
(1983) 11 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 216 of 1978

Soorat Singh Himachal Singh

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 30-11-1983

Acts Referred:

Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 — Section 9

Citation : (1984) JLJ 165 : (1984) MPLJ 187

Hon'ble Judges : U.N. Bhachawat, J; R.C. Shrivastava, J

Bench : Division Bench

Advocate : Lokendra Gupta, for the Appellant; M.A. Shah, Deputy Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

U.A. Bhachawat, J.

This is a petition under Articles 226 and 227 of the Constitution of India, whereby (he petitioner seeks a writ of certiorari for quashing the orders dated 27-12-1975 of the Competent Authority and Collector, Sagar (Annexure E), dated 11-8-1976 of the Additional Commissioner and Competent Authority, Sugar Division (Annexure F) and dated 29-4-1978 of the Member, Board of Revenue, Madhya Pradesh, Gwalior (Annexure G).

The short facts leading to this petition are these : The petitioner's family consisted--at the relevant time--of himself, his wife and a minor son. The petitioner held 83.12 acres of dry land, situated at Midwasa, Tahsil and District Sagar. Out of this land 1.30 acres was sold by him vide registered sale-deed dated 30-6-1972 to one Shibbu Gaud (respondent No. 6) and 4.13 acres to Raghuvir Singh son of Ramnath (respondent No. 5) vide registered sale-deed dated 25-1-1973. The petitioner contends that his family consisting of the aforesaid members, was a joint Hindu family and the agricultural land detailed hereinabove belonged to that family. The petitioner submitted a return relating to

the aforesaid land, which he contends, he had filed in his capacity of the Karta of the joint Hindu family--under section 9 of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (hereinafter, for short, referred to as the Act) before respondent No. 4, showing that his joint Hindu family held 81.05 acres of land, excluding the aforesaid transfers.

Respondent No. 5 prepared and published a draft statement in accordance with section 11 (1), (2) and (3) of the Act in respect of the petitioner's holding, showing that the petitioner held 83.12 acres of land; the petitioner was entitled to hold only 54 acres of the land in question and the remaining 29.12 acres of land was proposed to be declared as surplus.

The petitioner, on the publication and service of the draft statement referred to hereinabove on him, filed his objections to it within the time prescribed u/s 11(3) of the Act. The objections were as under:

(i) That the Joint Hindu Family, according to the deemed partition embodied in section 6(ii) of the Act, is entitled to hold 90 acres of land, each member of the Joint Hindu Family becoming a separate holder after deemed partition.

(ii) Shibbu Gond being an Adivasi and a landless agricultural labour, the transfer made to him was out of the scope of section 4(1) as it stood on the date of the sale.

(iii) That Khasra 110/2 village Patna Bujurg, Tahsil Raheli area 4.13 did not belong to the holder. In 1952 half of this land was purchased Benami in the name of Surat Singh though the land was purchased by Badan Singh. As Badan Singh had no money at the time of the purchase, and Surat Singh had paid the money, the name of Surat Singh was put in the sale-deed of 1952. When Badan Singh paid the consideration, Surat Singh executed a sale deed on 25-1-1973 in favour of Raghubir Singh minor grand son of Badan Singh.

(iv) That Nanhibai (respondent No. 7) had a right of maintenance over the joint Hindu family property, being widow of the brother of the petitioner.

Respondent No. 4, after due enquiry in the objections overruled them vide his order dated 27-12-1975 (Annexure E). Being aggrieved with this, the petitioner unsuccessfully filed an appeal and revision u/s 41 of the Act before respondents Nos. 3 and 2 respectively. Thereupon, the present petition has been filed

In the petition, various grounds have been raised, but the Learned Counsel for the petitioner, at the time of arguments, planned his argument to confine only to the two contentions, namely : (i) that the land in question was held by a joint Hindu family of the petitioner; that by virtue of the provisions contained in section 6(ii) of the Act, each member of the family was deemed to hold 1 /3 of the land in question as an independent holder--therefore, for determining the maximum extent of the land under the Act, section 7(1)(a)(3) applied, according to which there was no surplus land and the land held was below the limit prescribed under the Act and (ii) that the sales referred to hereinabove while

giving the resume of the facts, in favour of respondents Nos. 6 and 5, have been held to be void without holding an enquiry and deciding the question in accordance with section 4(1) of the Act.

