

(1994) 04 BOM CK 0016
In the Bombay High Court
Case No : Second Appeal No. 609 of 1989

Vijay Anandrao Kshirsagar	Vs	APPELLANT
State of Maharashtra and others		RESPONDENT

Date of Decision : 28-04-1994

Acts Referred:

Maharashtra Resettlement of Project Displaced Persons Act, 1976 — Section 2(10)

Citation : AIR 1995 Bom 206 : (1994) 4 BomCR 38 : (1995) 1 MhLj 42

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : V. Anturkar, for the Appellant; K.K. Tated, A.G.P., for the Respondent

Judgement

1. This second appeal is confined to the determination of one single provision of the Maharashtra Resettlement of Project Displaced Persons Act, 1976. The appellant, who is a holder of certain agricultural lands in Satara District in Koregaon Taluka has challenged the acquisition of an " area of 5 acres and 2 gunthas, after the application of emergency clauses. He filed a suit in the court of the learned Civil Judge, Senior Division, Satara, being Civil Suit No. 84 of 1979, whereby he contended that the acquisition was bad-in-law because his individual holding was less than the prescribed minimum of 8 acres under the Resettlement Act by virtue of a partition that had taken place on 1-12-1968. The Court rejected this plea and held that the computation of the joint family holding of 29 acres and 30 gunthas was treated as a unit for acquisition and that therefore, the amount of land that has been acquired out of this holding was correct. The matter was carried in appeal and the Appellate Court confirmed the decision of the trial Court. The appellant thereafter filed the present second appeal and my brother Desai, J. while admitting the appeal observed that the substantial point of law canvassed namely the question as to whether the expression "person" as appearing in S. 2(10) of the Resettlement Act is to be construed as including the expression "family" for the purposes of this Act, had to be decided.

2. Mr. Anturkar, learned counsel appearing on behalf of the appellant has fairly conceded before me that he does not desire to re-agitate the factual aspect with regard to the evidence in relation to the family partition of 1-12-1968 which has been rejected by both the trial Court and the Appeal Court. Those decisions proceed on the basis of evaluation of evidence and in the light of the concurrent findings it would be impermissible to re-open that issue. Mr. Anturkar, has however presented a strong challenge based purely on a point of law whereby he contends that the authorities were wrong in construing the expression "person" as being inclusive of the term "family" or to be more precise "Hindu undivided family".

3. It is necessary for me to recount the line of argument that has been canvassed. Mr. Anturkar submits that the Resettlement Act was promulgated for the purpose of acquiring from the larger holdings some amount of land for the purposes of resettling the persons from the affected zone. The rationale behind this which has been upheld by this Court is that since agriculturists in the benefited zone would get immense benefit by virtue of the irrigation project in question that they should off-set a part of this benefit by parting with some of their excess holdings which were necessary to resettle persons from the affected zone, whose lands were in fact submerged in order to make the project operational and provide the benefits for the others. After much consideration, it was considered that those persons holding over 8 acres of land in the benefited zone should part with a proportionate part of the excess. Having regard to the situation that obtains in this country, particularly in relation to agricultural holdings, Mr. Anturkar submitted that the property is invariably ancestral and that the holdings proceed on the basis of Hindu undivided family. This would necessarily imply that the record would show the eldest male member as the Karta. Mr. Anturkar states that in actual fact the Karta is no more than the Administrator of the property or the Trustee who holds it on behalf of the whole family. The coparceners for instance, do have legally defined shares and interests in that property regardless of the paper projection that it technically stands in the name of the Karta.

4. Mr. Anturkar relies on the definition of the term "family" as is set out in S. 2(9) of the Act as also on the definition of the term "holding" which is set out in S. 2(10) of the Act. For the purposes of convenience the relevant provisions are reproduced below :

"2. In this Act unless the context requires otherwise

(2) "family", in relation to a displaced person, means the family of the displaced persons consisting of such person and his or her spouse, minor sons, unmarried daughters minor sisters, father and mother and other members residing with him and dependant on him for their livelihood:

(10) "holding" means the total land held by a person as an occupant or tenant, or as both."

5. Mr. Anturkar, contends that the Legislature was conscious of the fact that in rural India, agricultural land is held and cultivated by families who live on that land and whose survival depends on it. He proceeds to point out to me that it is not as though the Legislature was not conscious of this social structure and set up and despite this position in S. 2(10), the Legislature used the expression "person" and did not make it an all inclusive definition. The sequester to this argument is that the expression "person" therefore has to be given its normal, natural and plain meaning which would mean that it refers to an individual and not a family. Mr. Anturkar therefore, submits that on the facts of the present case, the appellant is a coparcener and the authorities were required to go through the exercise of notional partition. He demonstrates to me that the overall holding of the Hindu undivided family was 29 acres 30 gunthas but that the legally defined share of the present appellant comes to a little over 7 acres which is below the prescribed minimum and that therefore the acquisition of 5 acres and 2 gunthas was had-in-law and that the challenge is liable to be upheld on this ground. Mr. Tated, learned A.G.P. has vehemently contested this position. In the first instance Mr. Tated drew an analogy to several other statutes particularly the Income Tax Act. He made a reference to the general principles of the Act and he contended that the Legislature was basically concerned with the concept of a holding. He submitted that even though the Legislature used the term "person" that expression was used in the sense as it is understood and deemed to be applied as in the case of several other statutes signifying thereby that it includes all those individuals who form part of the unit in question. Mr. Tated draws a sharp distinction between the expression "person" and "individual" and he states that if the intention was to treat the holding of a co-parcener as the unit, that it would have been so set out in the Act. Mr. Tated also draws my attention to the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act as also to the provisions of the Urban Land Ceiling Act and he states that in those cases, the Legislature has made clear provisions for the exercise of a notional partition even if physical partition has not been done. In carving out the size of the Unit therefore, Mr. Tated submits that the Court has to strictly apply the provisions of that particular Act in relation to the cases that arise under that statute and one cannot borrow from principles and procedures that may have been prescribed under the other Act.

