

(1998) 10 SC CK 0035
In the Supreme Court Of India
Case No : C.A. No. 1915 of 1991

State of Maharashtra

APPELLANT

Vs

Vithalrao Ganpatrao Warhade

RESPONDENT

Date of Decision : 15-10-1998

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 10(1),
2(11A), 2(22), 4(1), 5

Citation : AIR 1999 SC 239 : (1998) AIRSCW 3605 : (1998) 7 JT 177 : (1998) 5 SCALE 603 : (1998) 8 SCC 284 : (1998) 2 SCR 323 Supp : (1998) 8 Supreme 276

Hon'ble Judges : S. P. Kurdukar, J; M. Jagannadha Rao, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

M. Jagannadha Rao, J.—The State of the Maharashtra has filed this appeal against the judgment of the High Court of Bombay dated 12.1.1982 in Special Civil Application No. 4026 of 1976. By that judgment, the learned Single Judge allowed the respondent's application filed under Article 227 of the Constitution of India and set aside the order of the Maharashtra Revenue Tribunal, Nagpur dated 15.7.1976 and the earlier order of the Surplus Land Determination Tribunal dated 27.5.1976 and held that land covered by several alienations made by the declarant, Sri Vithalrao Ganpatrao Warhade during the period 26.9.1970 and 19.9.1975 was to be excluded from the holding of the declarant in view of the proviso to Section 4(1) of the Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961 (as amended by Maharashtra Act, 1972 (Act XXI of 1975) and as amended by Maharashtra Act, 1975. (Maharashtra Act XLVII of 1975). We shall be referring to the amending Act, 1972 (Act XXI of 1975) as the Amending Act, 1972 and the amending Act XLVII of 1975 as the Amending Act, 1975.

2. We shall now refer to a few facts. Upon public notice being given on 12.3.1976, the land holder gave a list of various lands owned by his 'family unit'.

The primary Tribunal in its order dated 27.5.76 came to the conclusion that the landlord owned Ac. 90.38 and was entitled to retain Ac. 54.00 plus Ac. 5.38 potkharab and Ac. 2.26 of non-agricultural land and that Ac. 3.80 sold for compelling necessity was not liable to be included in his holding. Other sales were not liable to be excluded. The balance of Ac. 29.94 were held surplus and were to be surrendered. The appellate Tribunal, in its order dated 15.7.76 held that the plea regarding a partition dated 15.1.1970 between the declarant, his wife and son was not seriously contended but in any event, the land held by the wife had to be blobbed with that held by the husband in view of the Section 4 of the principal Act of 1961, as amended. Further, the partition was unregistered and the declarant's son was a minor at mat time. The appellate Tribunal held that there was no case made out for excluding the land covered by other sales inasmuch as there was no proof that the sale of lands for Rs. 50,000 was spent for purchasing better quality of land. Only Rs. 15,000 was spent for purchasing other land and the bulk of the consideration was spent for construction of a house at Nagpur and that could not, according to the appellate Tribunal, be considered as a sufficient reason for claiming exclusion of the other lands also, inasmuch as no compelling necessity was proved. The appeal was, therefore, dismissed.

3. In the High Court, the declarant claimed exclusion of lands sold by him and also lands sold by his wife between 26.9.70 and 19.9.75. He contended that the extent so sold was liable for exclusion under the proviso to Section 4(1) of the Act. The partition dated 15.1.1970 was also relied upon and it was also contended that the extent of land got by the declarant's wife from her parents before 26.9.70 was also liable to be excluded. It was contended for the declarant that the 'family unit' concept was brought into force initially w.e.f. 19.9.1975 when the ceiling area was also reduced by the Amending Act of 1972, but as on 19.9.1975 the proviso to Section 4 permitted exclusion of lands acquired before 26.9.70 by the members of the family unit-by testamentary disposition or devolution on death or by operation of law or by partition effected before 26.9.1970 and mat, therefore, the extent of land transferred by the declarant and his wife out of such lands which fell within these categories, stood excluded as on 19.9.1975. When the lands so held stood altogether excluded from the holding as on 19.9.1975, men even if by the Amending Act of 1975 which came into force on 20.9.1975, the proviso to Section 4 permitting such exclusion was deleted, those lands do not get included in the holding again since the latter Amending Act of 1975 (Act XLVII/75) was effective from 20.9.1975 only and not from 19.9.1975. Hence, there was no question of testing the validity of those transfers of excluded land, on the anvil of Section 10(1), i.e. Whether they were intended to defeat the provisions of the "Amending Act of 1972". Further the words in Section 10(1) "in order to avoid or defeat the object of the Amending Act, 1972," - would mean the object of the 1961 Act as amended by the 1972 Amendment (w.e.f. 19.9.1975) when the proviso to Section 4(1) was intact, those words could not be taken as referable to the Act of 1961 as further

