

(2004) 02 BOM CK 0009

In the Bombay High Court

Case No : Writ Petition No. 1866 of 1991

State of Maharashtra

APPELLANT

Vs

Anjanabai Deshmukh and Others

RESPONDENT

Date of Decision : 16-02-2004

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 3(3)

Citation : (2004) 4 MhLj 503

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : S.Y. Deopujari, A.G.P, for the Appellant; A.M. Bapat, for the Respondent

Final Decision : Dismissed

Judgement

S.T. Kharche, J.—Heard the learned counsel for the parties.

2. This writ petition takes an exception to the common order dated 27-2-1989 passed by the Maharashtra Revenue Tribunal (MRT) in two appeals, i.e. ALC. A. 3 of 1989 and ALC A. 22 of 1989, whereby the order passed by the Surplus Land Determination Tribunal (SLDT) was modified in arriving at the conclusion as to what was the land declared to be surplus held by family unit of Shankarao Narayan Deshmukh.

3. Relevant facts are as under :

One Shankarao Narayan Deshmukh, the husband of Anjanabai, respondent No. 1, son-Prataprao, respondent No. 2 and daughter-Ratnabai, respondent No. 3 owned agricultural land. Shankarrao died during the pendency of the proceedings, and therefore, his legal heirs were brought on record. The suo motu proceedings were initiated by the SLDT in the year 1988. Deceased Shankarrao did not file return as is required u/s 12 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short, the Ceiling Act). The SLDT passed the order in 1988 declaring land surplus. The legal heirs as well as the aggrieved

person i.e. respondent No. 4 Arvind Kadam had preferred appeal before the MRT which came to be decided on 18-7-1988. The MRT allowed the appeal and remanded the matter back to the SLDT for fresh enquiry. Thereafter the SLDT held enquiry and by the order dated 31-12-1988 declared the surplus land i.e. to the extent of 102.09 acres. The land bearing survey No. 49 admeasuring 18.31 acres is owned by respondent No. 4 Arvind and it is situated at village Pimpalgaon. This land was found to have been in cultivation of the original land holder Shankarrao, and therefore, the SLDT completed necessary formalities and ultimately by the order dated 31-12-1988, held that the respondent Nos. 1 to 3 had surplus land to the extent of 102.09 acres. Being aggrieved by this order, the respondent Nos. 1 to 3 carried appeal to the MRT bearing appeal No. ALC.A.3 of 1989. So also the respondent No. 4 had carried appeal to the MRT which was numbered as ALC.A. 22 of 1989. Both these appeals were heard together on merits by the MRT and ultimately decided both the appeals by common order dated 27-2-1989. The MRT reversed the finding of the SLDT and came to the conclusion that the land admeasuring 18.31 acres owned by respondent No. 4 Arvind Kadam would not be liable to be included while determining the surplus land and consequently allowed the appeal filed by the respondent No. 4. However, the learned Member of the MRT partly allowed the appeal filed by respondent Nos. 1 to 3 and held that Prataprao is the son of Shankarrao, and therefore, the holdings of Shankarrao were to be partitioned notionally and accordingly had effected notional partition and the MRT recorded findings that the land admeasuring 46.72 acres is liable to be excluded while determining the surplus land. These findings are challenged in this writ petition.

4. The contention of learned Assistant Government Pleader is two fold. Firstly, that the Member of the SLDT was perfectly justified in inclusion of the land admeasuring 18.31 owned by respondent No. 4 Arvind Kadam, because the land was found to have been under cultivation of Shankarrao since 26-9-1970 to 2-10-1975 which is deemed to have been held by him as a tenant. He contended that the Member of the MRT without any reason has set aside the findings of the SLDT and held erroneously that the land admeasuring 18.31 acres standing in the name of Arvind Kadam was not liable for inclusion in the total holdings of Shankarrao while determining the surplus land. He further contended that the land owned by Arvind Kadam, respondent No. 4 was purchased by his father Anandrao Kadam in an auction in Revenue Case No. 22/14/58-59 of Pimpalgaon and the sale certificate was also issued in the name of respondent No. 4. He contended that though the land was purchased in the name of minor Arvind, it was being cultivated continuously by Shankarrao, and therefore, the finding of the MRT cannot be sustained in law so far as the land admeasuring 18.31 is concerned.

5. The second contention of learned A.G.P. is that the learned Member of the MRT, without any pleadings or proof had computed the surplus land on the basis of notional partition and excluded the share of Prataprao, admeasuring to 46.72 acres i.e. 1/3rd while determining the surplus land. He contended that

Shankarrao or his legal heirs did not raise this point of notional partition before the SLDT, and therefore, the learned Member of the MRT has committed an error in adverting to this point of notional partition while disposing of the aforesaid appeals and erroneously held that the land which would have been allotted in the share of Prataprao, was liable to be excluded by effecting notional partition. He contended that it was not open for the Member of the MRT to consider this issue of notional partition for the first time while deciding the appeals especially when no contention was taken at any time before the SLDT right from the year 1988 till the conclusion of the SLDT proceedings, i.e. till 31-12-1988. He further contended that in these circumstances, the impugned common order passed by the MRT cannot be sustained in law and is liable to be set aside.

