(1976) 10 BOM CK 0009

In the Bombay High Court

Case No : Spl. C.A. No. 3615 of 1976

Vimalabai Govind Juvekar — APPELLANT

Vs

State of Maharashtra and others — RESPONDENT

Date of Decision : 08-10-1976

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 10, 10(1), 11, 12, 13
Transfer of Property Act, 1882 — Section 5

Citation : (1976) MhLj 858

Hon'ble Judges : C.S. Dharmadhikari, J

Bench : Single Bench

Advocate : L. Mohta, for the Appellant; M.A. Garud, Asstt. Government Pleader for respondents Nos. 1 to 3 and B.N. Mohta, for the Respondent

Final Decision : Allowed

Judgement

C.S. Dharmadhikari, J.—The petitioner''s husband died in the month of June 1975, He had no issue. The agricultural property which the petitioner''s husband had was his self-acquired property. The total holding was about 81 acres 3 gunthas. During the life-time of late Govind Juvekar, the husband of the petitioner, he executed a registered will on 25-4-1973. By the said will the deceased bequeathed 35 acres of land to his nephew Prabhakar Narayan Juvekar, respondent No. 4 to this petition. After the death of deceased Govind Juvekar in June 1975, the said nephew became owner of the said property and is also in possession thereof. Thus it is the case of the petitioner that even before the commencement date i. e. 2-10-1975, of the Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and (Amendment) Act, 1972, referred to hereinafter as the Amending Act, 35 acres of land was in possession of his nephew, namely, Prabhakar Narayan Juvekar. In spite of this, the said land was counted in the holding of the petitioner by the Surplus Land Determination Tribunal as well as the Maharashtra Revenue Tribunal.

2. It appears that Prabhakar Narayan Juvekar had filed his independent return u/s 12 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, referred to hereinafter as the Ceiling Act. He included this land in his holding. The said proceedings were ultimately dropped, because it was found that he was not holding land in excess of the ceiling area. So far as the case of the petitioner is concerned, such a plea in specific terms was raised before the Surplus Land Determination Tribunal. However, the Surplus Land Determination Tribunal came to the conclusion that the will was executed by he deceased after 26-9-1970 and, therefore, the same is invalid in the eyes of Saw in view of section it) of the Ceiling Act. Ultimately, therefore, the said land was counted in the holding of the petitioner and the land measuring 23 acres 13 gunthas was declared as surplus out of her total holding.

3. Being aggrieved by this order, the petitioner tiled an appeal before the Maharashtra Revenue Tribunal. The learned Member of the Maharashtra Revenue Tribunal agreed with this finding recorded by the-Surplus Land Determination Tribunal. In this view of the matter, the appeal filed by the petitioner was dismissed, it is these orders which are challenged before me.

4. Shri L. Mohta, the learned counsel for the petitioner, contended before me that the will executed by deceased Govind Juvekar on 25-4-1973 is not a ''transfer within the meaning of the said term as defined in Explanation to section 8 of the Act, According to Shri Mohta, the same meaning will have to be given to the said term even in section 10 of the Ceiling Act. If this is so, it being not a transfer effected after 26-9-1970 and prior to the commencement date, it was not obviously covered by section 10 (1) of the Ceiling Act. He, therefore, further contended that this land could not have been included in the holding of the petitioner, more so when late Govind Juvekar died on 20th June 1975 even before the commencement date of the Amending Act.

5. On the other hand, it is contended by Shri Garud, the learned Assistant Government Pleader, that the words used in Explanation to section 8, namely, ''any other disposition'' will obviously cover even the testamentary dispositions. According to him, all types of dispositions are included in the definition as given in this Explanation to section 8 of the Ceiling Act. Therefore, the disposition of the property by virtue of a will is also covered by the said definition. In this view of the matter, the authorities below were right in ignoring the said transfer, it being hit by section 10(1) and thereby including the said 35 acres of land in the holding of the petitioner. He further contended that there is no material on record to record a finding that after the death of deceased Govind on 30th June 1975, respondent No. 4 Prabhakar Juvekar was put in possession of the said land and it is he who was holding the said land on the commencement date.

6. In the present case, I am concerned with a will which was executed and became operative by virtue of the death of testator prior to the commencement date itself, namely, 2-10-1975. The cases where a person comes into possession of land under a will, that is, by testamentary disposition, are covered by the

provisions of section IU (2) of the Ceiling Act. However, in this case I am not concerned with such a controversy, because petitioner Vimalabai has not acquired this land by virtue of will. The will is executed in favour of Prabhakar and it is he who is claiming the said land, and in fact has shown it in his holding. The case of the petitioner is that the said land cannot be included in her holding, because she was not holding the same on the commencement date.

