

(2009) 04 BOM CK 0140

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 2655 of 1993

Pandharinath Awari

APPELLANT

Vs

The State of Maharashtra and
Others

RESPONDENT

Date of Decision: April 9, 2009

Acts Referred:

- Constitution of India, 1950 - Article 227
- Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 - Section 10, 10(1), 16, 16(2), 45(2)
- Maharashtra Agricultural Lands (Lowering Ceiling on Holdings) (Declaration and Taking Possession of Surplus Land) Amendment Rules, 1975 - Rule 4

Citation: (2009) 3 BomCR 601 : (2009) 111 BOMLR 1966 : (2009) 4 MhLj 381

Hon'ble Judges: R.C. Chavan, J

Bench: Single Bench

Advocate: R.R. Deshpande, for the Appellant; A.M. Deshpande, AGP for Respondent Nos. 1 to 4 and S.D. Chopde, for the Respondent

Judgement

R.C. Chavan, J.

This petition seeks to have the order passed by the Additional Commissioner, Nagpur Division, Nagpur, on 25-5-1993 in Revision No. 6/60-A(6)/89-90 of Dhamangaon quashed and set aside and a further direction to the authorities to take surplus land from the holding of respondent No. 5 Gangadhar Raghoba Bhoyar from whom the petitioner had purchased the land.

2. The Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961 (for short, .the Ceiling Act.) came into force on 2-10-1975. The petitioner purchased 11.25 acres of land from survey No. 55 from respondent No. 5 on 26-7-1979. Thus the land had to be included u/s 10 of the Ceiling Act for computing the total holding of land holder respondent No. 5. On 8-6-1987, the Surplus Land Determination Tribunal

determined that 18.81 acres of land was surplus and also possibly held that the land was delimited from survey No. 55. The landlord had challenged the computation of total holding and the surplus land before the Maharashtra Revenue Tribunal by preferring Ceiling Appeal No. 47 of 1989. The State also seems to have raised a cross-objection and eventually the Maharashtra Revenue Tribunal, by its order dated 25-9-1987, held that 22.01 acres of land was to be treated as surplus and directed the Surplus Land Determination Tribunal to take further action to delimit 22.01 acres of land after giving the appellant an opportunity to exercise choice of retention.

3. By a Jahnirnama or proclamation published on 28-3-1990, the petitioner's land was sought to be taken up as surplus land. The petitioner, therefore, filed a revision before the Additional Commissioner, Nagpur Division, Nagpur, u/s 45(2) of the Ceiling Act, which was rejected by the Commissioner by his impugned order dated 25-5-1993. This is why the petitioner is before this Court.

4. I have heard Shri R.R. Deshpande, learned Counsel for the petitioner, Shri A.M. Deshpande, learned AGP for respondent Nos. 1 to 5, and Shri S.D. Chopde, learned Counsel for respondent No. 5, owner of the land.

5. The learned AGP has also made available for my perusal the record of the proceedings before the Commissioner.

6. The learned Additional Commissioner in his impugned order has observed that the order of the Surplus Land Determination Tribunal dated 8-6-1987 mentions that the surplus land will be from the possession of the landlord. Thus till 8-6-1987, there was no question of the petitioner having any grievance in respect of the proceedings before the Surplus Land Determination Tribunal, since his land was not to be touched. In the light of this, the observations of the learned Additional Commissioner in his impugned order that the petitioner was aware of the proceedings before the Surplus Land Determination Tribunal and reference to the objection raised by the petitioner on 9-3-1981 as also petitioner's presence on 18-2-1981 and 16-4-1981 before the Surplus Land Determination Tribunal is thoroughly irrelevant. The question as to which land was to be identified as surplus, was not at all required to be decided at that stage without completing computation of total holding of respondent No. 5 and determining the extent of surplus land. The presence of the petitioner in the earlier proceedings was irrelevant and need not have influenced the judgment of the learned Additional Commissioner.

7. After having observed that the order of the Surplus Land Determination Tribunal mentioned that the surplus land will be from the possession of the landlord, the observation of the learned Additional Commissioner that the petitioner had not availed of any opportunity in appeal after the order was passed by the Surplus Land Determination Tribunal, is indeed surprising. It has not been shown that any order indicating that the petitioner's land was to be touched had been passed before the

Jahirnama or proclamation dated 28-3-1990 came to be noticed by the petitioner. This fact has not been contested by filing any return by any of the respondents.

8. In any case, it would not be open for a landholder to opt to keep the lands in his possession intact and ask the ceiling authorities to take over surplus land, which he had already sold. The provisions of Sections 10 and 16 of the Ceiling Act have been considered from time to time by this Court. In [Keshao Govind Begde Vs. The State of Maharashtra and Others](#), , a similar attempt of the landholder was repelled by holding in para 7 as under:

The policy is, therefore, clear. If it is obligatory on the holder to retain the cumbered land with him, it is difficult to see how the petitioner can insist that the lands which have been sold already should be taken in the first instance for delimiting the surplus land. It has to be noted that though u/s 10, the land will be taken into consideration after calculating the transferred lands, it does not mean that the transfer is to be entirely ignored for all purposes. At any rate, it will be extremely difficult to allow the petitioner to make a choice when he has already made alienations. It may also be noted that in case the transferred lands are taken up to meet the surplus, the transferees will be entitled to recover the purchase money from the petitioner and for the refund of the consideration money which they have paid under the Transfer of Property Act, the property would be under an encumbrance. Considered from any point of view, it seems difficult to accept the submission of Mr. Masodkar. Such inequitable pleas cannot be accepted in a writ petition under Article 227 of the Constitution. It, therefore, follows that the order with regard to the delimiting of this surplus made by the Tribunal is correct and will have to be maintained.

9. In *Shriram S/o. Jagoji Brahmane v. State of Maharashtra and Ors.* reported at 2007(2) Mh.L.J. 353, I had an occasion to consider the same question and had reached the same conclusion. The provisions of Section 10 of the Ceiling Act clearly indicate that the landholder is to lose the property in his possession first and only thereafter the property transferred is required to be taken over as surplus by the State. The right to select the property to be retained by the landholder recognised in Sub-section (2) of Section 16 is subject to Sub-section (1) of the said Section, which in turn makes the provision subject to the provisions contained in Section 10 of the Ceiling Act, with the result that the landholder would have to first give up the property in his possession as surplus before asking the Ceiling Authorities to touch the property transferred.

10. The learned Counsel for the petitioner also relied on a judgment in [Shankargir Gulabgir Gosavi and Another Vs. State of Maharashtra and Others](#), , where apart from the provisions of Sections 10 and 16 of the Ceiling Act, this Court had also referred to the provisions of Rule 4 of the Maharashtra Agricultural Lands (Lowering Ceiling on Holdings) (Declaration and Taking Possession of Surplus Land) Amendment Rules, 1975 made under the Ceiling Act, which provides for the manner

and extent to which land of and in possession of transferees could be deemed surplus land u/s 10(1). It lays down that out of the land transferred and in possession of transferee, where there is one transferee, then land to the extent of the deficiency shall be deemed to be surplus land. This deficiency is the deficiency after using up the lands in possession of a landholder.

11. In view of this, the impugned order cannot be sustained. It is quashed and set aside. The proclamation dated 28-3-1990 is also quashed and set aside. The authorities shall initiate the exercise of delimiting surplus land afresh after first exhausting the lands, which are in possession of the landholder and then touch the lands, which are transferred to the petitioner or others.

12. Rule is made absolute in above terms. No order as to costs.