

(1981) 08 GUJ CK 0045
In the Gujarat High Court

Sheth Chinubhai Chimanlal

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 21-08-1981

Acts Referred:

Gujarat Agricultural Lands Ceiling Act, 1960 — Section 15, 15, 6, 6, 6(2)

Citation : (1982) GLH 77 : (1982) 1 GLR 317

Hon'ble Judges : B.K. Mehta, J

Bench : Single Bench

Judgement

B.K. Mehta, J.—A short but interesting question arises as to whether a joint Hindu family of less than five persons is subject to disability of clubbing its holding of land with that of individual member thereof under the Gujarat Agricultural Lands Ceiling Act, 1960 (the "Act," for short). The question arises in the following circumstances.

2. The petitioner Chinubhai Chimanlal holds agricultural lands in his individual capacity as well in the capacity of Karta of his Joint family consisting of himself, his wife, his minor son and minor daughter. The other members of the said Joint Hindu family, namely, the wife of the petitioner, his minor son and minor daughter also hold lands as individuals in their individual capacity. The lands owned by the members of the said family as well as Joint Hindu family are situate within the revenue limits of village Piplaj, Lambha, Laxmipura and Hansol. It appears that on promulgation of the Gujarat Agricultural Lands Ceiling Act, 1960 (Known hereafter as the "Ceiling Act," for short), proceedings were initiated u/s 20 of the Ceiling Act read with Rule 10 of the Gujarat Agricultural Lands Ceiling Rules, 1961 (known hereafter as the "Ceiling Rules", for short) treating the petitioner as bolder of all the aforesaid lands and also making provisional declaration about the excess land. One full round of proceedings commencing with the order of the Mamlatdar (Ceiling) of December 13, 1966 and ending with the order of the Gujarat Revenue Tribunal by its order of November 6, 1970 resulted into remand of the proceedings which were again commenced by notice

of August 10, 1970 followed by notice of December 4, 1970 in exercise of powers u/s 20 of the Ceiling Act. The petitioner was called upon to show cause why the lands standing in the name of petitioner, his wife, his minor son and minor daughter admeasuring 174 acres and 13 gunthas be not treated as the holding of the petitioner and also to show cause why the land in excess of 72 acres of land which the petitioner is entitled to retain be not declared as a surplus land which he is liable to surrender to the State Government. The petitioner by his replies of September 10, 1970 and January 22, 1971 inter alia contended in effect that the lands standing in the name of the petitioner, his wife, his minor son and minor daughter cannot be clubbed with the land standing in the name of the petitioner on behalf of joint family of himself, his wife and minor children. It was further contended that under the scheme of the Ceiling Act, the authorities were under obligation for purposes of determining the extent of the surplus land to compute the total land holding of the individual concerned as well that of joint family if such individual person has a share in the land held by such joint family. In other words, the legal contention was that the authorities were under obligation to compute the surplus land unit wise, that is, unit of an individual or unit of joint family.

3. All the relevant records comprising of books of accounts of H.U.F. of the petitioner, audited accounts and balance sheets, the wealth tax and income tax assessments the extract from revenue record and affidavits as well oral evidence of the witnesses of the petitioner were produced before the competent authorities. The effort of the petitioner in adducing the aforesaid evidence was for purposes of establishing that the land standing in the name of the petitioner on behalf of the joint family was distinct from the lands owned and standing in the name of the petitioner and other members of his family in their individual capacity. The Agricultural Lands Tribunal of City Daskroi Taluka of Ahmedabad by its order of September 30, 1972 in Ceiling Case No. 12 of 1966-72 held inter alia that in as much as the Village Form No. 7-12 from the revenue records do not disclose that the family of the petitioner is a joint Hindu family and the evidence which has been produced was neither authoritative nor reliable it was therefore not admissible in evidence. The Agricultural Tribunal therefore held that the lands standing in the name of the petitioner as well as other members of his family should be clubbed together and the petitioner was entitled to retain land admeasuring 72 acres and the rest of the land was surplus land and therefore be must surrender it to the State Government as specified in paragraphs 3 and 4 of his order.