7. For properly appreciating the controversy raised before me, it will be necessary to make a reference to the relevant provisions of the Ceiling Act. Section 3 of the Ceiling Act deals with prohibition on holding land in excess of the ceiling area. Then section 4 of the Ceiling Act deals with the land held by a family unit. Section 5 lays down the ceiling area and then comes section & which lays down restrictions on transfers. Section & as a whole reads as under :

8. Where a person, or as the case may be, a family unit holds land in excess of the: ceiling area on or after the commencement dale, such person, or as the case may be, any member of the family unit shall not, on and alter that date, transfer any land, until the land in excess of the ceiling area is determined under this Act.

Explanation--In this section- ''transfer'' means transfer, whether by way of sale, gift, mortgage with possession-, exchange, lease, assignment of land for maintenance, surrender of a tenancy or resumption of land by a landlord or any other disposition, whether by act of parties made inter vivos or by decree or order of a Court, tribunal or authority (except where such decree or order is passed in a proceeding which is instituted in such Court, tribunal or before such authority before the 26th day of September 1970), but does not include transfer by way of sale or otherwise of land for the recovery of land revenue or for sums recoverable as arrears of land revenue, or acquisition of land for a public purpose under any law for the time being in force

Then comes section 9 of the Act which deals with the restriction on acquisition of land in excess of ceiling area. Section 9 lays down that no person or a member of a family unit shall at any time, on or after the commencement date, acquire by transfer any land if he, or as the case may be, the family unit already holds land in excess of the ceiling area or land which together with any other land already held by such person, or as the case may be the family unit, will exceed in the total the ceiling area. By an Explanation to this section it is clarified that in this section also the word "transfer" has the same meaning as in section 8. Then comes section 10 which deals with the consequences of certain transfers and acquisitions of land. Section 10 of the Ceiling Act reads as under :

10(1) If:

(a) any person or a member of a family unit, after the 26th day of September 1970 but before the commencement date, transfers any land in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972, or

(b) any land is transferred in contravention of section 8, then, in calculating the ceiling area which that person, or as the case may be, the family unit, is entitled to hold, the land so transferred shall be taken into consideration, and the land exceeding the ceiling area so calculated shall be deemed to be in excess of the ceiling area for that holding, not with standing that the land remaining with him or with the family unit may not in fact be in excess of the ceiling area.

If by reason of such transfer, the holding of a person, or as the case may be, of the family unit is less than the area so calculated to be in excess of the ceiling area, then all the land of the person, or as the case may be, the family unit shall be deemed to be surplus land; and out of the land so transferred and in possession of the transferee (unless such land is liable to forfeiture under the provisions of sub-section (3), land to the extent of such efficiency shall, subject to rules made in that behalf, also be deemed to be surplus land, notwithstanding that the holding of the transferee any not in fact be in excess of the ceiling area.

Explanation--For the purposes of clause (a) ''transfer'' has the sane meaning as in section 8.

All transfers made after the 26th day of September 1970 but before the commencement date, shall be deemed (unless the contrary is proved) to have been made in anticipation of or in order to avoid or defeat the object of the mending Act, 1972

Explanation--For the purposes of this sub-section, a transfer shall not be regarded as made on or before 26th September 1970 if the document evidencing the transfer is not registered on or before that cute or where it is registered after that date, it is not presented for registration on or before the said date.

(2) If any land is possessed on or after the commencement date by a person, or as the case may be, a family unit in excess of the ceiling area, or if as a result of acquisition (by testamentary disposition, or devolution on death, or by operation of law) of any land on or after that date, the total area of land held by any person, or as the the case may be, a family unit, exceeds the ceiling area, the land so in excess shall be surplus land.

(3) Where land is acquired in wilful contravention of section 9, then as a penalty therefore, the right, title and interest of the person, or as the case may be, the family unit or any member thereof in the land so acquired or obtained shall subject to the provisions of Chapter IV, be forfeited, and shall vest without any further assurance in the State Government:

Provided that, where such land is burdened with an encumbrance, the Collector may, after holding such inquiry as he thinks fit and after hearing the holder and the person in whose favour the encumbrance is made by him, direct that the right, title and interest of the holder hi some other land of the holder equal in extent to the land acquired in wilful contravention of section 9 shall be forfeited to Government.

