
(1969) 10 BOM CK 0012
In the Bombay High Court
Case No : Spl. C. Application No. 144 of 1968

Tanaba

APPELLANT

Vs

Maharashtra Revenue Tribunal, Nagpur and 3 others

RESPONDENT

Date of Decision : 10-10-1969

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 70
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 10, 12, 13, 14, 16

Citation : (1970) MhLj 519

Hon'ble Judges : M. N. Chandurkar, J

Bench : Single Bench

Advocate : D. K. Khamborkar, for the Appellant; M. M. Qazi, Asstt. Govt. Pleader, Respondent No. 1 was not represented, for the Respondent

Final Decision : Dismissed

Judgement

M. N. Chandurkar, J.—The question which arises in this petition is whether the Collector in the course of an enquiry u/s 18 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, hereafter referred to as the Ceiling Act, has jurisdiction to decide an issue of tenancy if such an issue arises before him. Proceedings for determination of surplus land commenced on a return filed u/s 12 of the Ceiling Act by respondent. No. 4 Mandakini-bai, who is referred to hereafter as the holder, were pending before the Special Deputy Collector, Yeotmal. The petitioner appeared in these proceedings after a notice u/s 17 (1) was caused to be given by the Deputy Collector. After the petitioner appeared he put in a written objection and it was his contention that he was a tenant of survey numbers 3, area 28 acres and 36 gunthas, and 5, area 16 acres and 32 gunthas of Mukharampur since before the year 1957-58 and that these two fields could not be declared as surplus land. It may be stated that in the return filed by the holder she had shown these two fields along with other land as being in her possession on the prescribed date, that is, 4-8-1959. The total area of the land, inclusive of these 2 fields in dispute, as shown by the holder was 155 acres, 6

gunthas. The Deputy Collector while referring to the objection of the petitioner that he was in possession of survey numbers 3 and 5 as a tenant, found that he had led no evidence in support of his case. He, however, took the view that the question whether the petitioner-objector was in possession of these fields as a trespasser or a tenant could not be decided by him for want of jurisdiction and that the holder should seek her remedy in the proper Court. The Deputy Collector passed an order that since the holder had admitted that she was in possession of these two fields between the period from 4-8-1959 to the end of the year 1902-63 and she had indicated that these fields would be retained by her, he did not include any area of these two fields as surplus land. The proceedings before the Deputy Collector terminated by a declaration that survey number 9, area 26 acres, 19 gunthas, was the surplus land and he accordingly directed a notification u/s 21 of the Ceiling Act to be issued. The petitioner aggrieved by this order had filed an appeal before the Maharashtra Revenue Tribunal at Nagpur.

2. When the appeal came up for bearing the arguments before the Tribunal were restricted to the question whether the Special Deputy Collector had jurisdiction to decide whether the petitioner was a tenant of fields survey numbers 3 and 5- The Tribunal took the view on a consideration of the provisions of sections 18, 19 and 20 of the Ceiling Act that the Collector under the Ceiling Act could decide the issue of tenancy between the surplus holder and any other person. The Tribunal further took the view that the powers of the Collector under the Ceiling Act were not controlled by any other Act and that the Ceiling Act was self-contained. The view taken by the Special Deputy Collector that he had no jurisdiction to decide the issue of tenancy was, therefore, held to be erroneous. The Tribunal took the view that opportunity should be given to the parties to file additional statements and to lead additional evidence. The order passed by the Deputy Collector on 29-9-1966 was set aside and the matter was remanded back to him for a fresh decision on merits. The petitioner has now filed this petition challenging the view taken by the Tribunal that the Deputy Collector had jurisdiction to decide the question of tenancy raised by the petitioner.

3. The learned counsel for the petitioner contends that the jurisdiction to decide the issue of tenancy raised by the petitioner before the Deputy Collector could be exercised only by the Tahsildar in view of the provisions of section 100 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, hereafter referred to as the Tenancy Act, and therefore, the only course which was open to the Deputy Collector was to refer the issue of the petitioner's tenancy to the Tahsildar. The learned counsel appearing on behalf of the holder also supports this submission and the argument advanced by him was that because the word "tenant" which is defined in section 2 (30) of the Ceiling Act refers to a person, who is deemed to be a tenant under the relevant Tenancy law, and the "landlord" referred to in that section is also referred to as a person who is deemed to be a landlord under the relevant tenancy law, the competent authority to decide the issue of tenancy was the Tahsildar in view of the provisions of section 100 of the

Tenancy Act.