amended by the 1975 Act (w.e.f. 20.9.1975) which deleted the proviso to Section 4(1). In other words, if the lands were acquired in the manner stated in the proviso to Section 4(1) and then stood excluded as on 19.9.1975, the bona fides of the transfers of those lands could not be considered in the context of Section 10 any longer, merely because the proviso to Section 4(1) was dropped by Amending Act (XLVII of 1975), w.e.f. 20.9.1975.

4. The High Court accepted this contention of the respondent and held that it was not necessary to go into the bona fides of the sales u/s 10(1) inasmuch as the land covered by the sales stood excluded as they fell in the category of lands referred to in the proviso to Section 4(1), and hence there was no question of deciding if they were intended to defeat the provisions of the "Amending Act, 1972 as amended by the 1975 Amendment". According to the High Court.

"the Amending Act, 1972 enabled a person to hold land separately if he owned and possessed the same since prior to 26.09.1970 and the said lands were not to be computed in the assessment of the family unit."

5. The High Court, stated that it therefore, followed that if such a member of the family unit transferred land falling within the proviso to Section 4, there could be no question of any intention to avoid or defeat the object of the Amending Act, 1972, (before the farther amendment by Amending Act of 1975) in as much as the 1972 Amending Act itself provided that such separate land could not be computed in the family unit. The High Court further held:

"This Explanation to Section 10 regarding the deeming provision only relates to assuming an intention on the date of the transfers of avoiding or defeating the object of the Amending Act, 1972 and it does not relate to the Amending Act XLVII of 1975."

6. The High Court further observed:

'It is to be noted that the Amending Act 1972, which is the Maharashtra Act No. XXI of 1975 has the commencement date 19.09.1975 while the next Amending Act which is the Maharashtra Act No. XLVII of 1975 has the commencement date 20.9.1975."

An individual, therefore, holding and possessing land separately before 26th day of September, 1970 and even though he was a member of the family unit, his land could not be commuted in the 'family unit, and if each of such members were holding lands within the ceiling limit-the Amending Act, 1975 being not relevant for purposes of Section 18(1)- then transfers during the period from 26th day of September, 1970 to 19th day of September, 1975 could not be said to have been effected in anticipation or in order to avoid or defeat the object of the Amending Act, 1972 (Act XXI of 1975) inasmuch as that Act itself permitted such separate holding. The High Court distinguished the decision in Rambilas v. State of Maharashtra, (1976) M.L.J. 865. In the result, the application was allowed and the orders of both Tribunals were quashed.

7. In this appeal, it is contended by the learned counsel for the State of Maharashtra, Sri D.M. Nargolkar that the view taken by the High Court is erroneous and that the fact that there was gap of one day between the commencement of the two Amending Acts was irrelevant and that the words in Section 10(1)- "defeating the objects of the Amending Act, 1972, mean the provisions of the Amending Act, 1972 as further amended by the Amending Act, 1975. The properties held by the husband and wife (and other members, of the family unit) have to be clubbed together and the bona fides of the sales made between 26.9.70 and the 'commencement date' had been rightly gone into by the lower Tribunals and these transfers were not accepted as bonafide.

