

(1977) 09 BOM CK 0024
In the Bombay High Court
Case No : Spl. C. A. No. 1033 of 1972

Tukaram Nandaji Gawande	Vs	APPELLANT
Commissioner Nagpur Division, Nagpur and another		RESPONDENT

Date of Decision : 27-09-1977

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 12, 2, 45(2), 6

Citation : (1978) MhLj 601

Hon'ble Judges : B.A. Masodkar, J; A.A. Ginwala, J

Bench : Division Bench

Advocate : V.S. Sohoni, for the Appellant; G.A. Paunikar, Asstt. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

A.A. Ginwala, J.—The petitioner had filed a return u/s 12 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, as it stood before its amendment in 1975 (hereinafter referred to as the Act) showing his total holding as 172 acres 24 gunthas. During the inquiry before the Special Deputy Collector he contended that there were 23 members in his family including his two wives, his sons, their wives and children. The Special Deputy Collector found that S. No. 96/3 admeasuring 14 acres 16 gunthas, and S. No. 93 admeasuring 13 acres 19 gunthas of Pimplod, were under the cultivation of Narayan who is the son of the petitioner for over 20 years and hence he concluded that these lands along with Narayan and the members of his family numbering eight in all, had to be excluded, from consideration. The Special Deputy Collector also found that the petitioner and his family of 15 members were entitled to hold 2 ceiling areas, namely, 168 acres, and after excluding S. Nos. 96/3 and 93 from the total holding of 172 acres and 24 gunthas, the remaining area would be below the ceiling area and hence the Special Deputy Collector by his order dated 30-9-1968 dropped the proceedings against the petitioner.

2. The Commissioner, Nagpur Division, respondent No. 1, started suo motu proceedings u/s 45(2) of the Act on the ground that the Special Deputy Collector had erred in excluding the area of S. Nos. 96/3 and 93 and also an area of 7 acres 20 gunthas out of S. No. 52, as, according to the Commissioner, there was no evidence to justify that exclusion. The Commissioner was further of the view that the Special Deputy Collector ought to have computed the members of the family of the petitioner as 7 and not 15. In this view of the matter, the Commissioner was of the opinion that the petitioner would be entitled to retain only 112 acres of land and the rest would have to be declared as surplus. After hearing the petitioner, however, the Commissioner found that the Special Deputy Collector had correctly excluded the area of S. Nos. 96/3 and 93 admeasuring 27 acres 35 gunthas. So also he held that the area of V acres 20 gunthas out of S. No. 52 had not been correctly excluded by the Special Deputy Collector and this finding of the latter called for further inquiry. The Commissioner further found that out of the 15 members mentioned by the petitioner in his affidavit dated 24-12-1965 only 7 members including the petitioner could properly be said to be the members of his family for the purposes of section 6 of the Act and in that view of the matter the petitioner was entitled to hold 112 acres of land only. The Commissioner, therefore, concluded that in these circumstances the order of the Special Deputy Collector in dropping the proceedings was not correct and he directed the case to be remitted to the Special Deputy Collector for inquiry afresh with regard to the area of 7 acres 20 gunthas out of S. No. 52 and decide the case afresh according to law. In substance, therefore, the order passed by the Commissioner on 25-5-1972 would indicate that out of the total holding of 172 acres 24 gunthas as shown by the petitioner in his return, he was entitled to the exclusion of an area admeasuring 27 acres 35 gunthas only and so far as the exclusion of 7 acres 20 gunthas was concerned, it called for an inquiry. With regard to the members of the family, he recorded a definite finding that the petitioner, his two wives, two sons and two grandsons alone constituted the family as contemplated by section 6 of the Act and, therefore, this family was holding land in excess of the ceiling area.

3. Shri Sohoni appearing for the petitioner contended that the Commissioner has wrongly excluded the daughters-in-law of the petitioner and also his grand daughters who were living with him on the appointed day (26-1-1962). Shri Sohoni submits that the correct computation of the members of the family of the petitioner would show that at the relevant time the family consisted of 12 members including the daughters-in-law and the grand-daughters, and if that is so, the petitioner would be entitled to hold twice the ceiling area i. e. 168 acres, and even if the area of 7 acres 20 gunthas out of S. No. 52 was included in the total holding, it could not be said that the petitioner was holding land in excess of the ceiling area. The question, therefore, which falls for consideration is whether the Commissioner was right in excluding the daughters- in-law and the grand-daughters.