4. In order to appreciate the contention raised by the petitioner it is necessary to make a reference to the provisions of the Ceiling Act which deal with the powers of the Collector when he holds an enquiry in order to determine the surplus land of the holder. Section 12 of the Ceiling Act casts an obligation on a person referred to therein to furnish to the Collector a return in the prescribed form containing the particulars of all lands held by him. After such a return is filed, the Collector has u/s 14 to hold an enquiry and determine the surplus land held by a person. Before, however, such an enquiry is held, u/s 17 of the Ceiling Act, the Collector has to cause public notice, in the prescribed form, to be given at convenient places in the village or villages in which the land comprised in the holding of the holder is situate. This notice has to specify the land in respect of which enquiry is to be held to ascertain the surplus land held by the person and the notice has to call upon all persons interested in the land to submit to the Collector their objections within a period of one month from the date of the publication of the notice. It is in pursuance of this notice that the petitioner had raised a contention before the Deputy Collector that survey numbers 3 and 5, in respect of which an enquiry was to be made by the Deputy Collector, were held by him in tenancy rights and that these fields could not be declared as surplus land.

5. Several matters in respect of which the Collector, in the exercise of his power to determine surplus land has to make an enquiry u/s 14 of the Ceiling Act, are enumerated in section 18 of the Ceiling Act. Section 18 is in the following words;

"18. On the day fixed for hearing u/s 14, or on any other day or days to which the inquiry is adjourned, the Collector shall, after hearing the holder and other persons interested and who are present and any evidence adduced, consider the following matters, that is to say,-

(a) What is the total area of land which was held by the person on the 4th day of August 1959?

(b) whether any land transferred or partitioned between the period from the 4th day of August 1959 and the appointed day, should be considered in calculating the ceiling area as provided by sub section (!) of section 10?

(c) what is the total area of land held by the person on the appointed day?

(d) whether any transfer or partition of land is made by the person in contravention of section 8, and if so, whether the land so transferred or partitioned should be considered in calculating the ceiling area under the provisions of sub-section (1) of section 10?

(e) whether any land has been acquired or possessed on or after the appointed day by transfer or by partition?

(f) whether any land has been acquired on or after the appointed day by

testamentary disposition, devolution on death or by operation of law?

(g) what is the total area of land held at the time of the enquiry, and what is the area of land which the person is entitled to hold?

(h) whether any land is held by the person as tenant, and if so, whether, his landlord has a subsisting right of resumption of the land for personal cultivation, under the relevant tenancy law applicable thereto?

(i) whether any land held by the person is to be forfeited to Government under sub-section (3) of section 10, or of section 13, or should be deemed to be surplus land under any of the provisions of this Act?

(j) whether the proposed retention of land by the person is in conformity with the provisions of section 16?

(k) which particular lands out of the total land held by him, should be delimited as surplus land?

(l) any other matter which, In the opinion of the Collector, is necessary to be considered for the purpose of calculating the ceiling area, and delimiting any surplus land."

After the enquiry provided for by section 14 is made in the manner laid down by sections 17 and 18, the Collector has to make a declaration stating the total area of land which a person is entitled to hold as a ceiling area and the total area of land which is in excess of the ceiling area. In addition to these, there are other matters which are enumerated in section 21 in respect of which also the Collector has to give his decision. He has to give area, description and full particulars of the land which is to be delimited as surplus land, and the area and particulars of land out of the surplus land in respect of which the right, title and interest of the person holding it is to be forfeited to the State Government. It is not necessary to refer to the further provisions of the Ceiling Act. The provisions of section 18, in my view, indicate the scope of the inquiry which the Collector has to make u/s 14, and read with the provisions of section 14 it is clear that it also refers to the scope of the power which the Collector is entitled to exercise while making such an enquiry. It is not disputed that there is no provision in the Ceiling Act which creates an express bar of jurisdiction prohibiting the Collector from deciding question of tenancy which may be raised by an objector, who appears in pursuance of a notice u/s 17 (1) of the Ceiling Act. In my view, not only is there no bar to the exercise of jurisdiction to determine a question of tenancy, if such question is raised in the course of an enquiry u/s 14, but the provisions of section 14 of the Ceiling Act, which deal with the powers of the Collector to hold an enquiry for the purposes of determination of the surplus land held by the holder, expressly vests the Collector with jurisdiction to decide every question which arises in the course of such an enquiry. A reference may be made to clause (h) of section 18. u/s 12 of the Ceiling Act a holder has to state in his return the particulars of land held by him as a tenant. In respect of this land held by him as

