

(1980) 09 BOM CK 0019

In the Bombay High Court

Case No : Spl. Civil Application No's. 3804 of 1976 and 3519 of 1980

Subhash

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 24-09-1980

Acts Referred:

Bombay Land Revenue Code, 1879 — Rule 75

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 2(1), 2(16)

Citation : AIR 1981 Bom 382

Hon'ble Judges : Tulpule, J

Bench : Single Bench

Advocate : R.G. Deo and S.G. Deshmukh, for the Appellant; D.P. Hegde, Asstt. Govt. Pleader, for the Respondent

Judgement

1. By this petition, one of the principal contentions which are raised, is in regard to the description of certain portions of land appearing in the revenue record as "Pot-kharab".

2. The petitioner filed a return before the Surplus Land Determination Tribunal, Gangakhed, showing the total land of 91 acres standing in his name. He raised several contentions and sought exclusion in regard to several pieces of lands on various grounds and claimed that S. No. 50 of Pimpri (Zola) should be excluded, as that was in the possession of his mother to whom it was given for her maintenance. S. No. 436, it was claimed, should have been excluded and he also claimed that S. No. 591 was agreed to be sold by him and possession was given to the prospective purchaser, while the land was subsequently sold on 21-1-1972. He also claimed exclusion on the ground that the portion of the land was pot-kharab coming to about 18 acres and 38 gunthas from various survey numbers.

3. The Surplus Land Determination Tribunal found the land held by the petitioner was 91 acres. He rejected all the contentions of the petitioner and held that he was a surplus holder to the extent of 37 acres. That surplus land was ordered to

be delimited from Survey Nos. 588, 240, 239 and 50. The petitioner carried an appeal to the Revenue Tribunal. The Tribunal held that this land which was claimed and liable to be excluded, admeasuring 1 acre 37 gunthas, should not be excluded, as in its own option, the petitioner has "failed to prove that even grass does not grow in that land". It, therefore, included that land. It also negated other contentions of the petitioner and dismissed the appeal. It may be mentioned that before the Tribunal, not only the petitioner, but his mother Rukminibai also preferred an appeal. In this Court also, two petitions have been filed both by Subhash Chintaman Dhare and his mother Rukminibai.

4. Mr. Deo, who appeared for the petitioner urged before me four grounds for exclusion of certain portions of lands from the total lands calculated as holding of the petitioner. His contention was that the land admeasuring 1 acre 38 gunthas from out of Survey Nos. 588 and 591 of the village Gangakhed and Survey Nos. 50 and 51 of the village Pimpri (Zola), should have been excluded being Potkharab land as shown in the record of rights. As regards Survey No. 591, it was also claimed that an area of 17 gunthas from out of that land was acquired for the purposes of a road and a certificate to that effect has been produced from the Tehsildar, showing that that portion of the land was acquired. It was his contention, it seems, that Potkharab lands are not cultivable lands and are not assessed since nothing grows in those lands and, therefore, they should have been excluded. Similarly, with regard to Survey No. 591, it was claimed that that land was not at all available and it ceased to be a part of the land belonging to the petitioner.

5. Mr. Deo secondly contended that in Survey No. 291, there is a Ginning Factory and in Survey No. 240, railway line passes. So far as the Ginning Factory is concerned, he claimed that that was liable to be excluded, as the land under it was not an agricultural land or was not capable of growing agricultural produce. So was his contention with regard to the railway line passing through his land Survey No. 240.

6. The third contention raised was in regard to Survey No. 436. It was contended that this land belonged to the father of the petitioner, Chintaman. That this Chintaman died in the year 1964. This Chintaman left behind him four sons, five daughters and his widow Rukhminibai. Since all these persons were the heirs of deceased Chintaman, under the Hindu Succession Act, they were entitled to share in the property in proportion to their share. That share, according to Mr. Deo, would be 1/10th. S. No. 436, was therefore, liable to be included in his holding only to that extent. His grievance was that an area of 2 acres and 28 gunthas has been included in his holding on the basis of Mutation Entry No. 1334, dated 28th June 1975. That Mutation Entry goes to show that the land has been divided amongst four brothers. The Tribunal accepted this mutation entry and the division and added that land. Mr. Dec's grievance is that in view of the number of heirs left by Chintaman, only 1/10th share of that land should have been added to the petitioner's holding.

7. The last contention which was raised related to S. No. 50. That land, according to him, was given under a consent decree to his mother Rukhminibai for her maintenance. Therefore, it was contended that that was not liable to be taken into account.