6. Mr. Bapat, the learned counsel for the respondents contended that the land admeasuring 18.31 acres was purchased by the father of Arvind Kadam in an auction held by the revenue authorities and the sale certificate was issued in the name of minor Arvind. He contended that simply because Shankarrao was cultivating the land for sometime before the institution of these proceedings, it did not follow that the said land was held by Shankarrao as a tenant and is liable to be included while determining the surplus land. He contended that the definition of land appearing in Sub-section (14) of Section 2 would clearly mean that, "to hold land" with its grammatical variations and cognate expressions, means to be lawfully in actual possession of land as owner or as tenant; and "holding" shall be construed accordingly". He therefore contended that the MRT was perfectly justified in coming to the conclusion that the land held in the name of Arvind Kadam is liable to be excluded while determining the surplus land of Shankarrao Deshmukh and rightly set aside the finding of the SLDT so far as this land is concerned.

7. Secondly, the bone of contention of Mr. Bapat is that Prataprao is the son of deceased Shankarrao and his age on the date of initiation of proceedings was 38 years and he was major. He contended that in view of Section 3(3)(i) of the Ceiling Act, the Member of the MRT was entitled to take into consideration, notional partition and to exclude the land which would have been allowed to the share of Prataprao in partition while computing the surplus land. He contended that when the land is held by a family of which the person is a member, the share of each member of the family shall be determined so that each member who is entitled to a share on partition, shall be taken to be holding separate land to the extent of his share, as if the land had been so divided and separately held on the relevant date. In support of this submission, he relied on the decision of Single Bench of this Court in the case of Kamalabai v. State of Maharashtra 1977 M.L.J. 450.

8. I have carefully considered the contentions canvassed by the learned counsel for the parties. The relationship between the parties is not in dispute so also it is not disputed that respondent No. 1 Anjanabai is widow, respondent No. 2 is son and respondent No. 3 is married daughter of deceased Shankarrao Deshmukh,

who was holding agricultural land which was the subject-matter of the ceiling proceedings initiated suo motu by the SLDT sometime in the year 1988. It is also not in dispute that respondent No. 4 is related to deceased Shankarrao and he is son of the sister of deceased Shankarrao Deshmukh. It is also not in dispute that Anandrao, who is father of Arvind Kadam had purchased the agricultural land bearing survey No. 49 admeasuring 18.31 acres situated at village Pimpalgaon in the year 1959 in an auction in the revenue case and accordingly sale certificate was issued in the name of Arvind Kadam on 6-11-1959 wherein the name of his father was shown as a guardian in the certificate. However, it is also undisputed position that this land was found to have been cultivated by deceased Shankarrao and the SLDT had taken into consideration the entries recorded in the crop statement for the period 26-9-1970 to 2-10-1975. It is, on this basis, the SLDT had come to the conclusion that Shankarrao must have been cultivating the land as a tenant, and therefore, included the said land in the total holdings of Shankarrao while determining the surplus land. This finding is neither legal nor correct as it is not based on the evidence.

9. The learned Member of the MRT has taken into consideration the factual position as well as the provisions of law and has reversed the findings of the SLDT and had rightly come to the conclusion that Shankarrao was not owner or tenant of this agricultural holdings i.e. survey No. 49 admeasuring 18.31 acres of land and therefore, it cannot be said that the said land could be treated as holdings of Shankarrao. This finding of the MRT cannot be said to be erroneous and at this juncture, it is necessary to reproduce the definition of land as contemplated u/s 2(14) of the Ceiling Act, which reads thus; "to hold land" with its grammatical variations and cognate expressions, means to be lawfully in actual possession of land as owner or as tenant; and "holding" shall be construed accordingly."

10. Having regard to the definition of the land in the Ceiling Act, it is clear that while construing the holding of any person, it is necessary that either the holder of the land is a owner of that land, or he is lawfully cultivating it as a tenant. In the present case, simply because Shankarrao was in actual physical possession of the said land and was cultivating it as per the crop statement for the period 26-9-1970 to 2-10-1975, it cannot be said that the said land admeasuring 18.31 acres could be said to be the land which shall be construed as holding of Shankarrao within the meaning of definition of land reproduced hereinbefore. Therefore, the learned Member of the MRT was perfectly justified in reversing the findings of the SLDT on this point and has rightly come to the conclusion that the land admeasuring. 18.31 acres which was owned by Arvind Kadam is liable to be ignored while construing the total holdings of Shankarrao Deshmukh. Therefore, no case has been made out to interfere into the findings of the learned MRT and consequently the contention of the learned A.G.P. for the petitioner that the said land should have been included by the MRT while construing the land of Shankarrao for determination of surplus land is misconceived and cannot be accepted.

