(1969) MhLj 165

Bombay High Court

Case No: Spl. C. Application No. 102 of 1967

Keshaorao Raoji		APPELLANT
	Vs	
State of Maharashtra and others		RESPONDENT

Date of Decision: Sept. 11, 1968

Acts Referred:

- Constitution of India, 1950 - Article 227
- Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 - Section 2(16)

Citation: (1969) MhLj 165

Hon'ble Judges: N.L. Abhyankar, J

Bench: Single Bench

Advocate: J.N. Chandurkar, for the Appellant; S.M. Hajarnavis, Addl. Govt. Pleader and Respondent No. 2 was not represented, for the Respondent

Final Decision: Allowed

Judgement

N.L. Abhyankar, J.
This petition under Article 227 of the Constitution raises an important question under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, that question being what land within the meaning of section 2(16) is liable to be excluded in determining the ceiling area and the surplus area in case of a landholder.

2. The petitioner returned an area of 135 acres and 25 gunthas as land in his possession u/s 12 of the Ceiling Act. The ceiling limit for this area is 84 acres. The Special Deputy Collector declared 51 acres and 25 gunthas as surplus liable to vest in the State. The petitioner disputes this finding and claims that as much as 8 acres, 29 gunthas are liable to be excluded altogether because that much area does not answer the description of land given in section 2 (16) of the Act. The break-up of this area is claimed as follows:

1. Survey No. 1/1 of Hirapur, area 7 acres, 36 gunthas, out of which 2 acres and 14 gunthas are claimed by the petitioner.

2. Survey No. 28 of Jalka, area 7 acres, 15 gunthas, out of which 3 acres, 15 gunthas are claimed by the petitioner.

3. Survey No. 39/2 of Jalka, area 15 acres, 9 gunthas, out of which 3 acres are claimed by the petitioner.

3. During the enquiry before the Special Deputy Collector, the record-of-rights entries in respect of these fields, among others, and the crop statements for the year 1963-64 in respect of these three fields were produced. Besides, Keshaorao entered the witness-box and examined Manikrao as well as Syed Habib and Rameshwar Tone who was the patwari. Keshaorao stated that out of the total area of 135 acres and (sic) gunthas in his possession, there are nalas and roads on account of which as area of 8 acres and 33 gunthas is uncultivated. The actual word used was (sic) i.e. fallow. He therefore claimed the exclusion of the whole of this area in determining the surplus. Manikrao, who is the owner of an adjacent land, stated that he had seen survey No. 28 and that out of this field only 5 a (sic) fit for cultivation and the rest is useless on account of a flowing nala, This nala was ten feet deep and 2ï¿½ chains wide. One chain is equal to 33 feet. On account of this nala, no crop can be taken from the same. Similarly, he stated that 3 or 3ï¿½ acres of land is uncultivated from survey No. 39/2 because where is a road to the east and south of the field. The width of this road is about 5 to 6 cubits. One road is called Wadura road and the other road is called Jungle road. He also stated that the nala in survey No. 28 also passed through this field causing it to lie fallow to the extent of 3ï¿½ acres. As regards survey No. 1/1 of Hirapur, he stated that his survey No. 88/3 is adjacent to is and in this field survey No. 1/1 there is a Government road about one chain in length called Akola road. On account of this road, one-half acre of land in fallow and another 2 acres is fallow on account of the nala. During cross-examination he was asked only one question by the officer, to which the witness replied that it is not possible to grow grass in the nala though it may be grown on the sides.

4. Syed Habib who is a retired Assistant Superintendent of Land Records and an experienced revenue officer, stated that he had seen all the three fields because he was the Revenue Inspector at the time of settlement and thereafter worked as Assistant Superintendent of Land Records, and also as Superintendent of Land Records and Naib-Tahsildar for some time. He has supported the petitioner that 3 acres, 1 guntha out of survey No. 28, 3 acres, 8 gunthas out of survey No. 39 /2 and 2 acres, 21 gunthas out of survey No. 1 /1 were uncultivable due to nalas and roads. He also stated that it was not possible to grow crops in this much area. No crop can be grown even if an attempt were made. It appears that this witness was not asked any question in cross-examination.

5. The fourth witness was Rameshwar who was the Patwari of Jalka and Hirapur and spoke about survey No. 28/1. He proved that in the crop statements of 1963-64 3 acres,

15 gunthas are shown as fallow from that survey number. Similarly 3 acres are shown as from survey No. 39/2 and 2 acres, 14 gunthas from survey No. 1 /I. He stated that he had seen this land and it was shown because it was not cultivable on account of nalas and roads. The road is a Government road. He also stated that even if attempts were made, it would not be possible to take any crop from this area, nor was it possible to grow grass.