4. The petitioner therefore carried the matter in appeal before the City Deputy Collector by his Civil Appeal No. 29 of 1972 who by his order of December 21, 1973 partly allowed the appeal by accepting the contention of the petitioner about the area of land in so far as it related to the conversion of the "Kyari Lands" into "Dry Crop" lands and gave benefit accordingly. On the principal contentions the appellate authority was not impressed. Three contentions were urged before the appellate authority. In the first place it was contended that the

Agricultural Lands Tribunal had erred in rejecting the claim of the petitioner about his status of joint Hindu family merely on the ground that Village Form No. 7-12 of revenue records did not establish that status. Secondly it was contended that the Tribunal was under obligation to compute the surplus land unit wise. Thirdly, if the petitioner or his wife, or his children are holding land individually as well as having share in the joint family which also holds the land, the provision contained in Section 6(2) of the Ceiling Act will not be attracted since the Legislature has for purposes of clubbing excluded the land belonging to the joint family from the obligation of clubbing. As regards the first contention, the Deputy Collector was of the opinion that evidence adduced by the petitioner pertaining to his status from the records of income tax and wealth tax assessment cannot be relied upon for purposes of deciding whether the family of the petitioner was a joint family or not under the Ceiling Act. The Deputy Collector, however, held that the petitioner, his wife and his two minor children constituted a family but not a joint family. He also held that though some of the lands of the petitioner were ancestral property and the petitioner might have received those properties as a coparcener of the undivided Hindu family of his father, even then the petitioner, his wife and his two minor children cannot be treated as a joint family for purposes of Section 6(2) of the Ceiling Act. He therefore reached the conclusion that Section 6(2) of the Ceiling Act was applicable as the family of the petitioner was not a joint family but simple family. He therefore modified the order of the Tribunal by holding that the petitioner was entitled to retain land admeasuring 72.22 1/2 acres instead of 72 acres as determined by the Tribunal and declared land admeasuring 167. 72 1/2 acres as the surplus land instead of 185.1 acres as held by the Tribunal. The petitioner therefore carried the matter in revision before the Gujarat Revenue Tribunal and the learned single Member of the Tribunal almost on the same reasoning upheld the order of the Deputy Collector and dismissed the revision application by his order of March 18, 1977. It is this order which is the subject matter of this petition.

5. Three questions arise in this petition for determination. In the first place, whether the Tribunal has committed an error apparent on the record in holding that the petitioner has not been able to prove his claim for the status of the undivided Hindu family from the revenue records and that assessment of the petitioner in his status as undivided Hindu family is not relevant in the context of the Ceiling Act. The second question which arises is that the petitioner's family is liable to be subjected to the disability of clubbing u/s 6(2) of the Ceiling Act and thirdly whether the authorities under the Ceiling Act are under obligation to compute the total holding of the land for purposes of determining the extent of surplus land qua the petitioner in his individual capacity as well in his capacity of undivided Hindu family.

6. As regards the first question I must state at the outset that the Agricultural Lands Tribunal was clearly in error in holding that the evidence adduced by the petitioner comprising of the statement of accounts, assessment proceedings, the audited accounts, balance-sheets, etc. were not admissible in evidence and