a tenant under clause (h) of section 18, the Collector has to decide whether any land is held by the holder as tenant, and if so, whether his landlord has a subsisting right of resumption of the land for personal cultivation under the relevant tenancy law applicable thereto. Section 18, clause (h), gives an express power, at least in a case where the question to be determined is whether the holder holds any land or not as a tenant, and whether his landlord has subsisting right or resumption under the relevant tenancy law. The relevant tenancy law in the instant case would be under the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. If the petitioner's contention were to be accepted, then even in spite of this express provision, if a question of the tenancy of the holder arises in an enquiry u/s 14, it will also have to be referred to the Tahsildar functioning under the provisions of the Tenancy Act. Holding so will be rendering the provisions of section 18 (h) of the Ceiling Act nugatory. It is then necessary to make a reference to the residuary clause (1) of section 18 and that clause empowers the Collector to decide any other matter which in his opinion is necessary to be considered for the purpose of calculating the ceiling area and delimiting any surplus land. The issue raised by the present petitioner before the Deputy Collector was that survey numbers 3 and 5 were held by him as a tenant and that they should be excluded for the purpose of calculation of the ceiling area. Obviously this is a matter which has to be decided before a final decision regarding the extent of the ceiling area and delimitation of the surplus land could be given by the Deputy Collector. If this matter was, therefore, required to be decided, then, in my view, section 18 is an express power which enables the Collector to decide this question. Section 18 is not the only provision which enables the Collector to decide an issue of tenancy. A reference may be made to section 19 of the Ceiling Act. u/s 19 if during any enquiry into the holding of any person other than a holding of any industrial undertaking or holding consisting of one or more compact blocks which the State Government may with a view to maintaining its integrity notify in this behalf, it appears that the whole or any part of the surplus land delimited is held by that person from a landholder and the landholder had a subsisting right of resumption for personal cultivation in respect of that land under the Tenancy Act, the Collector has, unless the right of resumption is subject to proceedings before any Court, tribunal or other authority at the time of such inquiry, notwithstanding any provision in the Tenancy Act, a power to restore possession to the landholder of so much of the surplus land as the landholder is entitled to resume and the balance left only becomes surplus land. If the petitioner's contention that whenever a question, the determination of which is provided for in the provisions of the Tenancy Act, arises in an enquiry u/s 14, should be referred to the Tahsildar, who is the proper authority according to him, then the right of resumption for personal cultivation is also dealt with by the Tenancy Act and the Collector will not be competent to exercise his powers u/s 19, though such a power is expressly given to him. In view of the scope of sections 14 and 18 of the Ceiling Act, therefore, I am unable to hold that if a question of tenancy arises in the course of an enquiry u/s 14 that question cannot be decided by the Collector.

6. As already observed, the basis of the contention raised on behalf of the petitioner and the holder in this case is section 100 of the Tenancy Act. No doubt section 100 of the Tenancy Act provides in clause (2) thereof that it is the duty and function of the Tahsildar to decide whether a person is a tenant, a protected lessee or an occupancy tenant. Section 100 (2) is as follows:

"100- For the purposes of this Act, the following shall be the duties and functions to be performed by the Tahsildar:-

(1).. ..

(2) to decide whether a person is a tenant, a protected lessee or an occupancy tenant."

While reading section 100, the material and the most important words "for the purposes of this Act" can not be ignored. Section 70 of the Bombay Tenancy and Agricultural Lands Act, 1948 is identically worded and clause (b) of section 70 of 1948 Act is as follows:

"70. For the purposes of this Act the following shall be the duties and functions to be performed by the Mamlatdar-

(b) to decide whether a person is a tenant or a protected tenant or a permanent tenant."

The meaning of the words "for the purposes of this Act" which also find place in section 70 of the Bombay Tenancy Act, 1948 was considered by a Full Bench of this Court in Nivruthi Laxman Kondobahiri Vs. Shivdayal Laxminarayan Sarda and Others, and their Lordships with reference to these words observed as follows:

"The words "for the purposes of this Act", in our opinion, mean for the purposes of deciding any question relating to a matter, which is regulated or governed by the provisions of this Act."

