
(2006) 11 BOM CK 0004

In the Bombay High Court

Case No : Writ Petitions No"s. 3047, 3048, 3049, 3067 and 3229 of 1994

Shriram Jagoji Brahmane

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 09-11-2006

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 10, 10(1), 10(3), 15, 16

Citation : (2007) 4 ALLMR 156 : (2007) 3 BomCR 714

Hon'ble Judges : Chavan R.C., J

Bench : Single Bench

Advocate : Avinash Gordey, for the Appellant; S.G. Ahirkar, A.G.P. in W.P. Nos. 3229 and 3067/1994 for respondent Nos. 1 and 3, V.A. Thakre and Anoop Parihar, A.G.Ps. in W.P. Nos. 3049/1994 for respondent Nos. 1 and 3 and S.Y. Deopujari, A.G.P. in W.P. Nos. 3048/1994 for Respondent Nos. 1 to 3, for the Respondent

Judgement

Chavan R.C., J.—By these petitions, the petitioners, who are all transferees of agricultural lands owned by one Abhiman Chipdaji Kalmegh, take exception to the orders, all dated 1-8-1994, passed by the Additional Commissioner, Amravati Division, Amravati, delimiting the petitioners' lands as surplus lands of the said Abhiman Chipdaji Kalmegh.

2. It is not in dispute that the lands in question were owned by Abhiman Chipdaji Kalmegh. All the transfers in favour of the petitioners are subsequent to 4-8-1959. The date referred to in Section 10 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short, hereinafter referred to as .the Ceiling Act.). Abhiman Chipdaji Kalmegh sold 2 acres of land out of Survey No. 20/2 at Village Mangruli, Taluka Warud, District Amravati, to one Shamrao Balaji Dhole on 21-8-1959. The said Shamrao Balaji Dhole sold the land on 15-3-1963 to one Jagoji Dhanuji Brahmane, the father of petitioner Shriram Brahmane, in Writ Petition No. 3229 of 1994. Shamrao Balaji Dhole, who had acquired another two acres of land from the said Survey No. 20/2 from Abhiman Chipdaji

Kalmegh, sold it to Nathu Ganpatrao Brahmne, the petitioner in Writ Petition No, 3047 of 1994, by a registered sale-deed dated 19-3-1962. Abhiman Chipdaji Kalmegh's widow Annapurna executed a gift-deed of 4 acres and 2 gunthas of land from Survey No. 20/2 on 7-5-1963 in favour of Krishna Rambhau Kalmegh, the petitioner in Writ Petition No. 3048 of 1994. 4 acres of land from Survey No. 35/2-A of Village Mangruli, Taluka Warud, District Amravati, was transferred by a registered sale-deed executed in the year 1958 by Abhiman Chipdaji Kalmegh in favour of Antuji Bhaguji Brahmane, the father of the petitioner in Writ Petition No. 3049 of 1994. However, since the exact date of the sale-deed executed in the year 1958 is not pleaded and the sale-deed is not placed on record, the Ceiling Authorities had held that this transfer in favour of Antuji Bhaguji Brahmane was hit by the provisions of Section 10 of the Ceiling Act. Petitioner Ramkrishna Bajirao Wadekar claims to have purchased one hectare ninety-two areas from Survey No. 35/2-A from Annapurna Abhiman Kalmegh by a registered sale-deed dated 18-3-1983. Thus, all these transfers are after 4-8-1959.

3. The land holder was found to be in possession of total 145 acres and 22 gunthas of land. By an order dated 30-12-1992 passed by the Sub-Divisional Officer, Morshi, 59 acres and 7 gunthas of land was found to be in excess. After considering the option exercised by the land holder u/s 16 of the Ceiling Act, the Sub-Divisional Officer identified the lands, which were to be delimited and declared as surplus lands, and taken for distribution. These lands include the lands purchased by the or transferred to petitioners. The petitioners preferred revision applications before the Additional Commissioner, Amravati Division, Amravati, who dismissed those revision applications by order dated 1-8-1994. Aggrieved thereby, the petitioners have filed these petitions.

4. The petitioners contend that in view of the scheme of Sections 8, 10 and 16 of the Ceiling Act, the petitioners lands cannot be declared as surplus lands.

5. On behalf of respondent No. 3. The Additional Commissioner, Amravati Division, Amravati, a return has been filed opposing the petition. The legal representatives of original landholder Abhiman Chipdaji Kalmegh, i.e. respondents No. 4 to 13, were brought on record. The notices were issued to them. They were duly served. But none is represented.

6. I have heard the learned Counsel for the petitioners and the learned Assistant Government Pleaders for respondents No. 1 to 3.