The Learned Counsel for the respondents-State, reiterating the reasonings of the tribunals below, contended that the petition deserves to be dismissed.

We proceed to consider the aforesaid two contentions ad seriatim.

Contention No. (i): At the outset, it may be stated that while arguing about this contention, it was also debated by the Learned Counsel for the parties as to whether the petitioner's family was a joint Hindu family or not. The contention of the Learned Counsel for the State-respondent No. 1 was that from the findings of the impugned orders of the tribunals below, it is clear that it has been found that the petitioner's family did not constitute a joint Hindu family. The land in question did not belong to the joint Hindu family and the petitioner was the individual holder, whereas the contention of the Learned Counsel for the petitioner had been that the finding is otherwise, that is, the tribunals have held that there was a joint Hindu family and the land in question belonged to that family.

These counter-arguments have a bearing with the question of applicability of section 6(ii) of the Act.

In the light of the view that we are taking of the matter, we do not propose to go into this question and proceed to decide the matter on the assumption that the land in question was a joint Hindu family property.

Thus, proceeding on this assumption what has to be decided in contention No. (i) is the extent of the legal fiction created by section 6(ii) of the Act. The decision of this question involves the interpretation of section 2(h) which defines "holder", 2(gg) which defines "family", section 6(ii) and section 7 of the Act.

Before we proceed to dwell upon the aforesaid sections for determining the merits of the contentions raised by the Learned Counsel for the petitioner, it would be pertinent to point out that while construing the provisions of the Act, the broad objective with which the Act was enacted has to be borne in mind and also that our Constitution is caste blind and neither knows, nor tolerates classes amongst the citizens. In respect of civil rights, all citizens are equal before the law. It cannot be gainsaid that ours is a welfare State where there is prosperity, equality, freedoms and social justice where democracy and poverty vie with each other. The preamble and the directive principles go to show that we are committed to justice, social, economic and political. It directs the State to bring out a social order, in which justice social, economic and political, should inform all the institutions of national life; it enjoins on the State to bring about an egalitarian State where there is no concentration of wealth, where there is plenty, where there is equal opportunity to all to education, to work and to livelihood and where there is social justice. The Act is a mile-stone towards the

achievement of what has been enshrined in the preamble and the directive principles of the Constitution. It has been enacted with the sacrosanct object of providing land to the needy persons and thus to procure the progress of the socially and economically weaker sections of the society. The long title of the Act also indicates object of the Act as to provide for imposition of ceiling on agricultural holdings, acquisition and disposal of surplus land, and matters ancillary thereto. Therefore, it is in this background of the objectives that the various provisions of the Act have to be construed. We shall quote here with advantage an excerpt from the judgment of this Court in State of Madhya Pradesh Vs. Board of Revenue, Gwalior and Others, , wherein G.P. Singh, C.J., speaking for the Bench, has said :

In construing a provision in the Ceiling Act the broad objective of the Act has to be kept in view. The Ceiling Act is a social welfare legislation designed to implement the great objective of securing social justice enshrined in the Preamble and the Directive Principles of the Constitution. The object of the Ceiling Act is to make available surplus land to the Government for distribution to the needy. The rules of construction applicable to expropriatory legislation are not applicable here and language permitting the construction which best secures the object of the Ceiling Act must be preferred against others which seek to defeat agrarian justice.

Ere we proceed to dwell any further on the point at hand, it would be necessary to have a disquisition of the legal history of section 7 of the Act, since in view of the definition of "ceiling area" given u/s 2(d) of the Act, which reads thus:

"Ceiling area" means the maximum area of land which a holder is entitled to hold u/s 7;

it is this section which prescribed the maximum area of land which a holder could hold. Section 7 in the principal Act stood as under:

7. Maximum extent of land to be held by a person.-- (1) Subject to the provisions of this Act, no holder shall, as from the appointed day, be entitled to hold land, other than exempted land, in excess of twenty-eight standard acres.

