Dominions possessed the right to pass laws with extra-territorial operations. However, the Statute of Westminster, 1931, gave power to the colonies and the Commonwealth Nations to pass laws which could be extra-territorial in their operation. After India reached Independence and the Constitution of India came into force, the same power was available to the Indian Legislature by Section 99 of the Government of India Act, 1935. Sub-Article 2 of Article 245 of the Constitution of India declares that no law made by the Parliament shall be deemed to be invalid on the ground that it shall have extra-territorial operation. So far as the rights of the State Legislature to enact legislation is concerned, the power is defined by Article 245(1). The State Legislature can make law for the whole or a part of the State, subject of course, to the provisions of the Constitution, viz. the division of subjects in the 7th Schedule. As a legal proposition, there seems to be no dispute that the Ceiling Act of 1961 is a State law, and the powers of the State to make any law extend to the whole of the State or a part thereof. Prima facie if an Act is shown to be extra-territorial in its operation, it would be beyond the legislative competence of the State Legislature. It may be that on some principles developed by Courts, extra-territorial operation which is merely incidental to the main events occurring in the State itself is justified. If it is shown that the present Act in its operation is extra-territorial, unless any such justification comes forward to defend it, the law would be beyond the legislative competence of the State Legislature.

7. With this background of the legal position, let us now examine the provisions of the Act and find out whether they are really extraterritorial in their operations. The present Chapters II and III have been added by the Amending Act of 1975.

They contain broadly the scheme of this Act for the purpose of determining the ceiling area which a person might keep to himself and to determine his surplus land which he must surrender to the State on payment of certain compensation. For the purpose of ready reference, we would quote the relevant portion of Section 3 which finds a place in Chapter II and the relevant portion of the said section is as under :

3(1). Subject to the provisions of this Chapter and Chapter III, no person or family unit shall, after the commencement date, hold land in excess of the ceiling area, as determined in the manner hereinafter provided.

Explanation: A person or a family unit may hold exempted land to any extent.

(2) All land held by a person, or as the case may be, a family unit whether in this State or any other part of India in excess of the ceiling area, shall, notwithstanding anything contained in any law for the time being in force or usage, be deemed to be surplus land, and shall be dealt with in the manner hereinafter provided for surplus land.

In determining surplus land from the holding of a person, or as the case may be, of a family unit, the fact that the person or any member of the family unit has died (on or after the commencement date or any date subsequent to the date on which the holding exceeds the ceiling area but before the declaration of surplus land is made in respect of that holding) shall be ignored; and accordingly, the surplus land shall be determined as if that person, or as the case may be, the member of a family unit had not died.

Explanation: In calculating the ceiling to be held in this State, and determining the surplus land, the area of land in any other part of India (being land which a person or family unit is entitled to hold in such other part of India under any law relating to ceiling on land) shall be taken into consideration. Only land held in this State may be declared as surplus.

8. Sub-Section (1) of Section 3 declares the entitlement of a person to keep agricultural land in the State. He may not hold after the commencement date land in excess of the ceiling area as determined in the manner provided by the provisions that follow in the entire Act thereafter. The principal declaration is that there is ceiling on holdings of agricultural land. The purpose of this amendment is to lower that ceiling. Ceiling under the present Act is being determined in terms of the classification of land. It is not necessary to go into details of the working at the moment. Suffice it to say that if all land is dry land, the maximum permissible holding is 54 acres. For the purpose of easy reference and facility of calculation, we will refer in this discussion to this acreage of 54 as the ceiling limit in Maharashtra. In the entire debate before us for the purpose of facility of understanding, the ceiling limit in Madhya Pradesh was also assumed to be 54 acres in the same manner, ignoring their classification of the various types of land. This hypothetical approach is necessitated for the purpose of illustrating and understanding whether the provisions of the Act have extra-territorial