6. It is complained that in spite of this evidence on record, the Special Deputy Collector as well as the Revenue Tribunal have not properly apprehended the scope of the inquiry and his claim has been rejected on entirely untenable grounds. The Special Deputy Collector devoted a few lines in disposing of the contention of the petitioner in paragraph 7. He merely observed as follows with reference to the oral testimony and the documentary evidence:

I have gone through the evidence and sketch map filed. I hold that the so-called Potkharab is still an agricultural land and though some portion may have been kept as uncultivated for using it for grazing purpose, it is still an agricultural land being a part of survey number and cannot be excluded while calculating the ceiling area.

I do not think that it was anybody''s case that any of the land claimed as Potkharab was kept for grazing purposes. In fact, all the evidence on record pointed to the contrary. It is surprising that a responsible officer entrusted with the duty of administering the Act should have paid such scant regard to the contentions raised before him and the material placed on record and should have given a finding which, as I have said, cannot be sustained.

7. Unfortunately, the matters did not improve when the Revenue Tribunal dealt with it in an appeal filed by the petitioner. The Tribunal observed that ''Potkharab'' is not defined in the Ceiling Act and that in common parlance this type of land is considered to be fit for agriculture. But the term ''agriculture'' having a very wide import, according to the definition, it will include land used for rearing and growing grass. With regard to land under the road the Tribunal observed that some roads are permanent and some roads are temporary i.e. seasonal, and that it was not the case of the appellant that the land from these fields had been acquired by Government for village roads. These roads are customary and the villagers enjoy the right of using the land as roads and therefore village roads are not roads in the strict term but they are either passages or tracks. The Tribunal further observed that in the instant case the petitioner had not proved that the so-called village roads were either permanent roads or property of the Government and that the land covered by the roads had been given an independent survey number. It was further observed that the user as road by other persons in the village amounts to the easement rights and these easement rights go with the fields across which the passages or the roads lie, and in view of these circumstances the contention of the appellant that the lands covered by the so-called village roads were liable to be excluded was repelled.

8. As regards the nala, it was observed that the petitioner had not proved that the banks of the nala do not grow grass. Moreover, the petitioner was held not to have disproved that the water in the nala cannot be used for the purpose of irrigating agricultural crops during winter season. On similar reasoning therefore the contentions of the appellant were rejected and the appeal was dismissed.

9. In my opinion, neither of the two authorities seem to have taken notice of the documents on record in the case and the oral testimony. The learned counsel appearing for the State has fairly pointed out that the record-of-rights and the crop statements of the fields which are revenue records compiled in obedience to the directions given in the Land Records and Survey Manual and the relevant Land Revenue Code give information as to the existence of nalas, roads, and whether the land is cultivable or not cultivable .For instance the record-of-right in respect of survey No. 39 /1 shows in column 13 that there is a road covering about 14 gunthas of land going through this field. Similarly, the record-of-rights of survey No. 1 /1 of Hirapur shows in column 13 that there is a road over an area of 10 gunthas of land going through this field. Even greater assistance can be had from a careful scrutiny of the entries in the crop statements of these fields. In respect of survey No. 28/1 the information given in the crop statements is as follows:

Other fallow	30 gunthas.	Column 9
Potkharab and uncultivable	1 acre 10 gunthas.	Column 11.
Fallow but cultivable	1 acre 15 gunthas.	Column 13.

Similarly in respect of survey No. 39/2 the crop statement for the year 1963-64 gives the following information:

Potkharab and uncultivable	1 acre 25 gunthas.	Column 11.
Land reserved for non-agricultural purposes.	04 gunthas.	Column 12.
Land fallow but cultivable.	1 acre 1 guntha.	Column 13.

Similarly in respect of survey No. 1/1 of Hirapur, the crop statement for 1963-64 shows the following state of affairs:

Other fallow land.	6 gunthas.	Column 9
Potkharab and uncultivable.	13 gunthas.	Column 11
Land reserved for non-agricultural purposes.	00 gunthas.	Column 12
Land fallow but cultivable.	1 acre 25 gunthas.	Column 13.

10. The entries in the crop statements as well as record-of-rights have evidentiary value which cannot be lightly ignored except at the peril of arriving at erroneous conclusions. Elaborate provisions have been drawn up in the matter of preparation of annual record of crop statements. Instructions are given in Chapter IV of the Berar Land Records and Survey Manual, volume II, at pages 22 and onward B. How entries are to be made in each of these columns which are as many as 1 to 16 in the crop statement has been carefully explained in these instructions. According to the instructions at page 25, in columns 8 and 9 of the crop statement, all land which has not been sown for a period of one to five years has to be entered. Land not sown for one year has to be shown as "current fallow" in column 8 and land not sown for more than one year and up to five years has to be shown as "other fallow land" in column (9). Thus, it will be seen that entries in columns 8 and 9 are relevant to determine whether any portion of the land is fallow and it will be for the petitioner to show why he was compelled to keep that much land as fallow. Thus, in respect of land shown in columns 8 and 9, if the petitioner can establish that the land is fallow because it is uncultivable or uneconomic, then the petitioner will be entitled to its exclusion, in determining the ceiling area.

