The Godavari Sugar Mills Ltd. and Others Vs S. Ramamurthy and Others

Special Civil Application No. 1562 of 1969

Court: Bombay High Court

Date of Decision: Feb. 16, 1972

Acts Referred:
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 â€" Section 2(14), 2(30)

Citation: AIR 1973 Bom 225 : (1972) 74 BOMLR 809 : (1973) ILR (Bom) 181 : (1973) MhLj 85

Hon'ble Judges: Vaidya, J; K.K. Desai, J

Bench: Division Bench

Advocate: F.S. Nariman and Sandip Thakkar, Mulla and instructed by Mulla, Craigie Blunt and Caroe, Attorneys, for the Appellant; S.P. Bharucha, instructed by Little and Co., Attorneys, for the Respondent

Judgement

K.K. Desai, J.
In this Petition under Articles 226 and 227 of the Constitution the six Petitioners have challenged the legality and

correctness of the decision of the Maharashtra Revenue Tribunal dated March 19, 1969, whereby the Tribunal confirmed the order of the

Collector of Ahmednagar dated August 31, 1965, in the matter of Inquiry No. Ceiling Rahuri 42 of 1964, whereby the Collector made a

declaration that the partnership firm of the six Petitioners, viz., M/s Somalia Farm, Lakh, was entitled to retain land to the extent of one ceiling area

i.e. 108 acres of dry-crop land and the total area of land which was in excess of the ceiling area was 812 acres and 32 3/4 gunthas equivalent to

dry-crop area 1321 acres and 12 gunthas.

2. The facts which require to be noticed are as follows : -

Prior to October 1, 1949, one K. J. Somalia was the owner of three big agricultural farms, one of them being Somalia Farm, situated at Lakh in

Rahuri Taluka. This last farm was sold on October 1, 1949, to the first Petitioner Company (hereinafter referred to as ""the Company""). The

holding of the Company, so far as this petition goes, may be considered as 869 acres and 02 gunthas. This very holding was the subject-matter of

an agreement of partnership executed by the six Petitioners including the Company on November 30, 1959. The substance of the agreement of

partnership was that as from June 1, 1956, the six petitioners should carry on the business of working and running of an agricultural farm on the

above lands of Somalia Farm (at Lakh) and of cultivating sugar-cane and other crops. The partnership was terminable at will. Though the

Company took the remaining five Petitioners as partners, the good-will of the firm name and the benefit of the agricultural tenancy rights and all

other rights in respect of the lands were agreed to continuously belong to the Company. The capital for the business was also to be brought in only

by the Company. The Petitioners Nos. 2 to 6 were only taken as working partners with a right to remuneration of Rs. 175/- p.m. plus shares in

profits and losses of partnership as given to them under clause 98) of the agreement. The company kept 25 per cent whilst the petitioner No.2 was

given 18.75 per cent and the rest of the petitioners were given 14.0625 per cent of the profits and losses in the partnership business. In pursuance

of its liability to do so under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, the partnership firm filed a return in respect of

the above lands. By the return the partnership claimed that the farm lands were being cultivated by the partnership as from June 1, 1959, and that

under the Act each of the six partners was entitled to retain lands to the extent of one ceiling area viz., 108 acres dry-crop land. In the alternative, it

was claimed that in any case the partnership firm as holders was entitled to retain with itself 108 acres of dry-crop land. By his order dated August

31, 1965, the Collector of Ahmednagar rejected the contention of the partnership that each of the partners was a separate holder entitled to retain

one ceiling area i.e., 108 acres of dry-crop land. He, accordingly, made a declaration that the partnership (s one entity) was entitled to continue to

hold one ceiling area i.e., 108 acres of dry-crop land and made consequential declaration regarding the surplus area and other relevant matters.

Before the Maharashtra Revenue Tribunal, diverse contentions were advanced so that a finding could be made in favour of the six Petitioners that

each of them was entitled to hold on ceiling area i.e., 108 acres of dry-crop land. The Tribunal rejected these contentions and confirmed the order

of the Collector. In arriving at this finding, the Tribunal referred to the provisions in the deed of partnership produced by the Petitioners. The

Tribunal noticed that the lands were cultivated in partnership and were entered in the name of Somalia Farm in the land records. It observed that in

accordance with the entries in the record of rights and the tenancy register it could be said that the firm of Somalia Farm was in actual possession

of the land. It referred to the provisions in Section 2(14) of the Ceiling Act defining the phrase ""to hold land"" and observed that the possession was

not with the individual partners and was with the Somalia Farm. The Tribunal observed :-

..... even assuming that the several partners of the Somalia Farms are in joint possession of lands which form the subject-matter of this

appeal, each of them would not be a holder within the meaning of sub-section (14) of Section 2 of the Ceiling Act, since their possession is nether

as tenants nor as owners except in respect of Godavari Sugar Mills Ltd.