(2) Notwithstanding anything contained in sub-section (1) where a holder has any one or more of his heirs specified in Schedule I, who do not hold any land in their own right and are dependent on him, such holder shall be entitled to hold land in excess of twenty-eight standard acres to the extent of five standard acres per each such heir not exceeding fifty-three standard acres in the aggregate :

Provided that where any such heir holds land in his own rights and the extent of such land is less than five standard acres, the holder shall be entitled on such heir's account, only to the extent by which the land of such heir falls short of five standard acres.

Thereafter, it was amended by M.P. Act No. 35 of 1960. Its amended form, so far as relevant, is set out hereinbelow:

(2) Notwithstanding anything contained in sub-section (I) where a holder other than a member of a joint Hindu family has any one or more of his heirs specified in Schedule I, who do not hold any land in their own right and are dependent on him, such holder shall be entitled to hold land in excess of twenty-five standard acres to the extent of five standard acres per each such heir not exceeding fifty standard acres in aggregate.

It was then amended by M.P. Act No. 12 of 1974. By this amendment, section 7 of the principal Act was altogether substituted, including its heading. By virtue of this amendment, in its amended form, it stood as under:

7. (1) Subject to the provisions of this Act, no holder shall, as from the appointed day, be entitled to hold land other than exempted land in excess of ten standard acres. Maximum extent of land to be held by a holder.

(2) Notwithstanding anything contained in sub-section (I) where a holder is a member of a family, the family shall be entitled to hold land as below:

(i) where the family consists of not more than live members. Fifteen standard acres.

(ii) where the family consists of more than five members. Eighteen standard acres."

It further underwent an amendment vide M.P. Act No. 13 of 1974. By virtue of this amendment, the whole of section 7 was substituted, including its heading, which is set out hereinbelow so far as is relevant:

7. Maximum extent of land to be held by a person or family. (1) Subject to the provisions of this Act, no holder or where the holder is a member of a family no such family, shall as from the appointed day, be entitled to hold land other than exempted land in excess of the land as is specified below :

*** **

Provided that where both the husband and wife hold land in their own rights, they shall continue to hold land within the ceiling area in proportion to the value of land held by each one of them before the appointed day.

(2) Where a holder who is a member of a family has a major son, such son shall be entitled to hold land separately from out of the land belonging to the family before the appointed day, subject to the ceiling area, specified in sub-section (1).

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(ii) land which a holder or member of a family has in a joint farming society as member thereof shall be treated as land held by such holder or member of a family.

Thereafter, it was again amended by M.P. Act No. 20 of 1974, consequent to which it stands in the present form, the relevant part whereof is set out

hereinbelow:

7. Maximum extent of land to be held by a person or family. (1) Subject to the provisions of this Act, no holder or where the holder is a member of a family, no such family, shall, as from the appointed day, be entitled to hold land other than exempted land in excess of the land as is specified below:

(a) where the holder is not a member of a family.

*** ** (3) dry land *** 30 acres.

(b) where the holder is a member of a family of five members or less.

*** ** (3) dry land *** 54 acres.

(c) where the holder is a member of a family of more than five members.

*** ** *

(3) dry 54 acres plus 9 acres for each member in excess of five subject to the maximum of 108 acres:

Provided that where all or any one of the members of a family is also holder and holds land in his own rights, the aggregate land which such family shall hold shall not exceed the ceiling area specified above and the members of the family shall continue to hold land within the ceiling area in proportion to the extent of the land held by each one of them before the appointed day.

(2) Where a holder who is a member of a family has one or more major sons, each such son shall, subject to the ceiling area specified in sub-section (1) for a holder, be entitled to hold land separately from out of the land belonging to the family before the appointed day, as if each such were a holder:

Provided that if such major son or a member of his family holds land in his own rights and the extent of such land is less than the ceiling area specified in sub-section (1) for the category of holders under which he (alls, he shall be entitled to hold land out of such family holding only to the extent by which the land held by him as on 1st January, 1971 falls short of the ceiling area;

It would be of significant relevance to point out that section 2(gg) was inserted in the principal Act by M.P. Act No. 12 of 1974, defining the term "family" for the first time simultaneously while amending section 7 of the Act, inter alia, deleting the expression "a joint Hindu family" and inserting the expression "family", instead.