8. On the other hand, learned counsel for the respondents Sri U.U. Lalit contended that the view taken by the High Court was correct. Learned counsel pointed out that the Amending Act 1972 (Act XXI/1975) was brought into force on 19.9.1975 while the Amending Act. 1975 (Act XLVII/75) was brought into force on 20.9.75. By the time the proviso to Section 4(1) was deleted with effect from 20.9.75 by Act XLVII of 1975, the exclusion of other lands held by each member of the family unit, -of the category mentioned in the proviso to Section 4- became an accomplished fact. The lands sold after 26.9.70 being of the category mentioned in the proviso to Section 4, and having stood excluded by 19.9.75, the question of the transfer of such lands defeating the object of the Amending Act 1972 did not arise and there was no need to go into the question of bonafides of these transfers. He also contended that the words in Section 10(1) "Amending Act, 1972" did not mean the said Act as further amended by the Amending Act of 1975. Learned counsel, however, fairly brought to our notice that the above contention which was accepted by the High Court in the impugned Judgment was not accepted in a latter Full Bench of Bombay High Court in Madkukar v. State of Maharashtra, (1986) MLJ 781 FB. Learned Counsel also fairly pointed out that the judgment of the Learned Single Judge now in appeal before us was squarely overruled by the Full Bench in Madhukar's, case. He, however, contended that the view expressed in the impugned Judgment is the correct one and the Full Bench Judgment is not correct.

9. The following points arise for consideration: (1) Whether the fact that initially the Amending Act of 1972 (Act XXI of 1975) was brought into force w.e.f. 19.9.1975 and the Amending Act of 1975 (Act XLVII of 1975) was brought into force w.e.f. 20.9.1975 would result in the disputed extent being excluded from the holding by 19.9.1975 so as not to attract Section 10(1), for considering whether the transfers of these lands in the crucial period was intended to avoid or defeat the object of the Amending Act, 1972?

10. (2) Whether the words 'Amending Act of 1972' in Section 10(1) mean the said Act as it stood on 19.9.75 or as it stood further amended on 20.9.75 by Amending Act of 1975 (Act XLVII of 1975)?

Point I:

11. The Principal Act of 1961 was enacted on 16.6.61. It fixed a higher ceiling for the land-holding man the ceiling area in force when the respondent's case was decided by the Tribunals. It appears that on 26.9.70, a conference of Chief Ministers was held and it was decided to evolve a national policy on the subject. As a consequence, the Maharashtra Amending Bill LVI of 1972 was introduced in the State Legislature on 07.08.1972 and was passed. But the said Act of 1972 received the President's assent only on 7.8.75 and it thereafter became Act XXI of 1975. It was published in the Gazette on 7.8.75 and was brought into force initially on 19.9.75. This Amendment of 1972 reduced the ceiling area and also brought in the concept of 'family unit'.

12. One other important fact is that the 'date of commencement' of the Amending Act 1972, was 19.9.1975 as stated above, but it was postponed to 2.10.75 by Ordinance XIV of 1975 promulgated on 2.10.75. That Ordinance was replaced by Act II of 1976 w.e.f. 2.10.1975. Therefore, Amending Act 1972 (Act XXI of 1975) become effective not from 19.9.1975 but from 2.10.75. By that date, i.e. 2.10.75, the latter Amending Act, 1975 (Act XLVII of 1975) had come into force on 20.9.1975, which deleted the proviso to Section 4(1). The public notice in question in the present case was issued by the competent authority on 12.3.76 and declaration came to be filed later and the Tribunals computed the ceiling area by orders dated 27.5.76 and 15.7.76. In other words, as on the date when the declaration was filed by the owners, the Amending Act of 1972 (Act XXI of 1975) was applicable as it was brought into force w.e.f. 2.10.75 (instead of w.e.f. 19.9.75) and the Amending Act (Act XLVII of 1975) was also applicable, having already been brought into force from 20.9.75. We shall now refer to some details in the provisions of the Act.

13. The Act defines 'family' in Section 2(11) and 'family unit' in Section 2(11A). The definition in Section 2(11 A) says that a 'family unit' means a family unit as defined in Section 4. Section 2(22) defines 'person' as including a 'family'.