operation. At this stage, however, it is only pertinent to notice fresh ceiling on agricultural land, and that ceiling is to be determined by the provisions of the Amended Ceiling Act. The first part of Sub-section (2) of Section 3 is again declaratory of what is the surplus land of a land-holder. It says that all lands held by a person, or as the case may be, a family unit "whether in this State or any other part of India" in excess of the ceiling area shall, notwithstanding anything contained in any law for the time being in force or usage, be deemed to be surplus land and shall be dealt with in the manner provided for surplus land. The provision obviously means, as has been provided in the other provisions of this Act and the Rules made thereunder, that a land-holder in Maharashtra must submit a return, if he holds land in excess of the ceiling area. The determination of holding land in excess of the ceiling area must be done on the footing of adding together all lands owned by him, whether in this State or any other part of India. The thirty-three petitioners before us are the owners of lands in Maharashtra as well as either in Madhya Pradesh or Andhra Pradesh. In their returns they were obliged by these provisions to show their holdings in this State as well as in the other States. Since we have already referred to 54 acres as the ceiling limit in Maharashtra, if the total of the land held in this State and Madhya Pradesh, for instance, exceeds 54 acres, the entire excess becomes surplus land. For the purpose of this part of Sub-section (2), the location of land is irrelevant. Even if a major portion of the land is in Madhya Pradesh and a small portion in Maharashtra, as the total of the clubbed land exceeds the ceiling limit of 54 acres, everything in excess of 54 acres is surplus land. The second paragraph of Sub-section (2) deals with the eventuality of a death taking place in a family between the date of the Return and the date of actual determination of the surplus area by the Competent Authority, such death is to be ignored. We need not dwell on this aspect of the matter at the moment. What is relevant at the moment is that this Explanation furnishes a clue as to how a ceiling area held by a person in Maharashtra is to be calculated. According to the Explanation, in calculating the ceiling area in this State and determining the surplus land, the area of land in any other part of India being land which a person or a family unit is entitled to hold in such other part of India under any law relating to ceiling on, land) shall be taken into consideration. Only the land held in this State may be declared as surplus. The provision seems to be clear enough. In the discussion before us, an illustration was adopted where a landowner was deemed to own 40 acres of land in Maharashtra and another 40 acres of land in Madhya Pradesh. The land held in both the States is to be clubbed together, so that the total holding would be 80 acres. It will then be necessary to find out the entitlement of the person in the other State in terms of the bracketed portion. As we have assumed, even in Madhya Pradesh the ceiling limit is 54 acres, the petitioners will be entitled "to hold all the 40 acres in Madhya Pradesh as being below the ceiling area. Having come to this conclusion and having found that the total acreage is 80, the Maharashtra State Land Determining Tribunal will operate the "present Act by permitting the person concerned to hold 54 acres in all. In other words, to the 40 acres in Madhya Pradesh, the balance of 14 acres will be

permitted to be added by retention in Maharashtra, and the rest of 26 acres of land will be declared as surplus. Since only the land in the State is to be declared as surplus, 26 acres out of 40 acres of land held in Maharashtra will be declared as surplus land. This is how Section 3 operates upon the holding of a person who has agricultural land in Maharashtra as well as the adjoining State of Madhya Pradesh. The Ceiling Acts of Madhya Pradesh, Andhra Pradesh as well as Gujarat were made available to us during discussion and a reference was made to the provisions of those Acts. What is of interest to be noted is that neither Madhya Pradesh nor Andhra Pradesh has a provision similar to the above provision of Section 3 of this Act. The State of Gujarat has incorporated similar provisions in their Ceiling Act. In other words, the Ceiling Act of Gujarat and Maharashtra are similar and on par, whereas the Madhya Pradesh and Andhra Pradesh, though similar, have not taken cognizance of holdings of agricultural lands by the holders in any other part of India.

9. We have just found out how the provisions of Section 3 will operate at the commencement date, when a Return has to be filed by the agricultural landholder. However, the subsequent provisions will show that this is the maximum acreage that a person can keep and the subsequent events may seriously affect the holding of this acreage. Events like deaths in a family or the acquisition of land by purchase or acquisition of land by gift or inheritance or by partition etc. are all accounted for, and each of these events affects the holding of land by persons whose cases have already been disposed of in terms of Section 3. In other words, as and when subsequent events occur, which add to the holding, taking the total above the permissible limit an obligation is cast upon the property-holder to file a true and faithful Return of his properties and get the reassessment made with permission to retain a maximum of 54 acres in terms of dry crop land.

10. The definition of "family unit", as now given, is found to be a legal and a justifiable definition. We need not therefore, consider the consequence of members of the family unit acquiring property in the context of the family unit definition being challenged. However, as we consider the effect of the subsequent sections, like Sections 8, 9, 10 and 11 of Chapter III, the restriction on acquisitions would become clear. Section 8 is prohibitory in its operation. It says :

Where a person, or as the case may be, a family unit holds land in excess of ceiling area on or after the commencement date, such person or as the case may be, any member of the family unit shall not, on and after that date, transfer any land, until the land in excess of ceiling area is determined under this Act.

11. The Explanation points out the implication and meaning of the word "transfer". This is a prohibition until the determination of the ceiling limit by the appropriate authority.

12. Section 9 prohibits acquisitions of land in excess of the ceiling area. It says :

No person or a member of a family unit shall at any time, on or after the

commencement date, acquire by transfer any land if he, or as the case may be, the family unit already holds in excess of the ceiling area or land which together with any other land already held by such person, or as the case may be, the family unit, will exceed in the total the ceiling area.