1. The word "family" has been defined in section 2(gg) of the Act, which reads as under:

"family" means husband, wife and their minor children, if any" The Bill which preceded the M.P. Act No. 12 of 1974, inserting, inter alia, this definition of "family" in the principal Act, was the M.P. Ceiling on Agricultural Holdings

(Amendment) Bill, 1972 (Bill No. 15 of 1972) was published in the M.P. Rajpatra, dated 18th April, 1972. The statement of objects and reasons, published with the Bill was as follows:

The Central Land Reforms Committee constituted by the Government of India has recommended that the ceiling on agricultural holdings should be fixed with reference to family as a unit and the ceiling area per family should be between ten standard acres to eighteen standard acres. The Committee has also recommended that where, as a result of exemption from ceiling area, there is or there is likely to be, concentration of land with any particular person or class of persons because of the personal interests such person or class of persons have in the exempted land, then in such cases such exemptions should not be granted. With a view to implement the aforesaid recommendations as also to fulfil the basic purpose of the Act, it is proposed to amend the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 suitably.

It is a fact that most of the land-holders in the State are Hindus. The normal state of a Hindu family is joint. The concept of a joint Hindu family as to its constituent members is not the same as given in the definition of the "family" in the Act. It is much wider. A Hindu joint family does not necessarily consist only of husband, wife and their children. In this regard, we would rest by quoting the relevant excerpt from para 233 (1) from Mulla's book : "Principles of Hindu Law", 14th Edition :

(1) Presumption that a joint family continues joint.--Generally speaking, "the normal state of every Hindu family is joint. Presumably every such family is joint in food, worship and estate. In the absence of proof of division, such is the legal presumption". In other words, "given a joint Hindu family, the presumption is, until the contrary is proved, that the family continues joint". The presumption of union is the greatest in the case of father and sons. The strength of the presumption necessarily varies in every case.

The presumption is stronger in the case of brothers than in the case of cousins, and the farther you go from the founder of the family the presumption becomes weaker and weaker. The reason is that "brothers are for the most part undivided; second cousins are generally separated"; and third cousins are for the most part separated.

It is also a fact that most of the joint Hindu families do possess agricultural holdings as the property of the Hindu family and as such, that Hindu family is a holder of the land.

1. The object behind the enactment of section 7 of the Act in the present form coupled with its heading as also revealed by the statement of objects and reasons of the Bill preceding the amending M.P. Act No. 12 of 1974, extracted hereinabove in paragraph 14.01 above, is that the ceiling on agricultural holdings should be fixed with reference to family as a unit. Since, as discussed in the preceding paragraph, the state of Hindu family as to its constituent members and

its property is different from the concept of family amongst other communities in the State, viz., Mohammedans, Christians etc. and the Act relates to the civil rights obviously for the purpose of introducing an uniformity in the meaning of family irrespective of caste or community to which a holder belongs, the artificial definition of family was introduced in the Act.

2. A joint Hindu family and its property continue to be joint unless there is a severance effected therein. Obviously, therefore, for the purposes of this Act, section 6(ii) of the Act is there to effect a severance and partition by fiction of the joint Hindu family and its property. Section 6(ii) of the Act reads as under:

6. Certain persons deemed or not deemed to be holders for purposes of this Chapter-- For the purposes of this Chapter:

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(ii) where land is held by a joint Hindu family, each member of such family who is entitled to share in the joint family property shall be deemed to hold an area of such land proportionate to his share in the property to which he would be entitled if a partition were to take place on the appointed day;***

From the discussion contained in paragraph 15, it is transparently clear that the family that has been recognised as a unit for the purpose of determining the ceiling of agricultural holdings under the Act is the family as confined under the Act and not the joint Hindu family, as contemplated under the Hindu Law, though the Act takes notice of the existence of a joint Hindu family and its being a holder of agricultural lands, and because of that, as would be indicated hereinafter at an appropriate stage, section 7 of the Act has made provisions for the extent of the area of land that could be retained by its member entitled to a share in the agricultural holding of the family.