unless the statue is established in terms from the revenue records, a person cannot succeed in establishing his status de hors the said records. When the matter came in appeal, the Deputy Collector, however, confused the entire issue when he held that though the petitioner, his wife and his minor children constituted a family but it was not a joint family though the petitioner has acquired lands as his share in ancestral property. It is a trite position in law to say that the share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue, who takes an interest in it by birth (Mulla's Hindu Law, page 272). When the matter went in revision, the Tribunal made the confusion worse confounded by trying to apply the principles which the learned Member of the Tribunal has digested from Mulla's Hindu Law by holding that it was to be proved that the petitioner was a member of a joint Hindu family with other members and thereafter he must live as a member of the joint family along with his wife and son which was not a case. On reading the orders of the Agricultural Lands Tribunal, the Deputy Collector as well as the Gujarat Revenue Tribunal, I am of opinion that they have failed to comprehend correctly the concept of joint family as recognized under the Hindu Law or under the Ceiling Act. The finding of the Deputy Collector that some of the lands were received by the petitioner as his share in the ancestral property is sufficient to hold that there was a nucleus and if further lands have been acquired from that income of the nucleus, they will be accretions to the property of the joint family and will be impressed with that character. The effort of the petitioner, it appears, in producing the assessment orders from the income tax and wealth tax proceedings is to establish that the petitioner had also the status of undivided Hindu family and some lands were standing in the name of the petitioner for and on behalf of his undivided Hindu family. The Agricultural Lands Tribunal committed an error apparent on the face of the record in rejecting the evidence as inadmissible. The Deputy Collector having found that the petitioner got some lands as his share in ancestral property again committed an error in holding that there was no joint family because the joint family of the father of the petitioner ceased long before. It is merely bagging the question but the crux of the problem is whether there was any nucleus and the lands standing in the name of the petitioner which he was claiming as the lands of his joint family were either the part of that original ancestral property or acquired from the property which has come to the share of the petitioner. The evidence comprising of the extracts from the account books as well as the audited accounts and balancesheets would also show as to what land was the laud of the joint family of the petitioner. If the petitioner is able to establish that there was some land of his joint family, the course which is to be adopted in computing the surplus land of such an individual like that of the petitioner is as prescribed in Section 6 read with Section 15 of the Ceiling Act. It is really surprising that the Agricultural Lands Tribunal as well the appellate authority under the Ceiling Act and for that matter the Gujarat Revenue Tribunal which are administering the provisions of the Ceiling Act every day have failed to comprehend the scheme of the Act and the different provisions made in the Act for computing the surplus land.

7. In order to appreciate correctly what is the scheme of Section 6 of the Ceiling Act, it would be profitable to set out a few relevant provisions contained in that Section which have a bearing on the question arising in the present petition. In this connection Section 2(16) and 2(21) are also required to be looked into.

2(16) "Joint family" means an undivided Hindu family and in the case of other persons a group or unit the members of which by custom or usage are joint in estate or residence:

2(21) "person" includes a joint family.

6(1) Notwithstanding anything contained in any law for the time being in force or in any agreement, usage or decree or order of a Court, with effect from the appointed day no person shall, subject to the provisions of Sub-section (2), (3), (3A) and (3B) be entitled to hold whether as owner or tenant or partly as owner and partly as tenant land in excess of the ceiling area.

(2) Where an individual, who holds land, is a member of a family, not being a joint family which consists of the individual and his spouse (or more than one spouse) and their minor sons and unmarried daughters, irrespective of whether the family also includes any major son and land is also separately held by such individual's spouse or minor children, then the land held by the individual and the said members of the individual's family excluding major sons, if any shall be grouped together for the purposes of this Act and the provisions of this Act shall apply to the total land so grouped together as if such land had been held by one person.

(3) xx xx xx xx xx xx xx xx (3A) xx xx xx xx xx xx xx xx (3B) Where a family or a joint family consist of more than five members, comprising a person and other members belonging to all or any of the following categories, namely:

(1) minor son

....

such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five, so however that the total holding of the family does not exceed twice the ceiling area; and in such a case, in relation to the holding of such family, such area shall be deemed to be the ceiling area; Provided that if any land is held separately also by any member of such family, the land so held separately by such member shall be grouped together with the land of such family for the purpose of determining the total holding of such family.

xx xx xx xx xx xx xx xx (3C) Where a family or a joint family irrespective of the number of members includes a major son, then each major son shall be deemed to be a separate person for the purposes of Sub-section (1)

(3D) For the purpose of Sub-sections (2), (3B) or (3C), the members comprised in a family or as the case may be, a joint family on the specified date shall alone

be taken into consideration and any changes in the character or number of members of the family occurring thereafter shall be ignored.

15. The extent of surplus land, if any, held by any person shall be computed on the basis of the total land held by such person;

Provided that the total land so held shall include-

(a) where such person holds in addition to the land held by him individually as owner or tenant, a share in the land held by a joint family, an area of land equivalent to his share in the land which such joint family is entitled to hold u/s 6.