The further observation was :

..... the farm is cultivated and managed by the partnership Firm. That would not confer on partners the character of holders. At the most it

can be said that Somalia Farm is managed by the firm and if the tenancy rights vest in Somalia Farm then Somalia Farm would be a holder. But it is

difficult to understand how the partners can be holders within the meaning of Section 2 (14) of the Ceiling Act when they do not claim any interest

in the tenancy rights and are only partners in cultivation and management.

They rejected the contention on the basis of the term ""person"" contained in Section 2 (22) of the Ceiling Act. The further observation was :-

..... There is no indication in the record to show that all these six partners are holders directly paying rent to the landlord. They are

only partners in cultivation. A careful perusal of the record has confirmed us in this view.

Having made the above finding the last observation that the Tribunal made was : -

..... It is only the Godavari Sugar Mills who are the holders and other persons who style themselves as partners of Somalia Farm are merely

partners in cultivation.

3. In support of the reliefs claimed in this petition Mr. Nariman for the petitioners has made the following contentions :

Having regard to the definitions of the phrases ""to hold"" and ""the tenant"" in Sections 2 (14) and 2 (30) of the Ceiling Act and the provisions in

sections 4 and 2 (6) of the Bombay Tenancy and Agricultural Lands Act, 1948, every person who lawfully cultivated lands belonging to other

persons whether or not their authority was derived directly from the owner of the land must be ""deemed tenant"" of the land. Each of the petitioners

who admittedly lawfully cultivated the lands in question must accordingly be held to be ""deemed tenant"" of the land. The partnership firm of the six

petitioners was not a ""persons"". In the result the Tribunal should have held in favour of each of the petitioners that each of them was entitled to

retain with himself 108 acres of land as the prescribed ceiling area. In developing his arguments Mr. Nariman referred us to the decision of the

Supreme Court in Dahya Lala v. Rasul 65 BomLR 328 = AIR 1964 SC 1820.

4. Mr. Bharucha for Respondents Nos. 1 and 7 has controverted all the submissions made by Mr. Nariman and has submitted that there is no

reason whatsoever to interfere with the declaration made by the Collector and confirmed by the Tribunal.

5. In connection with the contentions made by Mr. Nariman it required to be recorded that on the following facts there is no dispute between the

parties. The Farm lands have been purchased by the First Petitioner Company on October 1, 1949, prior to June 1, 1956, the partnership firm of

the petitioners was not connected in any manner with these lands. As is recorded in the agreement of partnership dated November 30, 1959, as

from June 1, 1956, the business of the partnership, viz., running a portion of the farms formerly known of Somalia Farms, Lakh and of cultivating

sugar (cane) and other crops thereon, has been carried on by the partnership. In respect of this business, all the Petitioner Company, Petitioners

Nos. 2 to 6 are merely working partners. Under clause (5) of the agreement of partnership, the firm name (Somalia Farms) and the good-will

thereof, including the benefit of tenancy rights of the agricultural lands, and all other rights, whatsoever, belong to the First Petitioner Company. The

finding of the Tribunal is that by virtue of the agreement of partnership and in accordance with the entries in the record of rights and the tenancy

register it could be said that the partnership firm (of Somalia Farm) was in actual possession of the lands.

6. The questions raised by Mr. Nariman are liable to be decide on the basis of the above facts. Before referring to the relevant provisions of law. It

may be noticed that the finding of the Tribunal is that the Petitioners Nos. 2 to 6 ""do not claim any interest in the tenancy rights"". The six petitioners

are only partners in cultivation and management.

7. The provisions of law on which reliance has been placed are Sections 2 (14), 2 (22) and 2 (30) of the Ceiling Act and Sections 2 (6) and 4 of

the Tenancy Act. The relevant parts of these sections run as follows : -

2 (14) ""to hold land"" with its grammatical variations and cognate expression of land as owner or as tenant and ""holding"" shall be construed

accordingly.