13. The word "transfer" used in this section has the same meaning as is contained in the Explanation to Section 8. The provisions of Section 9 are also quite clear, and are not difficult to understand. If a person is already holding land in excess of the ceiling limit, undoubtedly he has no right to hold such total holding. If a person holds land below the ceiling limit, it seems to be permissible to him to buy land to such extent that the total land consisting of the original land and the added land does not exceed the ceiling limit. If, however, he acquired land, which together with the existing land, exceeds the ceiling limit, there is a total prohibition enacted by Section 9. In spite of this prohibition, if a person buys land so as to make the total holding exceed the ceiling limit, the consequences as provided by Sub-section (3) of Section 10 follow. Where the land is acquired in wilful contravention of Section 9, then as a penalty thereof, the right, title and interest of the person, or as the case may be, the family unit or any member thereof in the land so acquired or obtained shall, subject to the provisions of Chapter IV, be forfeited, and shall vest without any further assurance in the State Government. There is a proviso, which deals with the encumbrances with which the land may be burdened, and how to adjust them. We may not, for the time being, refer to that provision at all.

14. Let us now consider how the provisions of Section 9 read with Section 3 Operate. In the debate the same illustration was used for understanding the said provisions. We have taken the case of a person holding 40 acres of agricultural land in Maharashtra and another acres in Madhya Pradesh. Since the ceiling limit for the purpose of the debate is taken as 54 acres in both the areas, and the total of the two holdings of 80 acres exceed the ceiling limit by 26 acres, he could be permitted to retain only 14 acres of agricultural land in Maharashtra. In view of the provisions of Section 9, he shall not acquire any land whatsoever. This is because any addition to his land will exceed the ceiling limit of 54 acres. It seems to be irrelevant whether he is able to add that land in Maharashtra or Madhya Pradesh. Since the total permissible holding has always to be considered in terms of ail lands held in all parts of India, the added acreage, whether in Maharashtra or Madhya Pradesh makes no difference to the calculation. Assuming that in breach of the law he (the holder) buys 10 acres in Maharashtra, what would happen to this transaction? He has exceeded the limit by 10 acres, and as he has now a holding of 14 acres in Maharashtra and 40 acres in Madhya Pradesh, "under Sub-section (3) of Section 10, this land of 10 acres added in Maharashtra is liable to be forfeited, subject to the provisions of Chapter IV.

15. Chapter IV deals with the procedure for determining surplus land, and contains provisions for making an application within the specified time, the moment his holding goes beyond the permissible limit. One may hold 54 acres

today, and if due to gift, transfer or any other means, he acquires additional land, his total acreage exceeds the ceiling limit, such person is then required to file a Return within the specified time. This procedure is to be found in Section 12, which falls in Chapter IV. An inquiry by the Collector is required to be held as per the provisions of Section 15, which again falls under Chapter IV, and after taking into account all aspects of the matter, as laid down in the clauses (a) to (1) of the said section, the Collector may declare which particular land or lands should be delimited as surplus land.

16. Continuing the illustration for the purposes of Section 9 read with Section 10, in the above case the addition of 10 acres would be forfeited under Sub-section (3) of Section 10. Let us now assume that he buys 10 acres of land in Madhya Pradesh, making his holding of 50 acres in Madhya Pradesh, retaining his 14 acres in Maharashtra. Thus his total holding today would be 64 acres and as the permissible limit in Maharashtra is only 54 acres on the basis of all lands held by him in all parts of India, the holder has exceeded his limit by 10 acres. Now, let us remember that so far as Madhya Pradesh is concerned, it takes no cognizance of lands in any other State or States. Since for the purpose of the illustration, we have taken that Madhya Pradesh has also a ceiling limit of 54 acres, the purchase of 10 acres in Madhya Pradesh was clearly a lawful act. The total holding became 50 acres in Madhya Pradesh by the addition of 10 acres. That State has no objection to that person holding 50 acres of agricultural land in addition to holdings in any other part of India, but the same act leads to penal consequences in Maharashtra in view of the combined operations of the provisions of Sections 9, 10(3) and Section 3, if read together. The question of total holding being the principal subject matter of this Act, that consideration will always project itself in the determination of the surplus land under all the sections of this Act. Since again the Explanation to Sub-section (2) of Section 3 requires surplus land to be declared in relation to land held in Maharashtra alone, the 10 acres out of the 14 acres held in Maharashtra will be declared surplus land. The position then would develop is this viz. that the holder will continue to possess 50 acres in Madhya Pradesh, but only 4 acres in Maharashtra. -He will have to shell out the 10 acres in Maharashtra, which it was permissible for him to retain at the initial determination of the ceiling case.

17. Thus far we are able to follow the provisions and apply them. However, the consequence of the declaration of surplus land viz. 10 acres, has flowed from the provisions of Section 9 read with Section 10(3) and Section 3 of the Ceiling Act of 1961. The Maharashtra Act is not able to directly affect the holding of land in the other States, as the purchase of 10 acres in Madhya Pradesh was clearly lawful. That State would not take any cognizance of that transaction. However, the purchase itself would be unlawful in view of the provisions of Section 9 of the Maharashtra Act. If the provisions of Section 10(3) are to be faithfully applied to the event, the implication would be that the land "so acquired" has to be forfeited to the State of Maharashtra. The land so acquired is in Madhya Pradesh. Possibly the State of Maharashtra cannot reach that land, and is not in a position

to enforce the forfeiture clause to that land. We are merely stating the effect of the operation of each of the sections, and reserve our conclusions to the end. What is pointed out by the learned Counsel arguing for the petitioners is that this means that from the beginning to the end the Act has the ingredient of extra-territorial operation.