6. Replying to Mr. Anturkar's submission that in those of the cases where a physical partition has taken place in the Hindu undivided family, that the law takes cognizance of the individual personal holdings of each co-parcener and that for the purposes of defining the size of the holding it would be wrong and irrational to go back to a position whereby those of the Hindu undivided families wherein the exercise of physical partition has not taken place are to be ignored and placed on a lower footing, Mr. Tated submits that the argument is fallacious. It is his submission that the law takes cognizance of the Unit as it exists at that point of time. If a partition has in fact taken place, the Character of the Unit changes in so far as it is split up into several smaller units in which case the law

takes notice of those smaller holdings which have resulted due to operation of law. On the other hand, it is his contention that where no such partition has in fact physically taken place, there is no warrant to hold that a notional exercise be undergone for the purpose of computing the individual shares of the coparceners because the Act makes no provision for anything of this sort.

7. On a consideration of the arguments advanced by learned counsel on both sides, the short question that requires to be resolved is as to whether the appellant is justified in his demand that the term "person" as it appears in S. 2(10) would entitle him to contend that he be treated as an individual coparcener as distinct from the single unit of the Hindu undivided family. To my mind, the demand is justified because one has to take the over-all perspective of the circumstances in which this Act was promulgated for the purposes of ultimately interpreting its provisions and giving effect to the legislative intent. I have had occasion to observe earlier that the Legislature intended most certainly to leave holdings up to 8 acres intact. Put more simply, therefore, in the opinion of the Government having regard to the benefits of the project, the holding of 8 acres was considered to be more than adequate as a personal holding. Person in the social sense naturally meant the immediate family. Ancestral property or Hindu undivided family property naturally gets fragmented among different groups with each successive generations dependent on the numbers of sons, dependents etc. In a given instance, therefore, it may appear to be rather unreasonable to hold that several families who come within the umbrella of Hindu undivided family are to be treated as one unit when on an actual evaluation it is found that each of them would in fact be holding less than 8 acres. The term "holding" therefore has to be construed not only literally but realistically if this is to be done then one will understand as to why the Legislature used the expression "person" and deliberately avoided mentioning in this Act even though several other acts may do so, that the term "person" shall include the expression family. To my mind, this was not accidental but it signified the legislative intent that each coparcener which expression is more synonymous with the term person than the expression family, will have to be treated as a holder. It is not difficult to carve out the shares of a coparcener by going through the simple exercise of a notional partition. In the case of large holdings, even a co-parcener may be found to be entitled to more than 8 acres of land in which case the provisions of the Act would come into operation. In this context, there is considerable significance in the arguments advanced by Mr. Anturkar, that the legislature has in the very preceding definition dealt with the term and expression "family", but has refrained from carrying over that term while defining the term "holding". Viewed at from any angle to my mind the contention on behalf of the appellant deserves to be upheld.

8. Applying this principle to the facts of the present case, having regard to the fact that the present appellant as a coparcener had a holding below the prescribed minimum, the acquisition of 5 acres 2 gunthas out of his holding leaving him with hardly two acres was unjustified. That acquisition is therefore

rendered bad in law and is consequently quashed. The judgments and orders of the Trial Court and the Appeal Court are accordingly set aside.

9. At this stage Mr. Tated the learned A.G.P. pointed out that the acquisition was done on an emergency basis and that the land has been distributed to landless persons. He submits as a consequence of this order, the revenue authorities would have to restore the acquired land to the present appellant and considerable loss and prejudice would be caused to the remaining respondents to whom the land has been distributed. Mr. Anturkar pointed out that at the earliest point of time, he has joined these persons as parties, but that they have neither filed their written statement nor contested the proceeding and that, therefore, they would be bound by the orders of the Court. Mr. Tated also advanced a contention that in order to avoid hardship to the remaining respondents who are admittedly poor agriculturists and who probably did not defend the proceeding out of poverty and ignorance that the Court should in the circumstances of this case direct that if the similar land is to be restored to the appellant from lands in the possession of the Government at the closest available point that these should be given to him. This procedure has been objected to by Mr. Anturkar on the ground that the family lands are all contiguous to each other and that it would be extremely harsh to allow the strangers to continue to cultivate at that place and to send the present appellant to some other part of the area. This objection appears to be a valid one in so far as if the acquisition was bad-in-law, then the status quo ante would have to be restored and the appellants land returned to him. The modalities of doing this are left to the concerned authorities in so far as alternate lands would have to be found for the respondents and they would have to be given some reasonable time for shifting to those lands having regard to the crops etc. that have been put down by them during the period when they were cultivating the present lands.

10. Appeal accordingly succeeds. The judgment and orders of the trial Court and the Appeal Court are set aside. The acquisition of the appellant's land is quashed. In the circumstances of the case, there shall be no order as to costs.

11. Certified copy expedited.

12. Appeal allowed.