

(1976) 11 BOM CK 0034

Bombay High Court

Case No: Special Civil Application No. 4035 of 1976

Harishchandra Narsingrao
Deshmukh

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision: Nov. 4, 1976

Acts Referred:

- Constitution of India, 1950 - Article 227

Citation: (1978) 80 BOMLR 166

Hon'ble Judges: Hajarnavis, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Hazarnavis, J.

This is a petition under Article 227 of the Constitution of India against an appellate decision of the Maharashtra Revenue Tribunal, Aurangabad, dismissing petitioner's appeal against the order passed by the Surplus Land Determination Tribunal, Taluka Bhokar, District Nanded.

2. The Surplus Land Determination Tribunal found that the petitioner held 177 acres and 20 gunthas of land and had, therefore, held that he was a surplus holder to the extent of 122 acres and 20 gunthas. Out of the land that was held by the petitioner, survey No. 285 admeasuring 153 acres and 8 gunthas is a tank. There is nothing on record to show the nature of the tank. It appears that the villagers have been using the water from the tank and there is also evidence to show that proceedings for acquisition of the tank for public purpose have been going on from 1958. Notification u/s 6 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, has been issued and there is dispute regarding the ownership of that tank. In these proceedings, it is the contention of the petitioner that the area covered by the tank is not land as defined in Sub-section (16) of Section 2 of the Maharashtra

Agricultural Lands (Ceiling on Holdings) Act, 1961. This contention has been over-ruled by the Surplus Land Determination Tribunal and Maharashtra Revenue Tribunal. They have included this land covered by the tank in the holdings of the petitioner and that is how they have come to the conclusion that he is a surplus holder. It is against this order that the present petition has been filed.

3. I heard both the counsel for the parties. I am of the view that mere fact that this being a tank from which water is used by the villagers, does not mean that it is a reservoir as understood under Clause (d) of Sub-section (16) of Section 2 of the Act. Prima facie, it appears that the tank¹ does not come within the mischief of Sub-section (16) of Section 2 of the Act. There is a difference between a tank and a reservoir as understood by the section. Reservoir is a place of temporary storage of water.

4. Mr. Kanuga, the learned Assistant Government Pleader, however, urged that some portion of the tank which is not covered by the water is cultivated by the petitioner. There is no evidence to show how much area was exposed and became available for cultivation. That being so, it is necessary to hold a thorough enquiry regarding the use of this tank. It is only after that enquiry, the question whether the tank falls within the mischief of Sub-section (16) of Section 2 of the Act can be determined. The orders passed by both the Tribunals below cannot be sustained and are, therefore, liable to be set aside.

5. In the result, the rule is made absolute. The orders passed by both the Tribunals below are set aside and the Surplus Land Determination Tribunal is directed to hold an enquiry about the nature and the use of the tank and then record a finding whether it is land as defined under Sub-section (16) of Section 2 of the Act and decide the case on merit. Under the circumstances of the case, there will be no order as to costs.