18. One more example may be added under the provisions of Section 11 of our Act. This section deals with the restriction on partition, where any land held by a family is partitioned after the 26th day of September 1970, and it reads as follows :

Where any land held by a family is partitioned after the 26th day of September 1970, the partition so made shall be deemed (unless the contrary is proved) to have been made in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972, and shall accordingly be ignored, and any land "covered by such partition shall, for the purpose of this Act, be deemed to be the land held by the family; and the extent of share of each person in the land held by the family shall be taken into consideration for calculating the ceiling area in accordance with the provisions of Section 3.

19. The language of this section is quite general in its application. It refers to the land held by a family. If that family has filed the Return in Maharashtra, because it owned land in Maharashtra and also held land in" Madhya Pradesh, the land in Madhya Pradesh was still a land held by the family. A partition of the land held in Madhya Pradesh, where the total acreage is below the ceiling limit is not at all prohibited by that State, but is ignored for any calculation of ceiling area in Maharashtra. An event, which is innocent and permissible in Madhya Pradesh, becomes relevant for the purpose of being ignored to . determine the area of a member of the family, in view of the provisions of Section 11 of our Maharashtra Act. In each of these cases, beginning with the clubbing of lands in the two States and ending with the illustration of partition with the intervening events of addition to the property by purchase or otherwise, all the events have taken place in Madhya Pradesh. What is argued before us is that on each occasion, events entirely occurring outside the State are being taken into account. It may be that the language of the impugned Act always refers to land in Maharashtra. It does not specifically refer to any land outside the State. However, in the garb of reference to Maharashtra land alone, the principal affection is on the lands outside the State. The mere accident of owning land in the two States by the same person does not provide any connection between the holding in one State and the other. These two entirely unconnected events are being clubbed together for depriving a person from Maharashtra his land in Maharashtra even though the total holding may be below the ceiling limit so far as the lands held in Maharashtra are concerned. In all these events the operation of the Maharashtra Act is upon the property and persons in Maharashtra State alone even though the happening of events may be entirely beyond the territorial limits of this State.

20. One more species where the lawful events are being ignored is provided by

Sub-section (2) of Section 4. Sub-section (1) of Section 4 defines a family limit. Sub-section (2) thereof says that

For the purpose of this section, all declarations of dissolution of marriage made by a Court after the 26th day of September 1970, and all dissolutions of marriage by custom, or duly made, pronounced or declared on or after that date shall, for the purpose of determining the ceiling area to be held by a family unit, be ignored; and accordingly, the land held by each spouse shall be taken into consideration for that purpose, as if no dissolution had taken place....

21. The further portion of this section need not be referred to, as it describes what is a dissolution before the 26th day of September 1970, which is not relevant for the operation of Sub-section (2) of Section 4 at all. The dissolution of a marriage after the 26th of September 1970 may take place either in Maharashtra or in Madhya Pradesh; the place of dissolution does not seem to have much relevance. What is important is that even after the dissolution if the wife were to inherit some agricultural land from her father or other relations, that land will be clubbed together with the existing land of the erstwhile husband, and if this holding exceeds the ceiling limit, then action under the provisions of Section 3 together with the other sections will have to be initiated.

22. With regard to the limitation on the basis of Maharashtra and Madhya Pradesh lands, where the husband owns some property in Madhya Pradesh, and the wife or divorced wife inherits that property in Madhya Pradesh as a lawful event of dissolution of marriage, is it permissible for the purposes of Sub-section (2) of Section 4 of the Act to club together such property for the purpose of determining the ceiling limit of the husband? Since the definition of family unit has been upheld, we need not make a grievance about that definition. What is argued before us is that an event taking place in a State outside Maharashtra is one which is absolutely unconnected with the holding of the husband's lands in Maharashtra. Such event of acquisition by inheritance, which occurs exclusively outside the State, provides the occasion for the operation of this Act, and this amounts to extra-territorial operation of the Maharashtra Act. It is in this context that we have stated earlier that Sub-section (2) of Section 4 provides one more species of cases where the operation of the law on the face of it is extra-territorial.

23. We may now refer to two other sections in relation to and in the manner in which they operate upon the holders of agricultural lands. Section 12 casts a liability upon a person or a family unit to file a Return within the prescribed time, if any of the conditions in the various clauses of Sub-section (1) of that section are satisfied. This responsibility is cast upon the holders of property irrespective of their domicile. If a person domiciled in Madhya Pradesh holds lands in Maharashtra so as to exceed the ceiling limit after the lands in both the States are taken into account, then that person or the family unit is obliged under the provisions of Section 12, to file a Return. Suppose such a Return is not filed, what would be the consequence? Section 40-A, introduced by the Maharashtra

Act II of 1976, lays down that:

(1) "If a person or any member of a family unit who is liable to furnish a return as required by Section 12, fails to furnish the return within the time prescribed by or under this Act or furnishes a return which he knows or has reason to believe to be false, he shall in addition to the penalty prescribed in Section 13, on conviction, be punished with imprisonment for a term which may extend for two years or with fine which may extend to two thousand rupees or with both.