7. The learned Counsel for the petitioners submitted that Sub-section (4) of Section 2 of the Ceiling Act defines appointed day. As the date of which the Act came into force. The Act came into force on 26-1-1962. Section 8 of the Ceiling Act prohibits transfer on or after the appointed day of land in excess of ceiling area held by any person until the land in excess of ceiling area is determined under the Act. u/s 10 of the Ceiling Act, any person transferring the land after 4th day of August, 1959 but before appointed day, in anticipation of or in order to avoid or defeat, the objects of the Ceiling Act, was liable to have such

transferred land computed in the ceiling area. The said section also provides that all the transfers made after 4th August, 1959 shall be deemed to have been made in anticipation of, or in order to avoid or defeat the objects of the Ceiling Act, unless the contrary is proved. Section 10 also provides as under:

If by reason of such transfer or partition the person's holding is less than the area so calculated to be in excess of the ceiling area, then all his land shall be deemed to be surplus land; and out of the land so transferred or partitioned and in possession of his transferee unless such land is liable to forfeiture under the provisions of Sub-section (3) land to the extent of such deficiency shall, subject to rules made in that behalf, also be deemed to be surplus land. Notwithstanding that the holding of the transferee may not in fact be in excess of the ceiling area.

8. Section 16 of the Ceiling Act enables a person holding land in excess of the ceiling area to retain such encumbered land up to the ceiling area. Sub-section (2) of the said section also provides that such person shall be entitled to select the lands he wishes to retain with himself, up to the ceiling area.

9. The learned Counsel for the petitioners submitted that the Revenue Authorities erred in allowing Abhiman Chipdaji Kalmegh to select the lands which he actually possessed for being retained with him and giving up the lands which he had transferred to others as surplus lands. He submitted that the entitlement to select the lands which the landholder wished to retain, contained in Sub-section (2) of Section 16 of the Ceiling Act was subject to the provisions of Sub-section (1) of the said section. Sub-section (1) of Section 16 categorically mentions that the provisions are subject to the provisions of Sub-section (1) of Section 10 and Section 15 and, therefore, inevitably, the Authorities were required to look into the provisions of Sections 10 and 15 of the Ceiling Act. The learned Counsel pointed out that in view of the part of the provisions of Section 10, quoted above, a landholder was liable to lose all his lands if his holding was less than the area calculated to be in excess and out of the lands transferred or partitioned and in possession of the transferee only lands to the extent of deficiency were deemed to be surplus lands. The learned Counsel, therefore, submitted that it is clear that the Legislature did not intend to punish the transferees by making them lose the lands for which they may have paid consideration, but made the transfer or liable to lose his own land, which is logical as well as reasonable. Therefore, according to the learned Counsel for the petitioners, who are the transferees, they cannot be made to lose the lands in their possession, because the landholder elected to give the lands transferred as surplus lands, retaining the other lands as his own.

10. The learned Assistant Government Pleaders appearing on behalf of the respondent Additional Commissioner, Amravati Division, Amravati, contended that all these transfers were effected to defeat the provisions of the Ceiling Act and, therefore, the transferees were not entitled to have their possession protected. There can be no quarrel with the proposition that the transfers in question are deemed to have been effected to defeat the provisions of the Ceiling

Act. The question is not whether these lands are to be computed in the holding of the landholder. The question is whether the landholder was entitled to elect to retain the lands not sold by him and to indicate the lands transferred as surplus lands. It is not possible to accept the contentions of the learned Assistant Government Pleaders, because allowing the landholder to indicate the lands transferred by him as surplus lands would amount to allowing him to pocket the consideration and also expose the transferees to the peril of losing their lands. The learned Assistant Government Pleader appearing in Writ Petition No. 3048 of 1994 submitted that the petitioner in the said writ petition is not the purchaser, but one, who has received the land as gift from Annapurna. There can be no doubt that the gift must have been without material consideration. All the same, having gifted away the property, it would not be open for Annapurna to ask the State to take over such gifted property as surplus land, if she indeed intended to give her own property to the petitioner in Writ Petition No. 3048 of 1994. It would be necessary for her to ensure that the donee enjoys the benefit of the property gifted, rather than turning the gift into an illusory nightmare where the donee is exposed to litigation in a maze of courts.

11. To recapitulate, the provisions of Section 10 of the Ceiling Act clearly indicate that the landholder is to lose the property in his possession first and only thereafter the property transferred is required to be taken over as surplus by the State. The right to elect the property to be retained by the landholder recognised in Sub-section (2) of Section 16 is subject to Sub-section (1) of the said section, which in turn makes the provision subject to the provisions contained in Section 10 of the Ceiling Act, with the result that the landholder would have to first give up the property in his possession as surplus before asking the Ceiling Authorities to touch the property transferred. Such property in the hands of the transferees can be taken over as surplus only to the extent of deficiency in taking over the entire land calculated as surplus.

12. In view of this, the impugned orders, all dated 1-8-1994, passed by the learned Additional Commissioner, Amravati Division, Amravati, identifying the lands, which came to the petitioners by transfer from Abhiman Chipdaji Kalmegh, as surplus lands liable to be taken over for distribution by the Government, deserve to be quashed and set aside and are accordingly quashed and set aside.

13. Rule is made absolute in the above terms. In the circumstances, there shall be no order as to costs.