(1982) 01 BOM CK 0024

In the Bombay High Court

Case No : Special Civil Application No. 832 of 1978

Waman Hari Pathak since deceased by his heirs and legal representative and Others — APPELLANT

Vs

State of Maharashtra and Another — RESPONDENT

Date of Decision : 13-01-1982

Acts Referred:
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 12

Citation : (1983) 1 BomCR 359

Hon'ble Judges : R.A. Jahagirdar, J

Bench : Single Bench

Advocate : M.V. Sali, for the Appellant; D.P. Hegde, A.G.P., for the Respondent

Judgement

R.A. Jahagirdar, J.—This petition arises out of proceedings under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, after its amendment of October 1975. The said Act will hereinafter be referred to as "the Ceiling Act". The original first petitioner has expired during the pendency of this petition but he will, for the sake of convenience be referred to as such in this judgment. The first petitioner is the father of the second petitioner. The facts leading to this petition have to be chronologically mentioned before one can appreciate the point of law neatly raised by Mr. Sali appearing in support of this petition.

2. Ceiling Case No. 104 of 1976 was stated in respect of the holding of the second petitioner and by its order dated 21st September, 1976 the Surplus Land Determination Tribunal, hereinafter referred to as "the S.L.D.T.", held that the second petitioner''s total holdings were to the extent of 92 acres 15 gunthas. Taking into consideration the number of members in his family and other relevant factors it was held that he was entitled to hold 64 acres 32 gunthas thus giving rise to surplus holding of 27 acres 23 gunthas. This order was challenged by the second petitioner in an appeal, being Appeal No. ALC/A/269 of 1976 before the Maharashtra Revenue Tribunal. The State also filed cross-objections. The Maharashtra Revenue Tribunal noticed that by a mutation entry, being,

Mutation Entry No. 18 of 7th January, 1970, two lands bearing Gat Nos. 37 and 134 together admeasuring 43 acres 16 gunthas had been transferred from the name of the first petitioner to the name of the second petitioner in the record of rights. According to the Maharashtra Revenue Tribunal these lands ought to be included in the holding of the second petitioner in view of the said mutation entry. The Maharashtra Revenue Tribunal also held that certain acreage which has gone under the road ought to be excluded from the total holding of the second petitioner. By its judgment and order dated 3rd December, 1976 the Revenue Tribunal set aside the order of the S.L.D.T. and remitted the case to the S.L.D.T. fresh inquiry and disposal in accordance with law and in the light of the observations made in its judgment.

3. In the meantime, revisional proceedings had been taken up in respect of the holding of the first petitioner by the Commissioner of Bombay Division. He noticed that the Maharashtra Revenue Tribunal had thought it fit to include the two lands mentioned in the Mutation Entry No. 18 in the holding of the second petitioner which necessarily required exclusion of the said lands from the holding of the first petitioner. He, therefore, set aside the order passed on 21st September, 1976 in Ceiling Case No. 149 of 1976 relating to the holding of the first petitioner. It may be stated at this stage that in the said inquiry the holding of the first petitioner had been held to be surplus to the extent of 5 acres 38 gunthas. The Commissioner directed that the case of the first petitioner should be heard along with the case of the second petitioner which had already been remitted to the S.L.D.T. by the Maharashtra Revenue Tribunal as mentioned above.

4. Thereafter both the cases were consolidated and were decided together by the S.L.D.T. by its order dated 31st October, 1977. By this order the S.L.D.T. held that the second petitioner was holder of surplus land to the extent of 65 acres 8 gunthas. While so holding, the S.L.D.T. included 43 acres 16 gunthas mentioned in Mutation Entry No. 18 of 7th January, 1970 in the holding of the second petitioner. Since this acreage was excluded from the holding of the first petitioner the first petitioner was naturally from the holding of the first petitioner the first petitioner was naturally held to be non-surplus holder. This order of the S.L.D.T. was challenged by both the petitioners before the Maharashtra Revenue Tribunal in an appeal, being Appeal No. ALC/A/47 of 1977, which was heard and dismissed by the Maharashtra Revenue Tribunal of Bombay by its judgment and order dated 31st March, 1978 which is the subject matter of the challenge in this petition.

5. Mr. Sali, the learned Advocate appearing in support of the petition, has criticised the judgment of the two authorities below mainly on one ground and that is that both the authorities were in error in including 43 acres 16 gunthas comprised in Gat Nos. 37 and 134 in the holding of the second petitioner. He has successfully shown to me that these two lands had been allotted to the share of the first petitioner in a registered petition in the year 1957. In the year 1970,

these two lands were purportedly transferred from the name of the first petitioner to the name of the second petitioner. It is Mr. Sali''s contention that by a mere mutation entry, ownership of the land cannot be transferred from one person to another. I have no hesitation in accepting this contention. If any presumption arises from the said mutation entry, that presumption stands rebutted by the very contents of the mutation entry which shows that this transfer is being made on oral report. The ownership of the Immovable property such as the agricultural land cannot be transferred orally. The mutation entry, therefore, has no legal effect.

6. Mr. Hegde, the learned Assistant Government Pleader, appearing for the State did not contend otherwise but according to him he conduct of the parties has consistently shown that these two lands have been treated to be of the ownership of the second petitioner and on that basis the parties have also acted. In particular, he invited my attention to the choice made have also acted. In particular, he invited my attention to the choice made by the second petitioner whereby he has asked the S.LD.T. to delimit one of these two Gat numbers as his surplus land. I am unable to accept the contention of Mr. Hegde that merely because the parties have acted in particular manner of conducted themselves in relation to the land in a particular manner that would affect the legal ownership of the land. Only in those cases where the ownership is claimed by adverse possession the conduct of the parties in relation to the land can possible affect the legal ownership of the lands. In the instant case admittedly as long ago as in the year 1957. Gat Nos. 37 had been allotted to the first petitioner who thus became the owner of the two lands. That ownership could not have been divested by mere oral report given to the relevant revenue authorities and by making mutation entry on the basis of the said oral report. In my opinion, therefore, Mutation Entry No. 18 of 7th January, 1970 was of no legal effect and it did not transfer the ownership of the lands from the first petitioner to the second petitioner. It may be, under the some arrangement the second petitioner is in possession of the said lands, if at all, but that possession does not amount to holding the said lands either as an owner or as a tenant to attract the provisions of the Ceiling Act. The acreage of the said two Gat numbers will have to be excluded from the surplus holding of the second petitioner. After hearing Mr. Sali for the petitioners and Mr. Hegde, the Assistant Government Pleader, the following position emerges:

The second petitioner''s holding is held to be 65 acres 8 gunthas. From this is to be deducted the area of 43 acres 16 gunthas which will leave an area of 21 acres 32 gunthas as surplus holding of the second petitioner. The case of the second petitioner, therefore, will have to go back to the S.L.D.T. for purpose of delimiting surplus land and accordingly it is remitted to the S.L.D.T. at Nandurbar.

Since the above two lands namely Gat Nos. 37 and 134 have been excluded from the holding of the second petitioner, they will necessarily have to be included in the holding of the first petitioner which would result in the restoration of the position obtaining by the order passed on 21st September, 1976 in Ceiling Case No. 149 of 1976 in the case of the first petitioner. That order is thus restored. There will be no order as to cots in this petition. Ceiling Case No. 149 of 1976 of the first petitioner to be taken up by the S.L.D.T. for the purpose of enabling the first petitioner to exercise his right in respect of delimitation of the land.