24. In the illustration we have referred to above, the domiciled person or the domiciled family from Madhya Pradesh has to file a return, and if they do not so file it, they will be liable to be prosecuted in addition to the forfeiture of the lands, as provided by Section 40-A. And a person or a family not domiciled in Maharashtra is made criminally liable. This would be an extra-territorial operation, so far as the persons are concerned who are not residents of Maharashtra. This is how the petitioners say that Section 4Q-A has the same quality of the extra-territorial operation as the earlier Sections 3, 10(3), as also Sub-section (2) of Section 14.

25. Section 43-A provides how lands held by a land-holder must be enumerated in the Return to be filed. The last sentence of this Sub-section (1) of Section 43-A requires the holder to furnish similar particulars of lands held by him, if any, in any other part of India. This is an incidental provision, which directly flows from Sub-section (1) of Section 3. An obligation, which is implied in Section 10(3), is made explicit in Section W-A, that a person is required to file the Return of the total land holding. These are the various provisions, which, according to the learned Counsel for the petitioners, exceed the legislative competence of the State of Maharashtra.

26. Before a final conclusion is drawn, it would now be relevant to examine the precise effect and operation of these sections. The written statement filed by the State of Maharashtra and the written reply sent by the Advocate General in response to the notice, as also the arguments addressed to us by the learned Additional Government Pleader contain the same burden of the song. They say that none of these sections affect directly any property of the property-holder outside the State. The law binds itself to the territorial limits of Maharashtra, as it operates upon the land in Maharashtra alone. In order to determine the ceiling of holding in Maharashtra, it may be that the land held in other States are merely taken into account. In doing so, the approach of the Act is to secure or release maximum acreage of agricultural land from bigger property-holders for distribution amongst the landless. This being the object, the operation of the Act is upon the land in Maharashtra alone. We have demonstrated above that whatever the effect of this Act has upon the lands outside the State, it is not confined to Section 3 alone. However, the learned Advocate-General in his reply has said that the provisions of Chapter III, viz. the relevant sections, like Sections 8 to 11, would not be applied to the lands outside the State. A similar argument is made before us by the learned Additional Government Pleader, when

he says that these sections do not directly operate upon the lands outside the State, but they are incidentally taken into account for the purpose of Section 3 alone. There are two difficulties, which we envisage, in accepting such an argument. Once a law is passed by the Legislature, the provisions begin to operate. It is an inexorable logic of laws that they begin to operate in full, once they are validly passed by the Legislature. It is not for the Additional Government Pleader or the State itself to say that certain sections do not and will not operate. We think it is beyond the powers of these authorities to say so. We also think that there is an inherent force in this statement, as it goes against the very logic of the sections themselves. All these sections undoubtedly operate on lands outside the State. A person may by sheer accident own properties in two States. Such problems will be found in the borderline areas on account of the newly created States after the re-organization of the States in 1956. A person owning lands in various villages suddenly found after 1956 that some of the lands are located in Maharashtra State and the rest in Madhya Pradesh or Andhra Pradesh. It is this event that is beyond his control which created a situation of a person holding lands in both the States. There is nothing to suggest that there is any prohibition for a person to hold or own lands in another State or in any part of India. However, cases like the present ones are the direct outcome of the re-organization of States in 1956, rather than wilful acquisitions in the various States. How the situation had arisen is irrelevant. But how the provisions of the Act operate is all that is material and is of real consequence. The fact that a person owns properties in another State has nothing to do with the fact that he also owns property in Maharashtra. Ownership of two different properties in two different States has no connection between them whatever may be their nature. Even then, the fact of owning properties in two different States alone is made the basis of the operation of Section 3 of the present Act. Prima facie, therefore, it is clear that the Act does not directly say so, but it actually operates upon the properties outside the State. We are unable to accept the written submissions or the arguments advanced on behalf of the State that the present Act does not affect properties outside the State. It is true, that by affecting properties outside is to mean that the State of Maharashtra does not acquire properties outside the State owned by a person -- they may be right. But the present phenomenon of owning properties outside directly results in losing a part of the property in Maharashtra. Hence it must be said that the present Act operates upon the properties outside the State.