11. Now, so far as the land admeasuring 46.72 acres which was to be taken into consideration as a share of Prataprao is concerned, it is not disputed that Prataprao is a son of Shankarrao and he was major on the date of ceiling proceedings and at this juncture it is necessary to reproduce Section 3 of the Ceiling Act, and it contemplates as under :

"3. Prohibition on holding land in excess of ceiling area and area in excess of ceiling to be surplus land.

(3) Where any land --

(a) is held by a family of which a person is member.

(b) is held in or operated by a co-operative society of which a person is a member,

(c) is held by a person jointly with others,

(d) is held by a person as a partner in a firm,

and the holding of such person or of a family unit of which such person is a member (including the extent of share of such person, if any, in the land answering to any of the descriptions in Clauses (a), (b), (c), or (d) above) exceeds the ceiling area on or before the commencement date or on any date thereafter (hereinafter referred to as the relevant date), then for purpose of determining the ceiling area and the surplus land in respect of that holding, the share of such person in the land aforesaid shall be calculated in the following manner :--

(i) in the land held by a family of which the person is a member, the share of each member of the family shall be determined so that each member who is entitled to a share on partition, shall be taken to be holding separately land to the extent of his share, as if the land had been so divided and separately held on the relevant date;

(ii) in the land held in or operated by a co-operative society or held jointly with others or held by a firm, the share of the person shall be taken to be the extent of land such person would hold in proportion of his share in the co-operative society or his share in the joint holding or his share as partner in the firm, as if the land had been so divided and separately held on the relevant date."

12. Simple reading of the aforesaid provisions of Section 3(3)(i) of the Ceiling Act would show that where any land is held by a family of which a person is a member and the holding of such person or a family of which such person is a member including the extent of share of such person, if any in the land answering to any of the descriptions in Clauses (a), (b), (c) or (d) above, exceeds the ceiling area on or before the commencement date or on any date thereafter (hereinafter referred to as the relevant date), then for purpose of determining the ceiling area and the surplus land in respect of that holding, the share of such person in the land aforesaid shall be calculated in the manner

prescribed for the same.

13. In *Kamlabai w/o Govindrao and Ors. v. State of Maharashtra and Ors.* 1977 M.L.J. 450, this Court held that; for the purposes of Section 3(3)(ii), Maharashtra Agricultural Lands (Ceiling on Holdings) Act is not necessary that the person whose share is to be excluded should make a claim before the Tribunal. The shares have to be determined in accordance with the Hindu Succession Act where it applies and not on the basis of claims made by members. Whether more or less or no claim is made by them it is the duty of the authorities to calculate the shares according to provisions of the Hindu Succession Act as the words to be emphasised in Section 3(3)(ii) are "the share of the person shall be taken to be the extent of land such person would hold in proportion of his share in the joint holding".

14. The Single Bench of this Court was dealing with the similar question and on taking into consideration the purpose of Section 3(3)(i), held that it was not necessary to file a return u/s 12 claiming that the husband of the petitioner died on 27-8-1975 leaving behind him, herself, two minor daughters, father and mother. This Court clearly observed that the Tribunals have erroneously assumed that in a case like the present one, the mother ought to have made a claim before the Tribunal for the purposes of Section 3(3)(c)(ii) of the Act before her share can be recognised while calculating the surplus land. Such an assumption is unwarranted by the provisions of law. The law only requires a calculation to be made of the surplus land on the basis of a fictional or notional partition to be conceived by the mind only for the purpose of calculating the holdings. In that view of the matter, the learned Single Judge declared that the petitioner No. 1 was not surplus holder and the share of the mother was excluded from the title holdings of the owner.

15. In the present case also it was not necessary for Prataprao or Shankarrao to plead before the SLDT for exclusion of the land falling to the share of Prataprao. The learned Member of the MRT rightly considered the position of law and also on appreciation of the evidence, rightly came to the conclusion that the total holdings of Shankarrao would be liable for notional partition. It is not in dispute that Prataprao is son, Anjanabai is widow and Ratnabai is daughter of deceased Shankarrao, and therefore, as per the provisions of Section 6 of the Hindu Succession Act, 1956, it is obvious that notional partition effected by the MRT was perfectly justified while excluding 1/3rd share of Prataprao while construing the total holdings of deceased Shankarrao. It is absolutely not necessary for the owner to make out a case for notional partition while construing the total holdings of the owner, and therefore, contention of learned A.G.P. that without pleading or proof it was not open for MRT to take into consideration the notional partition is clearly misconceived and liable to be rejected and in that view of the matter, no fault or error could be found with the order passed by the learned Member of the MRT. In the result, no case is made out for interference into the impugned order, and therefore, writ petition is dismissed and in the

circumstance, with no order as to the cost. Rule is discharged.