We would now revert to the main point at hand. As already said hereinabove in paragraph II of this order, we proceed on the assumption that the holding in question is of the joint family consisting of the petitioner, his wife and minor son. By operation of the fiction provided by section 6(ii) of the Act, there would be a notional partition on the appointed day, that is, the 7th of March, 1974 between these persons and each of them would be entitled to equal share in it, that is, 1/3rd share each. The holding according to the petitioner, admeasures 81.05 acres, excluding the fore-referred transfers and according to the respondents, the transfers cannot be excluded and it should be held to be admeasuring 83.12 acres. But, for the purpose of the decision of the question at hand, this rival contention is inconsequential. We assume that the holding admeasures 83.12 acres. Therefore, the share of each of the members of the family on the notional partition, would be 27 and odd acres.

1. Here, it would be pertinent to point out that sections 6 to 15 fall in Chapter 111 intituled as "Fixation of Ceiling Area, Determination of Surplus Land And Acquisition Thereof". The sequence in which sections 6 and 7 of the Act are

placed in the same Chapter is of vital significance in determining the extent of the fiction provided by section 6(ii) of the Act. The view is now settled that the headings or titles prefaced to sections or group of sections can be referred to in construing an Act of Legislature. In this regard we shall quote with advantage an extract from "Maxwell on Interpretation of Statutes", 10th Edition p. 10, which has been adopted and approved by their Lordships of the Supreme Court in *Bhinka and Others Vs. Charan Singh*, :

The headings prefixed in sections or sets of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute but they may explain ambiguous words.

Approving the above quotation, in that very decision, their Lordships held :

If there is any doubt in the interpretation of the words in the section, the heading certainly helps us to resolve that doubt.

It is also a well-settled canon of construction that there should be a harmonious construction; inconsistency and repugnancy to be avoided. The provisions of one section of a statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them (see *Mohammad Sher Khan v. Raja Seth Swami Dayal* AIR 1922 PC 17 at p. 19 and *Sanjeevayya D. v. Election Tribunal, Andhra Pradesh* AIR 1967 SC 1211 at p 1213).

2. Here, it would also be advisable to mention that it is a trite law that in interpreting a provision, creating a legal fiction, the Court has first to ascertain for what purpose, the fiction is created and thereafter, the Court has to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction; but in so construing, it is not to be extended beyond the purpose for which it is created. (See *State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others*, , *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, , *Produce Exchange Corporation Ltd. Vs. Commissioner of Income Tax (Central), Calcutta*, and *Commissioner of Income Tax, Gujarat Vs. Vadilal Lallubhai, etc. etc.*, . At this stage, we may quote with advantage the often quoted passage of Lord Asquith as under:

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it..... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs. (See *Ease End Dwelling Company Ltd. v. Finsbury Borough Council* (1951) 2 All ER 587 (HL 589))

In the light of the above discussion, the result that is obtainable is that even after the notional partition between the three persons of the joint family by

virtue of Section 7 of the Act, these persons shall fall within the purview of a family and the area which they are entitled to hold shall be determined with reference to Section 7(1)(b) of the Act. Consequently, it would be 54 acres of land as determined by the tribunals. The Learned Counsel for the petitioner had contended that all these three persons, as a consequence of the notional partition u/s 6(ii) of the Act should be treated as separate holders and their extent of holding is liable to be determined, treating them as an individual holder--not as a member of family--with reference to Section 7(1)(a) of the Act. In support of this contention, it was argued that once a notional partition is there, to treat them as a family would tantamount to negative the effect of the notional partition or reunite the family, which can only be done with the agreement between the parties. The argument of the Learned Counsel for the petitioner, though attractive, is devoid of substance. As already stated hereinabove, the two sections, namely, sections 6 and 7 which fall in the same Chapter, have to be construed harmoniously and ultimately to determine the ceiling area which a holder is entitled to hold u/s 7 of the Act. These two sections are harmoniously construed in this manner that after the notional partition u/s 6(ii) of the Act, the persons falling within the purview of the definition of "family" shall be treated to be one unit. The extent of the fiction provided in Section 6(ii) of the Act is, thus controlled by Section 7 of the Act.