27. Now, can this phenomenon be described at all as an extra-territorial operation of the Maharashtra Act? So far as the case law cited before us is concerned, we are familiar with four different approaches in the matter of what is described as the extra-territorial operations of law. The first instance is provided in *Governor-General v. Anglo-Mineral Corporation Ltd.* in AIR 1944 51 (Federal Court) where a Company incorporated in England but operating in India and drawing a major part of the profits in India was sought to be taxed under the Indian Income Tax Act. When the assessment to tax was challenged as extra-territorial operations of the Indian

Income Tax Act, the Federal Court found on facts that it does not appear to be in the real sense as an extra-territorial operation of law. It may be that the Company was incorporated in England and the Directors may be functioning in England; it may also be that the profits belonged to the share-holders who are residents of England and receive their dividends in England. However, the main field of operation and its business are in India. Substantially, therefore, it is the events in India which are taxed. There is, therefore, no extraterritorial operations involved in these set of circumstances. However, if it is to be assumed that the Company incorporated outside India is being taxed in India, the procedure seems to be permissible in certain circumstances. There is sufficient nexus between the event and the tax imposed, it furnishes a good nexus for the the extra-territorial operations of an Act, and the enforcement does not, in the circumstances, become unlawful. They, therefore, concluded that the fact that a major portion of the business of profit-making was in India did afford sufficient and good nexus, if need be, for the lawful enforcement of the Indian Income Tax Act. This is the first- approach on the question of nexus, so far as the branch of Indian Income Tax law is concerned. This approach has been found to have application, uniformly, in the subsequent case law.

28. The second approach of the extra-territorial operations is provided in the case of Sales Tax Act. In *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, , a number of transactions of sales took place in Bombay, but delivery was given in another State. The taxation of Sales Tax in Bombay State was challenged on the ground that the sale was completed elsewhere. The Supreme Court points out, while upholding the tax in Bombay, that a part of the sale transaction having taken place in Bombay State, provided a good nexus, and the tax may be lawfully levied in the Bombay State. Though the decision on facts seems to be no more good law in view of the decision in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, , the principle laid down does not seem to be affected or impaired in any manner. The earlier decision was declared no good law on the basis of Article 286(2) of the Constitution, but the main principle, that a particular event, like the delivery of possession, would provide sufficient nexus, has been confirmed.

29. A third occasion arose for the examination of this principle in *The State of Bombay Vs. R.M.D. Chamarbaugwala*, where a Company constituted in Bangalore was carrying on the business of Crossword puzzles, styled as gambling in the judgment, extensively in the Bombay State, Though the Company was located outside the Bombay State and though the prizes were declared from outside the State, they had extensive network of collecting-agents in the Bombay State. Forms were filled in the Bombay State and fees were collected in the Bombay State and the competitors, on becoming successful in collecting prizes, were being paid in the Bombay State. It was held that in the case of gambling, if there is a territorial nexus between the person sought to be charged and the State seeking to tax him, it provides sufficient nexus for imposing the tax under the Bombay Lotteries and Prize Competitions Control and Tax Act (54 of 1948). The

same approach was extended in the case of trusts in *The State of Bihar and Others Vs. Charusila Dasi*, . This was a religious endowment which was registered as a public trust in the State of Bihar. Its trustees were functioning from Bihar and controlled all the properties of the trust situate in Bihar, the trust owned properties in the State of Bihar as well as outside the State of Bihar. When the operation of the Bihar Hindu Religious Trusts Act was challenged in relation to the properties of the trust, outside the Bihar State, the Supreme Court negated the contention on the ground that the facts found afforded sufficient nexus. The facts were that the trust was located and registered in Bihar. Some properties were located in Bihar State, and the properties outside the State of Bihar were being administered and controlled from the State of Bihar. This was considered as sufficient nexus to extend the operation of the Bihar Hindu Religious Trusts Act to the properties located outside the State. These are the well known approaches where the principle of nexus has come to the rescue of the operation of an Act, which is *prima facie* extra-territorial in its operation.

30. So far as the facts before us are concerned, our findings recorded above are clear enough. According to us, the ownership of properties in two different States -- one of them being Maharashtra -- is a matter of no consequence, as they are found absolutely unconnected with each other. Our findings further show that for the proper implementation of the provisions of the Maharashtra Act, Sections 3 to 11, the only event which is being constantly taken into account for affecting the properties in Maharashtra is the existence of properties outside, as also the addition and subtraction of that property outside the State. It is true that the Act does not directly affect the properties outside the State. None of the transactions outside the State are being declared or capable of being declared unlawful under the provisions of the present Act. Even if the properties outside the State exceed the ceiling limit, which is permissible in Maharashtra, the Act does not seek to affect all such properties of the holder in the other State. It is true that where a land is acquired in excess of the ceiling limit in the other State, that breach is covered by Section 9 of the present Act, as we have stated earlier. One of the consequences of such breaches of acquisitions is to forfeit that very land. The wording of Sub-section (3) of Section 10, which we have stated earlier, requires the land "so acquired" to be forfeited.- This is obviously beyond the powers of the Maharashtra State to do. The provisions may be ineffective so far as the lands outside the State are concerned, but a plain reading of the provisions do seem to indicate that they want to operate upon those lands, though they cannot do so for want of jurisdiction. Apart from this particular instance, when the Act seems to directly operate on the lands outside the State, the main burden of the song or the argument of the State is that the Act is confined to the land held in Maharashtra, and does not seem to go beyond the territorial limits of Maharashtra.