14. Chapter II and III were substituted by the Amending Act of 1972 (Act XXI of 1975) w.e.f. 19.9.1975 (postponed to 2.10.1975).

15. Chapter II deals with 'Lowering of ceiling on Holdings'. It states that subject to the provisions of chapter II and III, no person or 'family unit' can, after the commencement date (i.e. 2.10.1975) hold land in excess of the ceiling area, as determined in the manner hereinafter provided in that section. Section 4 deals with 'Land held by family unit'. Section 4(1) states that all land held by each member of a family unit, whether jointly or separately will for the purposes of determining the ceiling area of the family unit be clubbed. The Explanation to Section 4(1) reads as follows:

"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, the surviving spouse or spouses, and at 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".

Sub-section (2) of Section 4 is not relevant for the purpose of the case before us. Section 5 refers to the 'Ceiling area'. As stated earlier, by mis Act of 1972 the ceiling area was very much reduced and it was applicable to the lands held by the members of the 'family unit'. Section 6 deals with extra area permitted in respect of a family unit consisting of more than 5 persons. Section 7 is not relevant for the present case.

16. Chapter III deals with 'Restrictions on Transfers and Acquisition-consequences of contraventions'. Section 8 deals with restriction on transfer by persons or a family unit holding land in excess of the ceiling area on or after the date of "commencement of the Amending Act 1972" i.e. initially 19.9.1975 and later 2.10.1975. Section 9 deals with restriction on acquisition of land in excess of the ceiling area. Section 10(1) deals with 'consequences of contraventions and acquisition of land'. As we are dealing with transfers between 26.9.70 and the date of commencement of the Amending Act, 1972, we are concerned here with Section 10(1) (a). The said Section 10(1) reads as follows:

"Section 10(1) : If

(a) any person or member of a family unit, after the 26th day of September, 1970 but before the Commencement date, transfers any land in anticipation or in order to avoid or defeat the object of the Amending Act, 1972: or

(b)..."

An Explanation was added to Section 10(1) by the same amendment i.e. Amending Act of 1972 (Act XXI of 1975) w.e.f. 19.9.1975 as follows and this provision altered the burden of proof.

Explanation : For the purpose of Clause (a), 'transfer' has the same meaning as in Section 8.

All transfers made after the 26th day of September, 1970 but before the commencement date, shall be deemed (unless the contrary is proved) to have been made in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972 ".

17. As on 19.9.75, the principal Act, as amended by Amending Act, 1972 (Act XXI of 1975) contained a proviso to Section 4(1) which, according to the respondent, excluded the lands in question from the holding as these lands were acquired in the manner mentioned in that proviso. Section 4(1) with the proviso read as follows as on 19.9.75 :

"4.(r). All land held by each member of a family unit, whether jointly or

separately shall for the purpose of determining the ceiling area of the family unit, be deemed to be held by the family unit:

Provided that, if any person, who is a member of a family unit holds land which is possessed separately before the 26th day of September 1970, as a result of acquisition by testamentary disposition or devolution on death or by operation of law or is acquired as a result of a transfer or partition effected prior to the 26th day of September 1970, then of determining the surplus land in any holdings which is in excess of the ceiling area on or before the commencement date, such land shall not be deemed to be held by the family unit".