8. It appears that, though that is not clear, there was a partition between the sons and father Chintaman sometime prior to 1964. As to how that partition took place and as to whether mother Rukhminibai had a share in the property is not disclosed. The consent decree, by which this land has been given to Rukhminibai, is dated 7th January, 1972 and, therefore, after the relevant date. The petitioner had three other brothers as Mutation Entry number 1334 goes to show. Merely because Rukhminibai was staying with the petitioner, it does not follow that he alone was liable to maintain her and for that purpose, S. No. 50 was given to her. If the mother had not been given any share in the partition, she should be entitled to have the partition reopened and have her share determined. The so-called transfer or disposition of S. No. 50 having taken place subsequent to the relevant date, is liable to be ignored and is rightly ignored by the authorities below.

9. That takes me to the only material contention which was raised. That contention really covers three contentions which were raised as grounds of excluding portions of lands of 1 acre 38 gunthas, of 17 gunthas and land under the Ginning Factory and covered by the railway line.

10. So far as the railway line is concerned, it is not understood how that claim is made. If the railway line runs through the Petitioner's land, then it must be running through Government land which must have been acquired from the petitioner long back. It is not his case that the railway line runs through private land. There is, therefore, no merit so far as this contention is concerned.

11. In a number of cases which have come before me in this Court, the S.L.D.T. has generally excluded the land in computing the total holding of a person, the land shown as Potkharab land in the record of rights. This has been generally the practice of the S.L.D.T. That practice presumably has been continued on the ground that the land which is shown as "Potkharab" in the revenue record is land which is uncultivable and is such as would not come in the definition "land" as shown in the Ceiling Act. However, in the present petition, this contention, has been called in question.

12. The definition of the word "Land" appears in Section 2, Sub-section (16) of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as "The Ceiling Act"). It is indicative as that definition includes certain kind of properties which cannot be described as land, but the section includes them as land for the ceiling purposes. The definition runs as follows;

"Section 2 (16). "land" means land which is used, or capable of being used, for purposes of agriculture, and includes:

- (a) the sites of farm buildings on, or appurtenant to such land;
- (b) land on which grass grows naturally;
- (c) trees and standing crops on such land;
- (d) canals, channels, wells, pipes or reservoirs or other works constructed or maintained on such land for the supply or storage of water for the purpose of agriculture;
- (e) drainage-works, embankments, bandanas or any other works appurtenant to such land, or constructed or maintained thereon for the purposes of agriculture, and all structures and permanent fixtures on such land."

In the present case, we are concerned with Clause (b). Now, under the first part of Sub-section (16) of Section 2, land which is understood as land for the purposes of ceiling and as the defining section says, is land which is used or capable of being used for the purposes of agriculture. Therefore, it is enough if the land is capable of being used for agriculture purposes. As to what is agriculture is denned again in Sub-section (1) of Section 2 and it includes apart from others, the raisins of grass, dairy farming poultry farming and breeding of livestock. It also includes land which is used for the purposes of grazing and also the land which is used for the purposes of rab-manure. Now, it is clear that if grass is grown upon a land meaning thereby that a particular kind of grass is sown and reared, then it would be included in the definition of the word "agriculture." Growing of grass or raising of grass upon any land would normally mean and pre-suppose any human activities being brought to bear on the land for the purposes of raising or growing grass. Though it is grass, it suggests cultivation of that grass in the land, sowing a particular kind of grass, rearing that grass and cultivating it as any other crop. Such activities will obviously fall within agricultural activities. It is, however, different where the land is used for the purposes of grazing. In such a case, no human effort is brought to the land which is used for grazing. An agriculturist may require for the purposes of his cattle, and in order to maintain them and feed them, pastures or grazing pieces of land. In order to maintain his cattle and bring them up and feed them, he may leave land which cannot be profitably used for agricultural purposes, not for growing crop, but used for grazing his cattle. Such pasture land would come not only within the definition of "agriculture" for the purposes of the Ceiling Act, but would also come, though not directly, by reason of the definition of word "land" namely, land which is used for agriculture or capable of being used for the purposes of agriculture, within that part of the definition "land".