31. We have given our anxious consideration to the arguments advanced on both the sides. Undoubtedly, the Maharashtra Act has been so drafted as to make it appear that it seeks -to affect lands in Maharashtra alone. However, at every

stage for its operation in this State it has taken the support of the existence of properties outside the State and owned by a person who is compelled to file a Return u/s 12 of the Act. The decided case laws do not seem to directly assist us, though they indicate that, as new situations develop, the principles have got to be adopted to them. In our view, the reference to the Maharashtra lands alone in the present Act is a camouflage or a machinery used to affect adversely the holding of a person by referring to properties outside, as the main basis for the operation of the Maharashtra Act within the territory of Maharashtra, This may be one more piece of illustration of extra-territorial operations of the Act. Even though such extra-territoriality is not to be found in the precedents, we have no doubt that shorn of the clever drafting of the Act, the provisions are obviously extra-territorial in operation. It is also possible to look at the provisions of the present Act from another point of view. By making the holding of lands in other States as the basis for calculation of the ceiling on holding under this Act, the Maharashtra Legislature has undoubtedly legislated with respect to the lands outside the State. This is an-attempt to enforce all India Ceiling on holders of land in Maharashtra. On this approach the Act is beyond the competence of the Maharashtra Legislature, even under Entry 18 of the Second List of the 7th Schedule. Assuming, however, that this is going too far, the earlier approach certainly makes it extraterritorial in its operation.

32. A new situation has undoubtedly arisen where under the guise of pretending to legislate for lands within the State, the lands outside the State are made the main basis for its operation. In the circumstances, we have no hesitation in holding that this is nothing but extraterritorial operation of -the Act. Will the principle of nexus developed by the Courts be attracted to such a situation? In law, it may be possible to invoke the aid of that principle. Is it possible to say that in this case there is sufficient nexus between the holding of land by a person in Maharashtra and the holding of lands in other States? We have already clarified that the ownership of lands, and the reduction or addition in land in other States, are events which are entirely outside the State of Maharashtra. Can we say that with those events there is some connection of ownership of property in Maharashtra, or some other event connected with the property in Maharashtra? On an earlier occasion, dealing with the provisions of the Bombay Prevention of Hindu Bigamous Marriage Act (25 of 1946) a factual situation arose for the consideration of the Full Bench of this Court. In *The State Vs. Narayandas Mangilal Dayame*, , Narayandas, who was a domicil of Bombay State was a married person. He went to Bikaner and married a second wife, who was a domicile of Rajasthan. After the marriage the couple came back to Bombay State. Narayandas was prosecuted under the provisions of the above Act on the ground that being a domicile of Bombay State he married in breach of the provisions of the above Act. The Full Bench while confirming the acquittal, pointed out that what is made a criminal offence is the event of second marriage. The second marriage in that case had taken place entirely "outside the State. The event which is the main basis of the offence had thus taken place outside the

State of Bombay. It was argued that the fact of domicile of the accused person afforded sufficient nexus for enforcing the provisions of that Act against him. While negating the claim of the State, this is what the Full Bench has observed (at p. 905 of 59 Bom. L.R. 901) :

Now, the question as to what is the territorial jurisdiction of a Legislature has come up very often for consideration by various Courts and the test which has been ordinarily laid down is that there must be a territorial nexus between the subject matter and the State. If the Legislature is dealing with a subject matter, that subject matter must have some connection or relation to the territory with regard to which the Legislature can legislate. In the absence of such a territorial nexus, a legislation dealing with a subject matter which is outside the boundaries of the province would be ultra vires the Legislature. Now, in this case the subject matter of the legislation is firstly marriage and secondly crime. With regard to marriage, the Legislature has attempted to legislate with regard to marriages contracted beyond the limits of the province or the State. If, therefore, the subject matter is marriage, it can only legislate with regard to that marriage which is contracted within the limits of the province or the State. If it legislates with regard to marriages contracted beyond those limits, a territorial nexus has got to be discovered between the State and the marriage contracted outside the limits with regard to which the Legislature is attempting to legislate. Now, it is difficult to understand what territorial connection there is between a marriage contracted in Bikaner and the State of Bombay....

33. The Full Bench, therefore, rejected the argument that domicile would constitute sufficient nexus. No event which is an offence or the ingredient of an offence had occurred in the State of Bombay. If this approach is thus taken into account, we find it difficult to justify the operation of the Maharashtra Act on the basis of the property owned in other States. There does not seem to be any territorial nexus which is the very Sine-qua-non of extending the territorial jurisdiction of one State over the subject matter to the other State.