11. The area shown in column 10 is forest, and if it is forest land, obviously it is not cultivable for agricultural purpose. But generally there are hardly any private forests in lands used for agricultural purposes by occupants. Column 11 is the most important column. In this column is shown land which is described as Potkharab in terms and it is Potkharab because no crops can be grown in such an area. This category of land includes all barren and uncultivable lands like mountains, deserts etc. Prima facie, the area shown in this column has necessarily to be excluded in determining the ceiling area. The area shown in column 12 is in respect of land put to non-agricultural uses. But non-agricultural uses may be of different varieties and land recorded in this column may be occupied by rivers, canals or other land, irrespective of whether they lie fallow or are unoccupied lands. So far as this type of area is concerned, the authorities will have to take into consideration the definition of land given in section 2 (16) of the Ceiling Act, which includes (a) the sites of farm buildings on, or appurtenant to, such land; (b) land on which grass grows naturally; (c) trees and standing crops on such land; (d) canals, channels, wells, pipes or reservoirs or other works constructed or maintained on such land for the supply or storage of water for the purpose of agriculture; (e) drainage-works, embankments, bandharas or any other works appurtenant to such land, or constructed or maintained thereon for the purposes of agriculture; and all structures and permanent fixtures on such land. Thus, land which is put to any one of the uses in clauses (a) to (e) of section 2 (16) which is the definition clause, will also be included as land which is cultivable because it is put to uses ancillary to agricultural occupation of the land. But if the use to which any portion of the land is put is not for agricultural purposes, then the authority will have to decide how far it can be excluded. AS regards land included in column 13 of the crop statement, it is called cultivable waste land. This category of land includes all lands available for cultivation but which are not cultivated. So far as this category of land is concerned, the petitioner will have to prove to the satisfaction of the

authorities that this land is abandoned from cultivation because no cultivation can be economically made or no crops can be usefully raised economically in this area. Column 14 shows permanent pastures and other grazing lands. If there are such portions in a field area which is included in column 14, then according to the definition of land in section 2 (16), prima facie this land will not be liable to be excluded.

12. Thus, the entries in the crop statements, to say the least, give valuable information on which the authorities are bound to act though the ultimate decision will depend on the actual evidence before the Court as to the reason why a particular land is set under agricultural occupation or raising of agricultural crops. What one is at pains to point out is that in deciding the issue whether any land answers the description of that word given in section 2 (16) of the Ceiling Act and there is no uniform rule as such for exclusion of nalas or roads which could apply in all cases. The Tribunal was also in error in finding that roads, whether Government roads in the sense that they are recognised Government roads or not, or other village roads over which the villagers might have a right of way, are liable to be included in the total area. If any person has a right of way over a road and the road is not seasonal in the sense that no crops can be grown on the road, then the land cannot be said to be land which can be used for agricultural purposes. Similarly, the rights which are shown in Government records are by and large rights which are called recognised rights and for that purpose they are shown in the record-of-rights. In fact, the land under these roads is excluded from calculation in fixing the assessment for such land. Similarly in case of nalas, if a considerable area of the field is overflow with nalas which makes it difficult, if not impossible for raising of crops or putting it to agricultural use, it is difficult to see how the mere fact that some grass may be grown on the bank of the nala can be said to bring it in the definition of land. Being a nala, some grass is bound to grow even without the effort of the agriculturist, but that does not mean that any portion of the nala is land which is capable of being put to agricultural use. Only that land can be held to be land capable of being put to agricultural use, where the agriculturist or the landholder has an opportunity and a right to grow such crops as he wants by agricultural operations. If nalas are overflowing any portion of the land which makes it difficult to use it for sowing crops, then the area under the nalas has necessarily to be excluded.

13. I have indicated in some detail the necessity of going deeper into the question that arises when any land is claimed as not answering the definition of land in section 2 (16) of the Ceiling Act. Each case and the different portions in each field have to be examined in the light of the provisions of the Act and the entries in the record-of-rights and the evidence tendered. It is not as if the entries made in the revenue records, either in the crop statements or in the record-of-rights, are conclusive of the matter. If they are so, nothing would be left for inquiry before the officer concerned. Therefore, the finding has to be reached only after due consideration of all the material including the oral testimony of witnesses as to the actual user to which the land is put or the reason why the land cannot be put to agricultural or cultivable use, which is the primary test for determining whether any portion is land within the meaning of section 2 (16) of the Ceiling Act. In view of the

unsatisfactory manner in which this case has been dealt with, the orders of neither of the authorities can be sustained. The orders of the Special Deputy Collector and the Tribunal are set aside and the case is remanded to the Special Deputy Collector with a direction to apply his mind afresh and decide the case according to law in the light of the observations made above. The petition is allowed but there will be no order as to costs.