13. Now Clause (b) speaks of land on which grass grows naturally. To some extent from what I have discussed above, there may be overlapping, in the definition of the word "land". Land which is used as pasture land by an agriculturist, by reason of the definition of the word "agriculture", may also fall within the first part of the definition of "land" in Sub-section (16) of Section 2. Clause (b), however, refers to land on which grass grows naturally. The idea,

therefore, which must be deemed to be conveyed and the classes of land which are specifically mentioned in Clause (b), must be different from the lands included for pasturage, The Legislature cannot be expected or assumed to have provided for the same class of lands twice over. In other words, pasture land which, the legislature knew or must have known, which will come under the definition of land combined with the definition of "agriculture," is not intended to be covered by the definition of land in Clause (b). In other words, Clause (b) must be said to apply and held to apply to such lands which are not used for pasture by agriculturists, but on which grass grows naturally, irrespective of the question whether they are agricultural lands, in the sense whether they are used for agricultural purposes or capable of being used for agriculture. Even if such lands may not be capable of being used for the purposes of agriculture, the definition and description in Clause (b) suggests that such lands must be held to be lands for the purposes of ceiling. Now, an agricultural activity is an economic activity and such activity will be brought to bear if it would be profitable with respect to any piece of land. If the land on which grass grows naturally, is capable of being used as agricultural land, it is obvious that it will come within the first part of the definition. Clause (b) however is attracted to lands on which grass grows naturally. The definition, therefore, extends beyond the first part of the section. Such land though not capable of being used for agriculture nor used for agriculture is still "land" for the purposes of the Act. These would be over and above the two other categories of such grass lands namely pasture lands and land capable of being used for agriculture. Even such land is sought to be included in the definition of land for the purposes of the Ceiling Act.

14. Mr. Deo contended that 1 acre and 38 gunthas of land from out of Survey Nos. 588, 591, 50 and 51 was such kind of land. It appears that there is no dispute that 1 acre and 38 gunthas from out of these lands has been described as "Potkharab" in the Revenue Records. As to what is exactly meant by Potkharab land and what class of land at the time of survey is classified as Potkharab land, is not on record. That may possibly be available from the Survey Manual. In the rules regarding Maharashtra Land Revenue Rules, page 230, an abstract of village accounts is shown under the heading "land not available for cultivation". Two classes of lands are shown as uncultivable (a) Potkharab and (b) rivers and nallas. A land which is classified as Potkharab, is not assessed to revenue. As to the manner of assessment and method, assessment rules are to be found in Survey Manual from Rules 90 onwards. In Gupta's commentary on the Bombay Land Revenue Code 1879 as it was before the Maharashtra Land Revenue Code came into force, the term "Potkharab" has been described to mean "barren or uncultivable land included in an assessed survey number" and includes "any land comprised in a survey number which for any reason is held not likely to be brought under cultivation" is included ,in it. Such lands also include nallas which may be uncultivable and also cover areas which become uncultivable though otherwise cultivable on account of say existence of public path over them. At page 280, rules in regard to the classification of land

Potkharab under the Bombay Land Revenue Code (former Rule 75) are mentioned. The Potkharab land as indicated from the Land Revenue Manual now in force above, consists of two classes of land-uncultivable and cultivable but withdrawn and reserved for some other purpose. The first kind is the unnamable land unfit for cultivation at the time when the survey was made. This inerrability of that portion of land may occur, it being rocky, or there being deep pits, or water courses scoured out by streams. The other may be occupied by reason of a road or recognised footpath or by tank or stream or other such public purposes on various grounds also.

15. It will be seen that the Potkharab land is primarily so described from the point of view of land revenue. If the land is not liable to be brought to economic use and for production of wealth, then it was considered as not liable to assessment. The land may become unproductive and not capable of economic use by reasons pertaining to the land like in the case of land being rocky, barren, or water course scoured out by streams and may be not pertaining to the land and externally such as passage way on a portion of a land for public purposes. It cannot be said that such land can be brought and used for agriculture. Prima facie, therefore, the Potkharab land may belong to any of these categories, but would essentially be, from the point of view, of its liability to pay the land revenue and produce wealth.

16. Reference in this connection may be made to the decision reported in : (1969)71BOMLR540 Kesharao Raoji v. State of Maharashtra. That was also a case under the Ceiling Act and the question which fell for decision there also was as to whether the Potkharab land could be treated as land within the definition of the word "land" occurring in Sub-section (16) of Section 2. It was observed:

"Thus, land which is put to any one of the uses in Clauses (a) to (e) of Section 2 (16) which is the definition clause, will also be included as land which is cultivable because it is put to uses ancillary to agricultural occupation of the land. But if the use to which any portion of the land is put is not for agricultural purposes, then the authority will have to decide how far it can be excluded."

The Court in that case was concerned with the village records maintained under the Berar Land Revenue Code and Berar Land Records containing several columns. Column No. 11 of that record shows that land which is Pot-kharab and it was stated:

"In this column is shown land which is described as Potkharab in terms and it is potkharab because no crops can be grown in such an area. This category of land includes ah barren and uncultivable lands like mountains, deserts etc. Prima facie, the area shown in this column has necessarily to be excluded in determining the ceiling area."