2 (22) ""person"" includes a family.

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.

There is no doubt that in the present case the relevant tenancy law is the Bombay Tenancy and Agricultural Lands Act, 1948.

Section 2 (6) ""to cultivate personally"" means to cultivate land on one''s own account -

(I) by one''s own labour, or

(ii) by the labour of any member of one''s family or

(iii) under the personal supervision of oneself or any member of one''s family by hired labour or by servants on wages payable in case or kind but

not in crop share.

... ...

(a) .....

(b) .....

(c) .....

Provided that the restrictions contained in clauses (a), (b) and (c) shall not apply to any land -

(I) which does not exceed twice the ceiling area

(ii) up to twice the ceiling area, if such land exceeds twice the ceiling are .....

2 (6C) ""to hold land"" as an owner or tenant shall for the purposes of clause (2D) of this section and section ..... mean to be lawfully in

actual possession of land as on owner or tenant, as the case may be.

Section 4. A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated

personally by the owner and if such person is not -

(a) a member of the owner''s family, or

(b) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the

owner or any member of the mortgagee in possession.

(c) a mortgagee in possession.

Explanation I - A person shall not be deemed to be a tenant under this section if such person has been on an application made by the owner of the

land as provided u/s 2-A of the Bombay Tenancy Act, 1939, declared by a competent authority not to be a tenant.

Explanation II - ....."" Relying on the provisions in Section 2 (4) of the Tenancy Act read with Section 2 (14) of the Ceiling Act and the

facts mentioned above. Mr. Nariman submitted that since the Petitioners were lawfully cultivating the lands belonging to the first Petitioner

Company, each of the Petitioners must be deemed to be in actual possession of the lands as ""deemed tenant"". The Petitioners, therefore, should be

held to hold the above lands within the meaning of that phrase in Section 2 (14) of the Ceiling Act. The result was that under the scheme of the

Ceiling Act each of the Petitioners as holder of the land was entitled to a declaration that he was under the Ceiling Act entitled to continue as

owner and to hold 108 acres of dry crop land. Each of the petitioners was entitled to a declaration to the above effect and thereafter surplus land

should have been ascertained under the Act. He fortified his above submission on the basis of the finding of the Supreme Court in the case of

Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim, that all persons other than those mentioned in clauses (a), (b) and (c) of Section 4 of

the Bombay Tenancy and Agricultural Lands Act 1948, who lawfully cultivate the land belonging to other persons whether or not their authority is

derived directly from the owner of the land must be deemed tenants of the land under S. 4 of the Act. He emphasised that at page 329 of the

Report the Supreme Court observed that : -

Section 4 seeks to confer the status of a tenant upon a person lawfully cultivating land belonging to another. By that provision, certain persons

who are not tenants under the ordinary law are deemed to be tenants for purposes of the Act. A person who is deed a tenant by Section 4 is

manifestly in a class apart from the tenant who holds lands on lease from the owner. Such a person would be invested with the status of a tenant if

three conditions are fulfilled - (a) that he is cultivating land lawfully, (b) that the land belongs to another person, and (c) that he is not within the

excepted categories ..... The Act affords protection to all persons who hold agricultural lands as contractual tenants and subject to the

exceptions specified all persons lawfully cultivating lands belonging to others .....

In his submission the above findings of the Supreme Court had the effect of overruling the observations of the Division Bench of this Court in

Gulabrao N. Wani Vs. Hemakashiram Gajare and Others, where having regard to the first Explanation to Section 4 of the Tenancy Act, the

Division Bench held that Section 4 in itself does not confer any status of tenancy in favour of the person lawfully cultivating the land, but it only

raises a rebuttable presumption regarding his being a tenant. The Division Bench, accordingly held that as under the terms of the agreement in the

case before it there was a special contractual relationship and inspite of the opponent in the case being in possession and lawfully cultivating the

land in question was not a tenant.

8. In connection with the above submission made by Mr. Nariman and the true effect of the phrase ""to hold land"" contained in Section 2 (14) of

the Ceiling Act it is necessary to remember the intent and the purpose of the Ceiling Act as clarified in the preamble which runs as follows : -

..... in the public interest to impose a maximum limit(or ceiling) on the holding of agricultural land ..... to provide for the acquisition of

land held in excess of the ceiling and for the distribution thereof to landless and other persons .....