XX XX XX XX XX XX XX XX

Broadly stated the scheme contained in Section 6 of the Ceiling Act is as under. No person is entitled to hold land in excess of the ceiling area either as tenant or as owner. This is subject to the provisions contained in Sub-section (2) to Sub-section (4) of Section 6 of the Ceiling Act. The Legislature has recognised a clear-cut distinction between the holding of an individual, holding of a family and holding of a joint family. If an individual holding land is a member of a family, the land standing in the name of his spouse and his minor sons and unmarried daughters are liable to be clubbed. Similarly in the case of a joint family of more than five members comprising a person (probably an individual!) and other members of specified category, such family will be entitled to hold land in excess of the ceiling area to the extent of one-fifth of such area for each member in excess of five subject, however, to the maximum of twice the ceiling area. This again is subject to the provision of clubbing. If land is held separately by any member of such family, the land held by individual member separately will be clubbed together with the land of the family for the purposes of deciding the total holding of such family. Again where a family or a joint family irrespective of the number of members includes a major son, each such major son shall be deemed to be a separate person for the purposes of determining excess land. This is in short the scheme contained in Section 6 of the Ceiling Act. Section 6 is to be also read in the light of the method provided for computation of surplus land in Section 15 of the Ceiling Act. In order to determine the extent of surplus land of any person (probably an individual!) his total land is to be considered. However, for determining the total land the area of land equivalent to the share of such an individual, where he has one, in joint family is to be clubbed with his individual holding.

8. On consideration of the scheme contained in Section 6 of the Ceiling Act in the light of what is provided in Section 15, it is clear to me that the authorities under the Ceiling Act are under obligation for purposes of computation of surplus land to decide-

(1) in the first place the total holding of the land of a person which may include also a joint family;

(2) if such person is holding land individually as well has a share in the land of

the joint family, the authorities must determine the land which such joint family is entitled to hold u/s 6 and then determine as to what would be the share of such individual person in the joint family land and then add the area of land equivalent to his share with the land held by him individually;

(3) if such an individual person is a member of a family but not a member of a joint family, the land held by him is liable to be clubbed with the land held by his spouse or his minor sons and minor unmarried daughters;

(4) in case of a family or a joint family consisting of more than five members comprising of a person and other members belonging to the categories specified in Sub-section (3B), namely, minor son, widow of a predeceased son, minor son or a daughter of a predeceased son, such family shall be entitled to additional benefit of holding land in excess of ceiling area or prescribed in the said sub-section; and

(5) if a family or a joint family includes a major son, then each major son is by deeming fiction of law to be treated as a separate person for purposes of computation of the excess land. This is irrespective of the members of the joint family.

9. A doubt is likely to arise as to why the obligation of clubbing prescribed in the case of a simple family or a joint family of more than five members, is not applicable to a joint family having less than five members. The reason appears to be that since a family or a joint family of more than five members has been given a benefit of additional unit under Sub-section (3B), they have been subjected to the obligation of clubbing where individual members of such family held lands separately in their individual capacity. A joint family of less than five members has not been provided with any additional benefit and therefore it is not subjected to clubbing. A partial clubbing is also provided in Section 15 of the Ceiling Act where it is prescribed that if an individual person holds in addition to the land held by him individually a share in the land held by a joint family an area of land equal to his share is to be clubbed with that of his individual holding. To that extent a partial clubbing is provided even in case of joint family having less than five members also. Nonetheless, when ceiling authorities are faced with the problem of determining the extent of surplus land of an individual person having a share in the land of the joint family, the authorities must determine the land unit wise, that is, in the individual capacity of that person as well as the sharer in the joint family and for that purpose decide the land to which a joint family is entitled to u/s 6 of the Ceiling Act. In so far as the the case is concerned, all the authorities have overlooked this essential scheme contained in Section 6 in the light of Section 15 and hence they have committed an error of law and therefore the order of the Tribunal confirming the order of the Deputy Collector is liable to be quashed and set aside and the entire matter should go back to the Agricultural Lands Tribunal for determining the surplus land, if there is any, in the case of the petitioner as an individual as well as th5 petitioner holding the land for and on behalf of the joint family and also of the land of the

different members of the family which the authorities have to compute according to the correct legal principles referred to in this order and contained in the relevant Sections of the said Act.

10. Rule is accordingly made absolute with no order as to costs.