It is not necessary to refer to another decision relied upon and reported in Mahadeo Kisanrao Salunke Vs. State of Maharashtra, as that decision does not directly deal with the question at hand. It will thus be seen that in that case also,

it was held that barren lands will prima facie have to be excluded as Potkharab from computation for the purposes of land under the Ceiling Act.

17. In the present case, though the contention was urged, it seems that the Tribunal took the view that it is not shown that even grass does not grow on this land. Now, it is difficult to think that even on rocky lands, bits of grass will not grow. But if bits of grass grow upon a large patch of land, it is the proportion of the grass which will determine the character of the land. Merely because, some patches of grass grow here and there, it would be difficult to call land not rocky and barren. The definition of the word "land" in the Act, must be rationally construed, bearing in mind, the object and the purposes of the Act. The Act was brought about with a view to impose a ceiling on the holding of agricultural lands in the State, and also to provide for the distribution and acquisition of such land which is in excess of the ceiling area. Therefore, the primary intention of the Act was to place a ceiling upon agricultural lands which can be held by a person and to distribute such excess lands and to acquire them through the State for distribution amongst the persons contemplated under the Act. The Act is, therefore, clearly not meant for the purposes of taking land which is not used, or which cannot be used for agriculture. The object also is to ensure "full and efficient use of the land for agriculture." The definition, therefore, of the word "land" which includes land on which grass grows naturally must be so construed and interpreted as to mean that the bulk of the land and most of the land which comes under that description are such lands which can be used ultimately for agricultural purposes, and not lands where grass grows here and there but are otherwise entirely rocky and barren. If, therefore, the intention and the object of the Act is borne in mind, there would be less difficulty in the practical application of the definition to a given piece of land. That must, however, depend upon the evidence available. In the present case, the contention was raised that this land is Potkharab. Presumably by that it was sought to be conveyed that it is not cultivable and cannot be brought to any agricultural use including grazing. That is a matter which can be decided only upon evidence. Such evidence, in the circumstances, does not seem to have been led and whatever evidence was led, consists of record of rights which prima facie indicates that the land for the purposes of land revenue, was treated as Potkharab and was not liable to be assessed. Such unassessed lands classified as Potkharab may be of two categories. The S. L. D. T. however, excluded that land which does not fall within the description as stated above on which grass grows naturally.

18. In the circumstances, opportunity must be given to the petitioner to establish his claim to exclusion of 1 acre and 38 gunthas of land in the first Survey Number. Since I am remitting this matter back to the S. L. D. T. for determination of that aspect of the matter it will also decide the question in respect of 17 Gunthas of land in S. No. 591. This can be done by adducing such evidence as the parties produce and the S.L.D.T. can obtain. The Tribunal will also take into account whether any land is liable to be excluded on account of the Ginning Factory in S. No. 239.

19. That leaves the question as to Survey No. 436. It is contended that under the Hindu Succession Act, the Petitioner's father Chintaman left behind him 10 persons--4 sons, 5 daughters and a widow as heirs. It was, therefore, claimed that land S. No. 436 was liable to be divided amongst these ten heirs. If the share of the Petitioner was then calculated notionally, it will come to one acre and not 2 acres and 28 gunthas. The Authorities below did not accept this contention on the basis of the Mutation Entry No. 1334, by which the land was shown to be divided amongst the four brothers, i.e., the petitioner and his three brothers. The Authorities, therefore, took the proportionate share of the petitioner from S. No. 436 as failing to him. Now, it cannot be disputed that the petitioner, in the circumstances, is entitled to 1/10th share. Mr. Hegde for Respondent-State, contended that though in the land there were 10 shares, the heirs amongst them by arrangement can decide that this land should be divided only amongst four brothers and accordingly such a division was made. The share in the land was liable to be taken into account. That would be so. But merely on the basis of the mutation entry which does not show that by reason of a voluntary arrangement, such a division was made, such a conclusion cannot be reached, the S. L. D. T. will also enquire into the exact share to which the petitioner is entitled to from S. No. 436 and whether by reason of any arrangement, this land has been divided amongst four brothers only. If that is so, then the S. L. D. T. will take into account 2 acres and 28 gunthas as before. If, however, there are shares more than four in the land, then the petitioner's share will be determined accordingly. Rest of the contentions are rejected.

20. Petition partly succeeds and is allowed to that extent. No order as to costs. Rule accordingly. Rule discharged in the Petition No. 3804 of 1976.

21. Petition allowed.