4. The petitioner has given a list of the members of his family and it is annexed

to the petition as Annexure C. It indicates that according to the petitioner his family consists of himself, his two wives, two sons, their wives and their sons and daughters. The list includes four daughters of the son of the petitioner, namely, Purushottam, out of whom Rajakanya was born on 7-8-1964 and has, therefore, to be excluded from consideration. Similarly Balu who is the son of Purushottam was also born on 3-2-1963 and has to be excluded from consideration. So also Gajanan who is the son of Namdeo will have to be excluded as he was born on 2-6-1963. After these are excluded, we are left with 12 members only who include two daughters-in-law and three grand-daughters of the petitioner. The Commissioner in his order dated 25-5-1972 has not given any reasons as to why he did not consider the daughters-in-law and grand-daughters of the petitioner as members of the family of the petitioner. He has merely stated that the seven persons mentioned by him in the penultimate paragraph of his order were the only members of the family for the purposes of section 6 of the Act.

5. The question whether a daughter-in-law would be a member of a Hindu undivided family within the meaning of the second part of sub-section (20) of section 2 of the Act came up for consideration before this Court in *Sadashio v. Commissioner, Nagpur Division* Special Civil Application No. 1144 of 1972 decided on 18-8-1977. There it has been held that under the Hindu Law the concept of joint Hindu family is understood to consist of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters, and in this view of the matter the daughter-in-law will be a member of the Hindu joint family and for the purposes of computing the entitlement of the family u/s 6 of the Act, will have to be counted as such. It has, therefore, been held that for the purposes of section 6 of the Act, the daughter-in-law would be a member of a Hindu joint family or, in other words, will be a member of the family as defined in sub-section (20) of section 2 of the Act.

6. The next question is whether an unmarried daughter of a son can be said to be a member of a joint Hindu family within the meaning of the second part of sub-section (20) of section 2 of the Act. Sir Dinshaw Mulla in his principles of Hindu Law, Fourteenth Edition, section 212, at page 261, has described a joint Hindu family in the following terms :

"A joint Hindu family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters."

In *Commissioner of income tax v. Gomedalli Lakshminarayan* 37 Bom. L R 692 a Division Bench of this Court has quoted the above passage by Sir Dinshaw Mulla, with approval and has observed as follows;

"Under the Hindu law, an undivided Hindu family is composed of (a) males and (b) females. The males are (1) those that are lineally connected in the male line, (2) collaterals, (3) relations by adoption and (4) poor dependants. The female members are (1) the wife or the "widowed wife" of a male member, and (2) maiden daughters."

Now, the son in a family would be a person lineally descended from a common ancestor, and if the Hindu undivided family takes within its fold unmarried daughters of lineal descendants, then an unmarried grand-daughter would undoubtedly be also a member of the Hindu undivided family. However, our attention has been drawn to the decision of a learned single Judge of this Court in *Bansilal v. The Maharashtra Revenue Tribunal* Special Civil Application No. 662 of 1967 decided on 13-2-1969. It is true that the learned single Judge in that case has held that an unmarried daughter of a son of a karta of a joint Hindu family cannot be included in the family as a member. The learned Judge has considered this question from the aspect of the liability of the karta to maintain such a daughter. In our opinion, in the face of the position in law as explained by Sir Dinshaw Mulla and approved by this Court in the ruling cited above, the view taken by the learned single Judge is not correct. With respect, therefore, we are unable to agree with the learned single Judge when he holds that an unmarried granddaughter of a son of the karta of a joint Hindu family cannot be included in the family as a member. In our opinion, that case is not correctly decided in this respect.

7. We may make it clear that sub-section (20) of section 2 of the Act which defines the phrase "member of a family" is in two parts. The second part refers to a Hindu undivided family and the first part refers to a family other than a Hindu undivided family. What we have held above with regard to the status of a daughter-in-law and unmarried daughter of a son applied only to a Hindu undivided family covered by the second part of the above said sub-section.

8. We, therefore, find that the daughter-in-law and the unmarried granddaughters of the petitioner (daughters of his sons) would be members of his family which is said to be a Hindu undivided family, and if that be so, the total number of the members of the family including the petitioner's daughters-in-law and unmarried grand-daughters would be 12 as stated above. For a family consisting of 12 members, admittedly the ceiling area will be 168 acres. If the area of S. Nos. 96/3 and 93 is excluded as held by the Special Deputy Collector and the Commissioner also, from the total holding of the petitioner as shown in his return, the remaining land would not be in excess of the ceiling area and hence there will be no necessity of further inquiry as contemplated by the Commissioner. We, therefore, find that the order passed by the Commissioner on 25-5-1972 cannot be sustained and has to be set aside and the order passed by the Special Deputy Collector on 30-9-1968 has to be restored.

9. In the result, therefore, we allow the petition, set aside the order passed by the Commissioner, respondent No. 1, on 25-5-1972 and restore the order passed by the Special Deputy Collector on 30-9-1968. In the circumstances of the case there will be no order as to costs.