

(2010) 08 SC CK 0077

In the Supreme Court Of India

Case No : Civil Appeal No. 546 of 2004

Sudam Shankar Kshirsagar and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Bombay General Clauses Act, 1904 — Section 3(35)
Land Acquisition Act, 1894 — Section 14(3), 4(1)
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 2(11), 2(22)
Maharashtra Project Affec

Citation : (2011) 1 BomCR 368 : (2010) 9 JT 225 : (2011) 1 MhLj 4 : (2010) 9 SCC 252 : (2010) 10 SCR 589

Hon'ble Judges : Mukundakam Sharma, J; Anil R. Dave, J

Bench : Division Bench

Advocate : Ajay Majithia, Rajesh Kumar and Kailash Chand, for the Appellant; Gopal Subramanian, Chinmoy Khaladkar, Sanjay Kharde, Asha G. Nair and Mukesh K. Giri, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.—The present petition is directed against the judgment and order dated 24.01.2002 passed by the Division Bench of the Bombay High Court dismissing the Writ Petition, filed by the appellants herein, registered as Writ Petition No. 5720 of 2001.

2. In the Writ Petition filed by the appellants before the Bombay High Court, they challenged the legality of the notification issued by the respondent-State herein u/s 4(1) of the Land Acquisition Act.

3. The appellants in the said Writ Petition prayed for quashing and setting aside the commencement of the Land Acquisition proceedings qua the appellants. Appellant No. 1 sought the said relief on the ground that a total holding of the appellant family being land covering 12.6 hectares, and each of the co-sharer of the family being entitled to hold land measuring about 2.53 hectares of land, no

land could be acquired under the Maharashtra Project Affected Persons Rehabilitation Act, 1986 [for short "Act of 1986"]. Consequently, it was argued that the entire exercise of proceeding under the Land Acquisition Act against the appellant is illegal and without jurisdiction.

4. According to the appellants, each member of the family who has attained the age of majority is entitled to hold independent land. Therefore, it is their submission that, akin to the provisions of the Maharashtra Agricultural Lands [Ceiling on Holdings] Act, 1961 [for short "Act of 1961"], each one of them would be entitled to retain his share in the joint family property which would be calculated as one unit each and if after such calculation, there is any excess land, such land could only be acquired in terms of the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1986 read with the provisions of Land Acquisition Act.

5. The aforesaid contention of the appellants were refuted by the respondent-State contending inter alia that the expression "holding" is defined u/s 2(8) of the Maharashtra Project Affected Persons Rehabilitation Act, 1986, which indicates the total land held by a person as an occupant or tenant or as both. Since the expression "person" appearing in the said definition is not defined under the Act of 1986, therefore, according to the State, resort should be had to the definition of the expression of "persons" u/s 3(35) of the Bombay General Clauses Act, 1904. According to the said legislation, the expression "persons" could include any company or association or body of individuals, whether incorporated or not, and relying on this definition, the stand of the State is that the expression joint Hindu family would also be included within the expression "person" and, therefore, the holding of the entire joint Hindu family itself would be calculated as one unit.

6. The Bombay High Court, where the Writ Petition was filed, accepted the contention of the State Government and held that the expression "person" occurring in the definition of "holding" u/s 2(8) of the Act of 1986 cannot be restricted solely to natural persons or juristic persons and that the expression "person" would include any company or association or body of individuals. In the opinion of the High Court, a Hindu Joint Family without doubt would be a body of individuals and would be covered under the expression "person" occurring in the definition of "holding" u/s 2(8) of the Act of 1986.

7. Having concluded so, the Bombay High Court also held that once Hindu Joint Family is held to be a person, the limit prescribed in Schedule-II has to be seen in the light of the holding of the person, i.e., holding of the Hindu Joint Family and not as holding of individual coparceners who constitute a Hindu Joint Family. The aforesaid findings recorded by the High Court are challenged in this appeal, wherein we have heard the learned Counsel appearing for the parties.

8. The counsel for the appellants in support of his submission drew our attention to the definition clauses of the Act of 1986, with a particular reference to Sub-

section 2 of Section 2 of the same, wherein the expression "affected person" is defined also to mean an occupant whose land in the affected zone is acquired u/s 14 for the purposes of a project and to the definition of expression "holding" u/s 2(8) of the Act of 1986.