34. Incidentally, it was urged before us that the provisions of the Maharashtra Act lead to certain results which cannot be justified except on the basis of the local jurisdiction of a State Legislature. What is argued is that if a person holds 54 acres of land in Madhya Pradesh, which we have assumed is the ceiling limit of that State, the person cannot own a single acre of land in Maharashtra. Whatever land he owned here will be declared as surplus. Such an operation has the effect of declaring, as if it is the all India ceiling of a person. Our attention was drawn to the provisions of Urban Ceiling Act, which is a Central piece of legislation. That Act points out how much building site should a citizen of India be entitled to hold anywhere in India. Jurisdiction, which is prima facie available to the Parliament, cannot be usurped by the State Legislature by designing a mechanism which would go to affect lands outside the State.

35. Yet another result was brought to our notice, if such an Act of one Legislature is permitted to operate to its full logical end. The Gujarat Legislature has passed

an Act which is very much similar to the Maharashtra Act. We may again assume, for the purpose of illustration, that the ceiling limit in Gujarat is also 54 acres. What happens to a person who owns 54 acres in Gujarat and 54 acres in Maharashtra. In both the States he is obliged to file the Returns. The bracketed portion from the Explanation to Sub-section (2) of Section 3 requires the authorities in each of the States to take into account only that much land which the ceiling law of the other State permits to the holder. Since Gujarat permits 54 acres, Maharashtra will take that into account and declare the entire area of 54 acres in Maharashtra as surplus. Similarly, in view of the similar provisions of the Gujarat Ceiling Act, the entire area in Gujarat of 54 acres will be declared as surplus. In order to appreciate this approach, the language of the bracketed portion must be pertinently noted. It says that so much "land alone is to be taken into account" which a person or a family unit is entitled to hold in such other part of India under any law relating to ceiling on land." (emphasis supplied). What is the limit prescribed by the ceiling law in each State need not be gone into. Suffice it to say that for the purpose of illustration the entitlement of a person or a family unit in each State is 54 acres. If that is so, the person concerned is likely to lose land in both the States. This illustration is given only to show that howsoever laudable the object of the State Legislature may be in obtaining lands for being distributed among the landless persons of the State, the mechanism thus adopted might lead to results which could not be permitted to occur. An argument was raised which may have some substance, though we may not exhaustively deal with it. It is incidentally pointed out that where a person has lands in two States, and some land is being declared as surplus, he is not given a choice at all as to whether he would like to surrender land in one State or the other. In all the ceiling laws till now available, the holder, who has to lose either urban land or agricultural land, has been given an absolute choice to pick and choose that land which he wants to surrender. In the case of the present Act, one finds that there is no choice available if he holds lands in more than one State; he has to surrender the entire holding in the Maharashtra State if the holding in the other State or States is above that State's ceiling limit. This is only the incidental effect of the operation of the Act, and we do not base our conclusions and declare certain provisions of the Act as unlawful or otherwise on mere incidental effects.

36. The principal ground on which we think that some of the provisions of the Act should be declared beyond the legislative competence of the State Legislature is the extra-territorial operation thereof, while there being no nexus whatsoever between the property outside the State and the provisions of the present Act.

37. The next question that arises for our consideration is whether these provisions are severable and is it possible to save the Act minus those provisions? We think, it is quite possible to give pointed references to certain words and expressions which, if deleted, would give full effect to our conclusions in this judgment. Accordingly, we declare that in Sub-section (2) of Section 3 the word "whether" in the first line, and the group of words "or any other part of

India", occurring in the second line, should be declared beyond the competence of the State Legislature and should be struck down. As a consequence, the entire Explanation clause to Sub-section (2) is unlawful and is being declared inoperative and beyond the competence of the State Legislature. We further hold that the last sentence in Sub-section (1) of Section 43-A, beginning with the words "The person" and ending with the words "to any Tahsildar" (i.e. "The person shall also furnish such particulars of land held by him, if any, in any other part of India to any Tahsildar"), should also be declared beyond the competence of State Legislature. If these provisions are struck down as beyond the competence of the State Legislature, as they have the effect of operating extra-territorially, there is no other challenge before us so far as the Ceiling Act is concerned.

38. Since these substantive provisions are being struck down, any of the incidental provisions contained in the Rules requiring the holder of land to file Returns on the basis of these provisions and the consequences of not filing them are automatically declared as inoperative.

39. This being our view, we answer the questions referred to us as follows :

Answer to Question No. 1 : Yes. To the extent indicated in the body of the judgment.

Answer to Question No. 2 : Yes, To the extent indicated in the body of the judgment.

Answer to Question No. 3 : No.

Answer to Question No. 4 : Does not survive.

40. In view of our above conclusions, we will state, with respect, that the Division Bench Judgment in Special Civil Application No. 49 of 1976, decided on 22nd/24th June, 1976, in so far as the question of extra-territorial operation is concerned, has been erroneously decided, and is over-ruled to that extent.

41. In view of the answers given to the questions referred to, all these Seventeen matters, which have reached the stage of final hearing will go back to the appropriate Bench for further hearing and disposal according to law. So far as the remaining sixteen petitions are concerned, in view of our conclusions as above, they shall stand admitted, and are directed to be placed before the appropriate Bench for further dealing with and disposal according to law.

42. So far as these References are concerned, there will be no order as to costs.