1. This is so by virtue of the Proviso to Section 7(1) of the Act according to which, where all or any one of the members of family is also a holder and holds land in his own right, the aggregate land which such family shall hold shall not exceed the ceiling area specified in Section 7(1)(b) or (e) of the Act, as the case may be. In the instant case, Section 7(1)(b) of the Act would apply because the strength of the members of the family is less than live. It would be advisable to iterate that the meaning of the word "family" that is to be assigned in section 7(1) of the Act is the one given in the definition of "family" in Section 2(gg) of the Act. This is clear that by virtue of the M.P. Act, No. 12 of 1974, the expression "joint Hindu family" which was introduced by M.P. Act No. 35 of 1960 in Section 7(ii) of the principal Act was deleted and it was substituted by the word "family". "When the legislature, in legislating in *pari materia* and substituting certain provisions in that Act for those which existed in the earlier statute, has entirely changed the language of the enactment, it must be taken to have done so with some intention and motive (see *R. v. Price*) 1871 L R 6 QB 411, pp. 416, 417." To the same effect are the observations of Lord Macmillan: When an amending Act alters the language of the principal statute, the alteration must be taken to have been made deliberately". (See *D.R. Fraser and Company Ltd. v. Minister of National Revenue*) AIR 1949 PC 120 123. In *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, it was observed by their Lordships: "The dropping of the word "reduce" and its substitution by the word "modify" was on this principle construed to give to the word "modify" a wider connotation so as to include not only reduction but also other kinds of alteration including enhancement." Similarly, in the instant case, because of the

deletion of the expression "joint Hindu family" and its substitution by the word "family" the only intention that has to be assigned to the Legislature is that the word "family" has to be assigned the meaning given in the definition--of course, according to the expression "unless the context otherwise requires" with which all these definitions are prefaced in Section 2 of the Act, if the context requires otherwise, a different meaning can be given to the word "family", but the Learned Counsel for the petitioner was unable to point out any such context and we too do not find any such context so as to assign any other meaning.

We are supported in the view taken by us that the ceiling has to be fixed with reference to family as a unit by the Statement of Objects and Reasons preceding the Amendment Bill for the Amendment Act No. 12 of 1974 as also by the rubric of Section 7 of the Act. To iterate, "or family". We are further supported in this view by a decision of the Supreme Court in *Hasmukhlal Dahayabhai and Others Vs. State of Gujarat and Others*, and *State of Maharashtra Vs. Vyasendra*, while interpreting the provisions of the Gujarat Agricultural Land Ceiling Act and of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act and determining the ceiling limit of a holding of a family unit. Before we set out the relevant excerpts from the aforesaid two decisions, we would like to say that though the relevant provisions are not just in the similar words as of Section 7 of the Act, the distinction between them is one without a difference. Substantially, they are closely similar. It would be apt to juxtapose them against each other along with the provisions of the Act:

Gujarat

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-sections (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 minor 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

(3A) xx xx

(3B) xx xx

(3B) Where a family or a joint family consists of more than five members

comprising a person and other members belonging to all or any of the following categories, namely:

(i) minor son.

(ii) widow of a predeceased son,

(iii) minor son or unmarried daughter of a pre-deceased son, where his or her mother is dead,

Such family shall be entitled to hold land in excess of the ceiling area So the extent of one-fifth of the ceiling area for each member in excess of the, 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 to such family for the purpose of determining the total holding of such family :

Provided further that where, in consequence of any member of such family holding any land in any other part of India outside the State, the ceiling area in relation to the family is reduced as provided in sub-section (3A), the one-fifth of the ceiling area as aforesaid shall be calculated with reference to the ceiling area as would have been applicable had no such land been held by such member in any other part of India.

(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). (Quoted from the above report)

Maharaslitra

Land held by family unit --(1) All land held by each member of a family unit, whether jointly or separately, shall for the purposes of determining the ceiling area of the family unit, be deemed to be held by the family unit.