9. Sub-section 2 of Section 14 of the Act of 1986 authorises the State Government to also compulsorily acquire land for carrying out the purposes of the said Act under the Land Acquisition Act, 1894; and the acquisition of any land for any of the said purposes shall be deemed to be a public purpose within the meaning of the Land Acquisition Act. It is also provided under Sub-section 3 of Section 14 that the State Government may also acquire lands in a gaathan in the affected zone as far as practicable according to the provisions of Part I of the Schedule.

10. The relevant provisions mentioned above may be reproduced here for ready reference: -

The Maharashtra Project Affected Persons Rehabilitation Act, 1986: -

Section 2(2) "affected person" means -

(a) an occupant whose land in the affected zone (including land in the gaathan) is acquired u/s 14 for the purposes of a project;

.....

.....

Section 2(8) "holding" means the total land held by a person as an occupant or tenant, or as both;

.....

Section 14(2) Subject to the provisions of this section, the State Government may for carrying out the purposes of this Act, also compulsorily acquire land under the Land Acquisition Act, 1894; and the acquisition of any land for any of the said purposes shall be deemed to be a public purpose within the meaning of that Act.

Section 14(3) The State Government may also acquire lands included in a gaathan in the affected zone as far as practicable according to the provisions of Part I of the Schedule.

11. The Act of 1986 was enacted to consolidate and amend the law relating to the rehabilitation of persons affected by certain projects in the State of Maharashtra and also for matters connected therewith or incidental thereto. In order to achieve the aforesaid purpose and objective, land belonging to a person could be acquired by issuing a notification under the provisions of the Land Acquisition Act. In the present case, the acquisition proceeding was initiated by State Government against the appellants who allege to be a Hindu Joint Family.

12. Counsel appearing for the appellant in support of his submission that the expression "person" would include individual coparceners constituting the Hindu Joint Family, relied upon the Maharashtra Agricultural Land [Ceiling on Holdings] Act, 1961. Counsel appearing for the appellant referred to Sub-section 22 of Section 2 of the Act of 1961 to state that "person" includes a family and that expression "family" is defined u/s 2(11) of the Act of 1961 as a Hindu Undivided Family, and in the case of other persons, a group or unit the members of which by custom or usage, are joint in estate or possession or residence.

13. In support of the said contention, he relied upon the decision of this Court in the case of *Gaya Din (Dead) through Lrs. and Ors. v. Hanuman Prasad (Dead) through Lrs. and Ors.* reported at (2001) 1 SCC 501 to contend that under the tenancy and land laws joint and undivided family is recognized as a person and, therefore, each major member of the family would be considered to hold one unit in the joint Hindu family property.

14. We have considered the aforesaid submissions in the light of the records. On appreciation of the records and the aforesaid provisions of law, we are of the considered opinion that the expressions "person" and "family" as contained in the Maharashtra Agricultural Land [Ceiling on Holdings] Act, 1961 have no application at all to the facts and circumstances of the present case. The object and purpose of enacting of the Act of 1961 is completely different from that of the Maharashtra Project Affected Persons Rehabilitation Act, 1986.

15. In the present case, the Maharashtra Agricultural Land [Ceiling on Holdings] Act, 1961 is not applicable and what is applicable is the Maharashtra Project Affected Persons Rehabilitation Act, 1986. The expression "person" is defined in the Act of 1961 and expression "holding" is defined in the Act of 1986. The Legislature while enacting the Act of 1986 incorporated the definition of expression "holding" u/s 2(8) and was fully conscious of the fact that there is a definition of expression "person" in the Act of 1961, but despite the said fact, it did not incorporate the said definition of expression "person" given in the Act of 1961. Since the expression "person" is not defined in the Act of 1986, in order to ascertain the definition of the same, we necessarily have to refer to the provisions of the Bombay General Clauses Act, 1904.

16. Section 3(35) of the Bombay General Clauses Act, 1904 defines persons to "include any company or association or body of individuals, whether incorporated or not. In that event, if we adopt the position and standard as enunciated in the aforementioned legislation, it has to be held that the expression "person" would include the body of individuals, meaning thereby, that the Hindu Joint Family is a body of individuals and is covered under the expression "person" mentioned in Section 2(8) of the Act of 1986.

17. Once the Hindu Joint Family is held to be a person, the limit prescribed in Schedule-II has to be considered in the light of the holding of Hindu Joint Family and not holding of individual coparceners constituting a Hindu Joint Family. That

being the position, we uphold the findings and the conclusions arrived at by the Bombay High Court.

18. Consequently, we find no merit in this appeal, which is dismissed. There will be no order as to costs.