18. It was argued for the respondent that the land in the present case-which had not been excluded by the tribunals- fell into the category mentioned in the said proviso, having been so held or acquired by members of the family unit before 26.9.70, and the same was, therefore, liable to be excluded "for determining the surplus land in any holding which is in excess of the ceiling area on or before the commencement date". Once the land stood so excluded when Act XXI of 1972 initially came into force on 19.9.75, then Section 10(1) could not be applied for such land and there was, therefore, no question of going into the bonafides of the transfer of such lands. It might be that the proviso to Section 4(1) came to be omitted w.e.f. 20.9.75 by the Amending Act (XIVII of 1975) but that was irrelevant inasmuch as the exclusion of these lands on 19.9.75 became an accomplished fact. Further the words "Amending Act, 1972" in Section 10(1) meant the said Act as it stood before its amendment by Amending Act XLVII of 1975 i.e. before the proviso to Section 4(1) was dropped. In other words, the contention was that such an effect, as stated above, was produced on the facts of the case because the Amending Act of 1972 (Act-XXI of 1975) came into force initially on 19.9.1975 while Amending Act of 1975 (Act XLVII of 1975) came into force one*day later, i.e. on 20.9.1975. The fact that, by Act of Legislature 19.9.1975 stood postponed to 2.10.1075 did not matter. That is the contention for the respondent.

19. We are of the view that the above contention as to the effect of the two Amending Acts raised by respondents is not correct and the said contention has been rightly rejected by the Full Bench in Madhukar's case.

20. It is true the Amending Act of 1972 (Act XXL of 1975) was brought into force initially on 19.9.1975 and as per the proviso to Section 4(1) which was very much there on that day, these lands individually belonging to the declarant or his wife might have stood excluded from the holding of the family unit if the same were acquired in the manner stated in the proviso to Section 4(1). It is also true that Amending Act of 1975 (Act XLVII of 1975) which deleted the proviso to Section 4(1) came into force only w.e.f. 20.9.1975.

21. But, the difference of one day in the commencement of these Amending Acts, in our opinion, would have had some significance if in that one day, declaration was filed, extents of land were computed and such computation had

also become final on the same day. But no such thing happened on 19.9.1975. In fact the owners filed declarations only in 1976. By the date the owners filed their declarations, the Amending Act, 1975 (Act XLVII of 1975) deleting the proviso to Section 4(1) had already come into force on 20.9.75.

22. Assuming that the difference of one day between the commencement of these two Amending Acts could have some bearing on the case, the fact remains that by Ordinance XIV of 1975 promulgated on 2.10.1975, the date of commencement of the Amending Act of 1972 i.e. 19.9.1975 was postponed to 2.10.1975. That would mean that the Amending Act of 1975 (Act XLVII of 1975) which dropped the proviso to Section 4(1) came into force on 20.9.1975 earlier to the Amending Act of 1972 (Act XXI of 1975), which came into force on 2.10.1975.

23. The result is that the contention for the respondents based on the difference of one day between the initial commencement of Amending Act 1972 (Act XXI of 1975) and the commencement of Amending Act 1975 (Act XLVII of 1975) is liable to be rejected for two reasons, -Firstly no exclusion by way of orders was passed by any Tribunal between the parties-based on the proviso to Section 4(1)- on the solitary day 19.9.75 nor did any such exclusion become final on 19.9.1975 before the latter amendment become effective from 20.9.1975. Even before any such thing happened, the proviso to Section 4(1) stood deleted w.e.f. 20.9.1975 when Amending Act, 1975 (Act XLVII of 1975) came into force. Hence in regard to all declarations filed by owners on or after 2.10.75, the proviso to Section 4(1) ceased to apply. Once the lands of the description in the said proviso did not stand excluded w.e.f. 20.9.75, the Tribunals were entitled to go into the question whether the transfers of such lands between 26.9.70, and 2.10.75 were bonafide or not and apply Section 10(1) of the Act and the Explanation added in Section 10(1) by Amending Act, 1972 (Act XXI of 1975). Secondly, the very date 19.9.75 of commencement of the 1972 Amending Act stood postponed to 2.10.75 by an Ordinance and hence even before Amending Act (Act XXI of 1972) could be applied, the proviso to Section 4(1) stood deleted w.e.f. 20.9.75. Hence in regard to all orders passed by the Tribunals on or after 2.10.75, it was obligatory for the Tribunals to apply Section 10 to all lands even if such lands had earlier stood excluded by the proviso to Section 4(1) and apply the new explanation added in Section 10(1).

