(1984) 01 BOM CK 0052

Bombay High Court (Nagpur Bench)

Case No: Special Civil Application No. 4141 of 1976

Indubai and Another		APPELLANT
	Vs	
State of Maharashtra		RESPONDENT

Date of Decision: Jan. 10, 1984

Acts Referred:

- Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 - Section 3, 3(3)(1)

Citation: AIR 1984 Bom 287

Hon'ble Judges: G.A. Paunkar, J

Bench: Single Bench

Advocate: R.N. Deshpande and S.R. Deshpande, for the Appellant; B.P. Jaiswal, Addl. Govt. Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This petition by the land order of appeal No. Alc-A-1742 of 1976 arising out or order of Surplus Land Determination Tribunal No. 1 Kelapur dated 31-5-76 in Ceiling Enquiry Case No. 23|60-A (5) of 1975-76 of Pahapad.

2. On return u/s 12 of the Ceiling Act filed by petitioner No. 2, the Surplus Land Determination Tribunal found that the petitioner No.2 family unity held total land 93.02 acres. Potkharab lands found there in was 5.35 acres. His family holding consisted of 3 members including his major son Suresh. The property in the hands of the petitioner No.1 was ancestral notional share of major son their in was determined at held 58.05 acres. Petitioner No.1 held separately 36 acres of land in s. Nos. 3 and 23 situated at Pathoda. Potkharab their in was determined at 3.02 acres. Thus 32.17 acres of petitioner No.1 was clubbed with 58.5 acres of petitioner No.2 Total holding were thus 92.4 acres. Deducting 54 acres of land, surplus with the petitioner was held at 37.4 acres vide order of Surplus Land Determination Tribunal dated 31-5-1976. This order was challenged by the petitioner in appeal before Maharashtra Revenue Tribunal. They contended that 36 acres of petitioner No. 1 be

treated as ancestral property and notional share of the major son suresh their in should be deducted from total holding. They further contended that at any rate the total holdings of the petitioners are joint family properties and the major son Suresh has a share their in. They also contended that 1.31 acres in s. No. 45 of village Zuil is not in their in possession, but it was in the possession of the trespasser Antu on the relevant date and this land is also liable these contentions were rejected by Maharastra Revenue Tribunal and the Maharastra Revenue Tribunal dismissed the appeal vide order dated 16-71976. These orders of surplus Land Determination Tribunal and Maharashtra Revenue Tribunal are challenged in this petition by the petitioners 1 and 2.

3. The learned counsel for the petitioner Shri r. N. Deshpande urged that mother has no share in the joint family property unless there is actual partition by merits and bounds. According to him share means pre-existing share. The petitioners major sons share in the .....below. The Revenue Tribunal below carved out 1+3 notional share of the major son Suresh at 29.02 acres and giving this deduction to the petitioners from their in total joint family holding 93.02 acres, the surplus was determined. Shri Deshpande contended that the share of each member of the family in the total land held by the family as mentioned in Section. 3 (3) (1) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 should be the share to which thee major is son generally entitled to under Hindu Law. The mother of the major son will get a share only in the event of partition by metes and bounds or when the property is divided actually on partition. Till then she can have no share. The interpretation of the said provision as also the provisions of Section 3(3) (ii) are obviously incorect. Section 3(a) (I) and (ii) recites as under :

Where any land -

(a) is held by a family of which a person is a member,

(b) (c) (d) X X X

and the holding of such person or of a family unit of which such person is a member (including the extent of share of such person, if any in the land answering to any of the descriptions in clauses (a), (b) , (c) or (d) above) exceeds the ceiling area on or before the commencement date or on any date there after(hereinafter referred to as the relevant date), then of for the purpose of determining the ceiling area and the surplus land in respect of that holding, the share of such person in thee land aforesaid shall be calculated in the following manner.

(i) in the land held by a family of which the person is a mamber, the share of each member of the fam,ily shall be determined so that each member who is entitled to a share on partition shall be taken to be holding separately land to the extent of his share as if the land has been so divided and separately held on the relevant date.

(ii) in the land held in or operated by a co-operative society or held jointly with others or held firm, the share of the person shall be taken to be the extent of the land such person would hold in proportion of his share in the co-operative society, or his share in the joint holding or his share as partner in the firm, as if the land has been so divided and separately held on the relevant date".

4. The petitioner No. is a member of the family. She is entitled to a share on partition between the petitioner No.2 and his son in the land held by the family. Consequently , the share of each member, father, mother and major son would be 1|3. The share of the major son is, therefore, rightly determined ar 1|3 in the family lands. The same is the case in respect of lands held jointly with others. The share of such joint holders would be the share as iif the joint holders would be the share as if the joint holdings had been so divided and separately held on the relevant date. The word ''share used in the section does not mean pre-existing share as such and does not the learned counsel for petitioners . I therefore, reject the contention of the petitioner and concur and confirm the findings of revenue courts below that they have correctly carved out the notional share of major son suresh and correctly excluded the share of major son suresh in the total holdings of the petitioners.

5. the next contention urged by Shri Deshpande for the petitioners is that the land 36 acres received by the petitioner N0.1 under will executed by her mother would be deemed to be joint family property and the notional share of major son Suresh should be carved out from the total holding. It is not possible to accept this submission. These 36 acres of land do not form the joint family propety of the ancestral property in which the major son will gave a share. Obviously it is the separate property in which the major son will have a share. Obviously it is the separate property fof the petitioner No.1 clubbed under the Ceiling Act with the total holding of the petitioner No.2 for arriving at the total holding of the family unity. This contention has, therefore to merits and deserves to be rejected.

6. the learned counsel Shri Deshpande then urged that 1.31 acres of land the petitioners on the relevant date, but it has been in possession of the z petitioner are not holding the said land within the meaning of Section 2(14) this land is liable to be excluded from the not possible to accept this submission of the petitioners. The petitioners themselves are found to be in possession of the said lands and the crop statements show the possession of the petitioners. Since the petitioners are in possession of this land as reflected in the crop statement . I hold that the contention of the petitioners was rightly rejected by both the Courts below.

7. Shri DEshpande the learned counsel for the petitioners further urged that the directions in the remand order have not been correctly followed while deciding the case afresh on remand by the surplus Land Determination Tribunal. According to Shri DEshpande, remand order had become final and conclusive. According to him, the commissioner held that the entire holding in this case is the joint fam,ily property and the Surplus Land Determination Tribunal was directed to carve out

notional share of the major son. This contentions is also not correct. The case was remanded by the Additional Commisssioner for inquiry and specific decision of the points (1) whether the fields in question are a self-acquired property of the landholder and his wife or (2) whether the fields in question constitute a joint family property. I, therefore, hold that the surplus Land Determination Tribunal has rightly decided the case in view of direction in the remand order.

8. the petitioners have not also raised the contentions raised in paras 3 and 6 above earlier before any of the Tribunals and they have been raised for the first time in this writ petition. However, I have already rejected the contentions for the reasons given by me above.

9. In the result, the petition is without merits and deserves to be dismissed. It is hereby dismissed. The rule is thus discharged. However, there will be no order as to costs.

10. Petition dismissed.