Apparently the Act was not intended to deprive the persons in actual possession of the land and cultivating the same as tenants thereof except in

cases where such tenants were found to be in possession of lands in excess of the ceiling fixed by the Act. The above can be ascertained by

reading diverse provisions in the Act. Towards this purpose, the phrase ""to hold land"" was defined in sub-section (14) of Section 2 to mean that a

tenant in actual possession of the land and also an owner in actual possession of the land must be held to continue ""to hold land"". Towards

protection of tenants in actual possession by sub-section (30)of Section 2 persons who were ""deemed tenants"" under the Tenancy Act were

included in the definition of the phrase ""tenant"". The policy of law disclosed by the above definitions was to provide that wherever a landlord was

not in actual possession of lands of his ownership and others cultivated such lands lawfully (whilst the owner was not cultivating the same

personally) they must be held to be ""deemed tenants"" and as such entitled to continue in possession of lands to the extent of ceiling area fixed under

the Ceiling Act. When the definition of phrase ""to hold land"" is read in the light of the preamble of the Act and the above discussion the meaning of

that phrase would be as follows. In every case in which the landlord or the owner continues in actual possession of land he must be held to hold the

land. This is in consonance with the provisions of the Act. The surplus area in possession of a landlord would have to be ascertained on the footing

of the area of land in his actual possession. In other words, in cases in which the landlord and the possession of the land of his ownership, he could

not be heard to state in connection with such land that it did not form part of his holding. The surplus area will have to be ascertained on the basis

that land in his actual possession was (and formed part of) his holding. The consequence of the above finding is that in cases in which actual and

factual possession of land continues under any arrangement whatsoever with the landlord himself the persons cultivating such land will not be

holders of such land. In connection with the question of finding out the ceiling area that an owner of lands in actual possession thereof should be

allowed to continue to hold and delimiting the surplus area in his possession the owner cannot be entitled to argue that other persons cultivating his

land were tenants and holders of land. Similarly, for ascertaining whether the ""tenant"" or the deemed tenant"" is holder of land under the Ceiling Act,

the true test to be applied must be the fact of actual possession thereof, the tenant cannot be held to hold the land in question. We have no doubt

that in this connection extreme importance must be given to the phrase ""actual possession"" as contained in sub-section (14) of Section 2. In our

view on the facts as established, it is clear that the First Petitioner Company is owner of the land mentioned in the present proceedings. The First

Petitioner Company has continued to remain in actual possession of the land in spite of its having made the agreement of partnership mentioned

above and in spite of its having become a partner with petitioners Nos. 2 to 6 for the purpose of carrying on the partnership business of working

and running the Farm (land) and of cultivating sugarcane and other crops thereon. In this connection it is important to notice that admittedly the

First Petitioner Company itself is a party to the cultivation of the land. Since it is an incorporated company it is a party to the cultivation of the land

through its agents. Even so, it must be held to have continued to cultivate the land even after the date from which the partnership carried on the

business. Now, it is true that the petitioners Nos. 2 to 6 by themselves and/or through their agents and labourers are also taking part in the

cultivation of the land. They cannot be held to be doing so unlawfully. To this extent they fall within the category of the ""deemed tenants"" u/s 4 of

the Tenancy Act. Even so, in connection with the enforcement of the Ceiling Act, the fact that the First Petitioner Company as owner, has not given

up the possession of the land can never be forgotten and must be borne in mind. The First Petitioner Company has continued in actual possession

of every and each part of the land and so far as we can judge it continues ""to hold the land"". Having regard to the above true position, we are not

in a position to accept Mr. Nariman''s submission that each of the six petitioners are entitled to finding that they are separate land holders of the

land in question and are entitled to a declaration that each of them is entitled to hold 108 acres of dry crop land from out of the land. In no event

such a declaration could be made in favour of the petitioners Nos. 2 to 6, as the actual possession of the land has throughout continued with the

First Petitioner Company.

9. In arriving at the above finding, we have given due and proper attention to the observations of the Supreme Court in the case of Dahya Lal and

Others Vs. Rasul Mohammed Abdul Rahim, .

10. In this case the finding of the Collector and the Tribunal is that the partnership firm was entitled to hold 108 acres of dry-crop land. That finding

has not been challenged and/or agitated on behalf of the respondents Nos. 1 and 7 in this case. We are, therefore, not in a position to interfere with

that declaration.

11. In the result, the petition must fail. Rule is discharged with costs.

12. Rule discharged.