24. It is argued for the respondent that the latter Amending Act (Act XLVII of 1975) was effective from 20.9.1975 and was not retrospective from 19.9.1975. But, in our view, the same result was achieved by postponing the date of commencement of the first Amending Act, 1972 (Act XXI of 1975) from 19.9.1975 to 2.10.1975, i.e. to a date after the date of the Commencement of the second Amending Act, 1975 (Act XLVII of 1975) i.e. 20.9.1975.

25. Again, it may be that previously i.e. on 19.9.75, in regard to transfers of lands other than those mentioned in the proviso to Section 4(1) above, if such transfers were between the crucial dates- they had to be tested on the anvil of

Section 10(1) as to their bonafides and also by applying the Explanation which changed the burden of proof. But w.e.f. 20.9.75, even the lands which were earlier liable to be so excluded under the proviso to Section 4(1) became liable to pass the test of Section 10(1) if they were transferred between 26.9.70 and 2.10.75 because the proviso to Section 4(1) stood dropped w.e.f. 20.9.1975.

26. In the present case, the Tribunals passed orders in 1976 by which time under the 1972 amending act (XXI of 1975) the concept of 'family unit' came in, Section 10(1) required the bonafides of the transfers between the 26.9.70 and 2.10.75 to be tested and the Explanation to Section 10(1) altered the onus of proof. Under Amending Act, 1975 (Act XLVII of 1975) the proviso to Section 4(1) stood dropped. All these provisions were, therefore, rightly applied by the Tribunals when they passed orders in 1976. The High Court was in error in holding that the proviso to Section 4(1) was still applicable and that these lands which fell into the category mentioned in the said proviso had to be excluded and that the bonafides of their transfers need not be gone into. Point 1 is, therefore, decided in favour of the appellant and against the respondent.

Point 2:

27. The next question is as to the meaning of the words "in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972", in Section 10(1) and its Explanation. Question is whether these words mean the Amending Act, 1972 as it stood originally as on 19.9.1975 when proviso to Section 4(1) was in existence or are also referable to the Amending Act, 1975, which came into force on 20.9.1975?

28. It is true that initially Section 10(1) and its Explanation merely referred to the proof of and intention to avoid or defeat the provisions of the Amending Act, 1972 i.e. the Act XXI of 1975 which came into force on 19.9.1975 and which date stood postponed to 2.10.1975.

29. But by 2.10.1975, the Amending Act, 1975 (Act XLVII of 1975) had also come into force from 20.9.75 and therefore, in our view, the words 'in anticipation of or in order to avoid or defeat the object of the Amending Act 1972' would have to be read as "in anticipation of or in order to avoid or defeat the object of the Amending Act 1972 as further amended by the Amending Act, 1975 (Act XLVII of 1975)". It would, therefore, become necessary to go into the bonafides of the transfers of lands even if the lands were previously liable to be excluded from the holding if they were of the category falling within the proviso to Section 4(1). Further, the change in the mode of proof as brought about by Act XXI of 1975 by virtue of the Explanation to Section 10 would also become applicable to these transfers. The holdings of the members of the family unit had also to be clubbed together as stated in the Act, as amended. In other words, once the Amending Act, 1972 stood further amended w.e.f. 20.9.75, there could be no question of still going by the Act as it stood before 20.9.75 and the Tribunals were bound to apply Section 4(1) without the proviso and Section

10(1) as also together with the new explanation to Section 10(1).

30. Further, we agree with the reasoning of the full Bench in Madhuker 's case 1986 M.L.J. 781 in this behalf. The Full Bench, in our view, rightly applied the principle enunciated by this court in Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others, . The relevant passage from the decision of this Court reads as follows:

"The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the Amending Act at all".

31. Applied to the present situation, the words 'Amending Act, 1972' in Section 10(1) must in our view be read 'Amending Act, 1972 as amended by Amending Act, 1975. This disposes of the second contention raised by the respondent.

32. For the aforesaid conclusions, the reasons given by the High Court are not correct and the reasons in Madhukar's case decided by the Full Bench in 1986 are correct. The appeal is allowed and the judgment of the primary tribunal as affirmed by the appellate tribunal is restored. No costs.