From the bare reading of this section, it is also clear that for the purposes of clause (a) of sub-section (1) of section 10 of the Ceiling Act, the word ''transfer'' has the same meaning as in section 8. Then the section also raises a statutory fiction as well as a statutory presumption, relating to transfers effected between 26-9-1970 and the commencement date. Therefore, from the bare reading of these various provisions of the Ceiling Act it is quite obvious that the ceiling area of a person or a family unit is to be fixed with reference to the commencement date, i.e. 2-10-1975. The prohibition or restriction imposed by section 8 or section 9 of the Ceiling Act becomes operative from the commencement date, namely, 2-10-1975. Even a sale or a transfer by a member of a family unit is intended to be brought within the mischief of section 10 of the Ceiling Act, though for a limited purpose. In the present case, the will was executed by the husband of the petitioner on 25-4-1973 in favour of Prabhakar and he became the holder of 35 acres of land with effect from 30th June 1975 itself when the husband of the petitioner died. Therefore, the only question which requires consideration in this petition is to find out as to whether the definition of the word ''transfer'' as given in Explanation to section 8 of the Ceiling Act will include in its import testamentary dispositions like a will.

8. While defining the term ''transfer'' in the Explanation to section 8 of the Ceiling Act, all types of transfers are sought to be included in the definition. The words used, namely, ''any other disposition'' will obviously mean all types of dispositions of land and cannot be read as ejusdem generis. I had an occasion to deal with this aspect of the matter in Gulabrao v. State of Maharashtra 1976 Mh. L J 727. But it does not appear to be the intention of the Legislature that it wanted to include in this definition even the involuntary or testamentary dispositions of property which are not made by act of parties inter vivos. It is no doubt true that while defining the word ''transfer'' the Legislature has in its import included sale, gift, mortgage with possession, exchange, lease, assignment of land for maintenance, surrender of a tenancy or resumption of land by a landlord or any other disposition, whether by act of parties made inter vivos or by decree or order of a Court, tribunal or authority, though the transfers otherwise for recovery of land revenue etc. have been excluded from the said import. Therefore, if this definition of word "transfer" as given in the Explanation to section 8 is read as a whole and in its context, it is quite obvious that only those assignments or dispositions of property which are the result of act of parties and are made inter vivos or the decree or order of the Court alone are covered by the definition.

9. We also get an internal evidence in this behalf from other provisions of the Ceiling Act itself. By section 9 of the Ceiling Act a restriction is imposed on the acquisition of land in excess of the ceiling area. In section 9 also the Legislature has used the words "acquire by transfer." By Explanation to this section the word "transfer" is given same meaning as is given to the said word in section 8 of the Ceiling Act. If any person or a member of a family unit acquires land by transfer on or after the commencement date, and if the said person or family unit is

already holding land in excels of the ceiling area, or by this acquisition will hold land in excess thereof then the consequences as laid down by sub-section (3) of section 10 must follow by necessary implication. In sub-section (2) of section 10 the Legislature has only used the word "acquisition", and then in the bracket the position is clarified by using the words testamentary disposition or devolution on death, or by operation of law''. In this sub-section the word "transfer" is not used by the Legislature. This clearly indicates that though a person can acquire land by testamentary disposition or devolution on death, or by operation of law, it cannot be termed to be an acquisition by transfer as contemplated by section 9 or Explanation to section 8 of the Ceiling Act. This position is further clarified by the Legislature in section 18 of the Ceiling Act. Section 18 of the Ceiling Act reads as under :

18. On the day fixed forbearing 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 is held by the holder on the 26th day of September 1970;

(b) whether any land transferred between the period from the 26th day of September 1C7G and the commencement date, or any land partitioned after the 26th day of September 1970, should be considered or ignored in calculating the ceiling area as provided by sub section (1) of section 10 or section 11;

(bb) whether the holder has any share in the land held by a family or held or operated by any Co-operative Society or held jointly with others or held as a partner in a firm; and the extent of such share;

(c) what is the total area of land held by the holder on the commencement date;

(d) whether any transfer or partition of land is made by the holder in contravention of sections or 11 and if so, whether the lend so transferred or partitioned should be considered or ignored in calculating the ceiling area under the provisions of sub-section (1) of section 10 or section 11?

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

(f) whether any land has been acquired on or after the commencement dale 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 holder is entitled to hold ?

(h) 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 Jaw applicable thereto ?

(i) whether any land held by the holder is to be forfeited to Government under subsection (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 holder is in conformity with the provisions of section 16?

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

(1) 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.

Clause (e) of section 18 enjoins a duty upon the Collector to verify as to whether any land has been acquired by the person or family unit as the case may be, on or after the commencement date by transfer or by partition. Then by clause (f) the Collector is farther enjoined to find out as to whether any land has been acquired on or after the commencement date by testamentary disposition, devolution on death or by operation of law. In clause (f) the word "transfer" is not used. Therefore, this acquisition of property by virtue of the testamentary disposition, or devolution on death or operation of law is not equated by the Legislature with the acquisition of property by transfer. This clearly indicates the legislative intention.