Explanation?A "Family unit" means,--(a) a person and his spouse (or more than one spouse) and their minor sons and minor unmarried daughters, if any; or

(b) where any spouse is dead, She surviving spouse or spouses, and the minor sons and minor unmarried daughters; or

(c) where the spouses are dead, the minor sons and minor unmarried daughters of such deceased spouses."

(Extracted from the above report)

Madhya Pradesh, Maximum extent of land to be held by a person or family. (1) Subject to the provisions of this Act, no holder or where the holder is a member

of a family, no such family, shall, as from the appointed day, be entitled to hold land other than exempted land in excess of the land as is specified below:

(a) where the holder is not a member of a family.

(1) land capable of yielding two crops and receiving assured irrigation or assured private irrigation for both the crops--10 acres

(2) land capable of yielding one crop and receiving assured irrigation or assured private irrigation for the crop--15 acres

(3) dry land--30 acres

(b) where the holder is a member of a family of five members or less.

(1) land capable of yielding two crops and receiving assured irrigation or assured private irrigation for both the crops; 18 acres.

(2) land capable of yielding one crop and receiving assured irrigation or assured private irrigation for the crop; 27 acres.

(3) dry land; 54 acres.

(c) where the holder is a member of a family of more than five members.

(1) land capable of yielding two crops and receiving assured irrigation or assured private irrigation for both the crops; 18 acres plus 3 acres for each member in excess of five subject to the maximum of 36 acres.

(2) land capable of yielding one crop and receiving assured irrigation or assured private irrigation for the crop; 27 acres plus 4.50 acres for each member in excess of five subject to the maximum of 54 acres.

(3) dry. 54 acres plus 9 acres for each member in excess of five subject to the maximum of 108 acres:

Provided that where all or any one of the members of a family is also holder and holds land in his own rights, the aggregate land which such family shall hold shall not exceed the ceiling area specified above and the members of the family shall continue to hold land within the ceiling area in proportion to the extent of the land held by each one of them before the appointed day.

(2) Where a holder who is a member of a family has one or more major sons, each such son shall, subject to the ceiling area specified in sub-section (1) for a holder, be entitled to hold land separately from out of the land belonging to the family before the appointed day, as if each such son were a holder:

Provided that if such major son or a member of his family holds land in his own rights and the extent of such land is less than the ceiling area specified in sub-section (1) for the category of holders under which he falls, he shall be entitled to hold land out of such family holding only to the extent by which the land held by him as on 1st January, 1971, falls short of the ceiling area:

Provided further that no major son shall be entitled to have land under the preceding proviso, unless he files before the competent authority a declaration in such form and within such period as may be prescribed.

In computing the ceiling area under sub-section (1)?

(i) Orchards other than banana gardens and vine-yards shall be treated as dry land; and

(ii) land which a holder or member of a family has in a Joint Farming Society or any other Co-operative Society as member thereof shall be treated as land held by such holder or member of a family;

(iii) One acre of land capable of yielding two crops and receiving assured irrigation or assured private irrigation for both the crops shall be equal to 1.5 acres of land capable of yielding one crop and receiving assured irrigation or assured private irrigation for the crops or three acres of dry land.

Explanation?For purposes of this section different kinds of crops grown in either Rabi or Kharif season shall be deemed to be one crop.

Justice Brett has, in *Dickenson v. Fletcher* (1873) LR 9 CP 1, pp. 7, 8 observed :

Where two statutes dealing with the same subject-matter use different language, it is an acknowledged rule of construction that one may be looked at as a guide to the construction of the other. In the instant case, to iterate, from the three provisions placed in juxtaposition, it would be clear that section 7(1) (b) and (c) of the Act read with the Proviso, is substantially the same as the provisions of the Gujarat and Maharashtra Acts on the subject. The relevant extracts from the fore-quoted decisions of the Supreme Court are as under:

Gujarat case:

Section 6(2) of the Act does not either disable a husband or wife from owning or holding their separate properties separately. It does not merge or destroy their separate legal personalities. It requires their separate holdings to be grouped together as though they were held by one person only for the purpose of determining the ceiling limit for each member of a family. It may indirectly have the effect of disabling a member of a family from holding land upto the prescribed ceiling limit for a person holding as an individual. In other words, the result is that such a member of a family will have to be content with a holding less than that of an unmarried individual. But there is no prohibition enacted by the second proviso to Article 31A(3) against different ceiling limits prescribed for various individuals or classes of individuals differently situated. Nor does the second proviso to Article 31A(1) prescribe any particular or direct mode of imposing different ceilings on individuals differently circumstanced. The ceiling limit may vary from individual to individual. These varying limits may result from the combined effect of several provisions. The prescription of different ceiling limits for different individuals, differently circumstanced, could be enacted

directly by a single provision dealing with individual ceiling limits, or, alternatively, it could be the consequence of several provisions dealing with differing sets of circumstances. No part of the second proviso to Article 31A(1) of the Constitution was infringed by section 6(2) of the Act, and, even if rights conferred on individuals by the 2nd proviso to Article 31A(1) were infringed in any way, provisions of Article 31B of the Constitution are enough to repel an attack based upon such an alleged infringement. Both Articles 31A(1) and 31B are intended to operate as protections against consequences of what could otherwise be breaches of the Constitution. It cannot be held that legislation falling under any part of Article 31A(1) of the Constitution, including the provisos cannot receive also the protection contemplated by Article 31B of the Constitution. There is nothing, in our Constitution to bar any statute from receiving a dual protection of both Articles 31A(1) and 31B of the Constitution if the conditions of each are satisfied.

Maharashtra case:

It is clear from these provisions that all land held by each member of the family unit, whether jointly or separately, is to be deemed to be held by the family unit, for the purpose of determining the ceiling area which the family unit may retain. The expression "family unit" is defined by the Explanation to mean "a person and his spouse.....". The circumstance that the land held by a constituent member of the family unit is separate property or stridhan property is a matter of no consequence whatsoever for the purpose of determining the ceiling area which the family unit can retain. The respondent, his wife and their minor sons and minor unmarried daughters, if any, are all constituent members of the family unit and all the lands held by them have to be pooled together for the purpose of determining the ceiling area which is permissible to the family unit. The nature or character of their interest in the land held by them is irrelevant for computing the ceiling area which the family unit may retain. The High Court was, therefore, in error in directing the Tribunal to inquire into the question as to whether the land which stood in the name of the respondent's wife and which was sold by her was her personal or separate property. Assuming it was so, it is still liable to be aggregated with the land held by the respondent.

The upshot of the foregoing discussion is that contention No. (i), raised by the Learned Counsel for the petitioner, has to be repelled; it is accordingly repelled and it is held that the determination by the Tribunals below that the petitioner's family, that is, himself, his wife and minor son, are entitled to only 54 acres of dry land u/s 7(1)(b) of the Act and the remaining land is surplus is correct and calls for no interference by us.

We now turn to the consideration of the second contention. It is significant to note that by the declaration of the fore-quoted transfers as void by the Competent Authority substantially the persons affected are the transferees. The transferees appear to have been satisfied with the findings of the tribunals below inasmuch as neither they have joined as the petitioners, nor have they appeared

in this Court even though they have been joined as respondents, to challenge that finding of the tribunals and as such, the petitioner is not entitled to raise a grievance alleging that those transferees were not noticed and as such, the finding of the Competent Authority is void. This apart, as observed by the tribunal respondent No. 2, this question was not raised by the petitioner in an appeal against the order of the Competent Authority--though he could have done so--and as such, he is not entitled to raise it before this Court in the petition under Article 226 of the Constitution. We would like to set out hereinbelow the relevant excerpt from the order of respondent No. 2. It reads as under :

4. As regards first contention of Shri Dwivedi that a notice was not given to the holder u/s 4(1) of the Act, it is pointed out that applicant could have agitated against the order of the Competent Authority by filing an appeal u/s 4(2) of the Act. Revisional jurisdiction cannot be exercised in respect of an order against which appeal lies. The statute itself bars the applicant in this regard.

For the foregoing reasons, the contention No. (ii) is also repelled.

In the result, the petition fails and is accordingly dismissed. We, however, in the facts and circumstances of the case, direct the parties to bear the costs, as incurred. The outstanding amount of security, if any, be returned to the petitioner.