This decision was later quoted with approval in another Full Bench decision of this Court in Rajaram Totaram Patel Vs. Mahipat Mahadu Patel and Others, . The contention of the learned counsel for the petitioner and the landholder is that when the question whether the petitioner was a tenant or not was required to be decided that question related to a matter which is regulated or governed by the provisions of the Tenancy Act, 1958, and therefore, such a decision could be given only u/s 100 of the Tenancy Act by the Tahsildar. In this context a reference is made to the definition of a tenant in the Ceiling Act. In section 2 (30) of the Ceiling Act the word "tenant" is defined as follows:

"2 (30). "tenant" means a person who holds land on lease, and includes a person who is deemed to be a tenant under the relevant tenancy law and "landlord" means a person from whom land is held on lease by a tenant and includes a person who is deemed to be a landlord under the relevant tenancy law."

Relevant tenancy law is defined in section 2 (26) as meaning in relation to the

Vidarbha Region of the State of Maharashtra, Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958. It is contended that the Deputy Collector had to decide whether the petitioner was a tenant within the meaning of the relevant tenancy law, and therefore, the question which was required to be decided was regulated and governed by the provisions of the Tenancy Act and that is how the Tahsildar alone could decide this issue of tenancy. I am unable to accept this contention. It is true that in the definition of "tenant" a reference is made to the definition in the Tenancy, Act, 1958. Defining the tenant with reference to a definition already existing in an earlier Act in this case is only an illustration of what is known as referential legislation. Merely because the word tenant is defined with reference to the definition of that word under the provisions of the Tenancy Act it does not mean that the question which is required to be decided by the Deputy Collector in the proceedings under the Ceiling Act is to be decided for the purposes of the Tenancy Act. The only effect of a reference to the relevant provision of the Tenancy Act in section 2 (30) of the Ceiling Act is that the definition of "tenant" in the Tenancy Act is to be read as a definition in section 2 (30) of the Ceiling Act. The effect of such kind of legislation is explained by Lord Esher, M. R. in *In re Wood's Estate*, Ex parte Her Majesty's Commissioners of Works and Buildings (1886) C.A. Ch. D. 607 in the following words:

"If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all."

In AIR 1931 149 (Privy Council) , the question which fell for consideration before their Lordships of the Privy Council was when a statute is incorporated by reference into second statute; the repeal of the first statute does not affect the second and their Lordships held:

"It is an accepted rule of construction that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second.....

Where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition,"

It was observed by their Lordships of the Privy Council referring to such a case of incorporation of the provisions of an earlier Act into a later Act that it amounts to nothing more than incorporating certain provisions from existing Act and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt.

7. It will thus appear that merely because the definition of the word "tenant" as given in the Tenancy Act is referred to as the definition of the "tenant" for the purposes of the Ceiling Act, the question which falls for determination is not whether the person claiming to be a tenant is a tenant for the purposes of the Tenancy Act, but the question is whether the person concerned is a tenant within the definition of that word in section 2 (30) of the Ceiling Act. Beyond referring to the definition of the word "tenant" in section 2 (32) of the Tenancy Act for the purposes of having a complete definition of a tenant in section 2 (30) of the Ceiling Act, no further reference to the provisions of the Tenancy Act becomes necessary as is clear from the dictum of Lord Esher quoted above. The question which falls to be determined in the ceiling proceeding with regard to the Tenancy is, therefore, not a question the determination of which is provided for or regulated by the provisions of the Tenancy Act. It is only in the restricted kind of cases where the decision is to be given for the purposes of the Tenancy Act that the Tahsildar can be said to have exclusive jurisdiction. In my view the reference to section 100 of the Tenancy Act cannot be of any assistance to the petitioner. In the view which I have taken, the Deputy Collector in the course of an enquiry u/s 18 had jurisdiction to decide whether the petitioner was a tenant of field survey numbers 3 and 5 as contended by him. The Tribunal was, therefore, justified in holding that the question of the petitioner's tenancy can be decided by the Deputy Collector.

8. The petitioner wanted to raise other contentions regarding the validity of the gift in favour of the respondent No. 3. These contentions cannot, however, be entertained at present stage these questions were not gone into by the Revenue Tribunal and the Revenue Tribunal has already remanded the matter to the Deputy Collector for a decision of the case on merits. The petitioner has been given an opportunity by the Tribunal to raise these contentions before the Deputy Collector.

9. The petition, therefore, fails and is dismissed with costs.