10. Normally the testamentary disposition is not included in the word "transfer" as made in section 5 of the Transfer of Property Act. Section 5 of the Transfer of Property Act deals with the transfers of properties which are by act of parties made infer vivos. If section 9 of the Ceiling Act is read in this context it appears that if the meaning as attributed by Shri Garud is given to the word "transfer" as defined in Explanation to section 8, it will obviously result in hardship and inconvenience not intended by the Legislature. If by testamentary disposition a person acquires a land and to such an acquisition section 9 was to apply, then the result will be that under sub-section (3) of section 10 the Act the said land can be forfeited of course subject to the provisions of Chapter IV, and consequently shall vest without any further assurance in the State Government and that too for no fault of the person who gets this land under a will. The will or testamentary disposition being not a transfer or disposition of the property by act of parties made inter vivos, a person will be penalised for the act of somebody else to which he was never a party. In my opinion, this was never the intention of the Legislature. If this was the intention of the Legislature, the Legislature would not have used a different phraseology in sections 10 (2) and (3) of the Ceiling Act or section 18 (e) and (f) of the said Act. As already observed, the phraseology used in these sections is indicative of the legislative intention.

11. As to whit is the nature of the disposal of immovable property by a will is by now well-settled. In this context a reference could be usefully made to the Full Bench decision of Jammu and Kashmir High Court in Dr. Gwashalal and Others

Vs. R.B. Thakar Kartar Singh, After making a detailed reference to a Full Bench decision of Madras High Court in Jamindar of Bhadrachalam v. Venkatadn Appa Rao A I R 1922 Mad. 457 and to a decision of Oudh High Court in AIR 1944 65 (Oudh) , the Full Bench of the Jammu and Kashmir High Court ultimately observed as under:

Disposal of immovable property by will would not amount to a transfer inasmuch as the property does not pass on to the donee at the time the will is executed. It is merely an intention expressed by the testator with respect to his property that after his death it should devolve on the donee. In my opinion, therefore, there is no specific provision in law prohibiting the disposal of immovable property other than the land as defined in the land Alienation Act, by will in favour of a non-State subject and such a will cannot be held to bt invalid.

In this context reference could usefully be made to the following observations of the Supreme Court in Thakur Mohd. Ismail Vs. Thakur Sabir Ali, :

Incidentally we may add that use of the words ''inter vivos'' in the definition of the word ''transfer'' merely emphasises that the transfer must be effective during the life time of the transferor as contrasted with a transfer by will which takes effect on the death of transferor.

In my opinion, these observations will aptly apply to the present definition also.

12. This Court had also an occasion to consider this aspect of the matter in the context of the provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 in Daulat Awachit v. Maharashtra Revenue Tribunal 1965 Mh. L J Note 6. While construing the word ''transfer'' used in section 38 (7) of the said Act, the Division Bench of this Court held that the word ''transfer'' as occurring in section 38 (7) does not include acquisition of interest under a testamentary disposition like a will. In my opinion, as already observed, the transfers which are by act of parties made inter vivos or as a result of a decree or an order of a Court, Tribunal or authority etc. alone are covered by the said term as defined in Explanation to section 8 of the Ceiling Act. It will not include the testamentary disposition of the property not made inter vivos.

13. In the present case, the will was executed on 26-4-1973 and the deceased Govind died on 30th June 1975 even before the commencement date. The certified copies of the crop-statements were produced before me by the learned counsel for the respondent No. 4 relating to the land in question from which it appears that the respondent No. 4 entered into possession of the land immediately after the death of late Govind and was holding the same on the commencement date. In the return filed on behalf of the respondent No. 4 he had further stated that besides the aforesaid agricultural property some house property was also given to him and he came in possession of the said property and became owner thereof in his own right. He has also clarified the position that he was the head of his family. He filed a return u/s 12 of the Ceiling Act had shown the said land in his holding as it was held by him on the commencement

date, but as the total members in his family unit were more than 5, in the said proceedings it was decided that he was not a surplus holder and, therefore, ultimately the proceedings were dropped. Thus in fact this land was shown in the holding of the respondent No. 4 and was counted in his holding in the proceedings instituted under the Ceiling Act qua his family unit.

14. In this view of the matter, in my opinion, the authorities below committed an error in coming to the conclusion that in spite of the fact that the lands were in possession of the respondent No. 4 by virtue of a will executed by deceased Govind on 25-4-1973 even before the commencement date, the same could be counted in the holding of petitioner Vimalabai, who inherited the other property of Govind under the Hindu Succession Act. On the commencement date an area of 35 acres was obviously in lawful and actual possession of the respondent No. 4 as an owner thereof and, therefore, it could not have been counted in the holding of the petitioner.

15. It is not disputed before me that if this area of 35 acres of land is excluded from the holding of the petitioner, then she was obviously not the surplus holder.

16. in this view of the matter, the Special Civil Application is allowed. The rule is made absolute and the orders passed by the authorities below are quashed and set aside. However, in the circumstances of the case there will be no order as to costs.