
(1980) 09 BOM CK 0032

Bombay High Court

Case No: Special Civil Application No. 2840 of 1976

Kisan Shamrao Jadhav

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision: Sept. 16, 1980

Acts Referred:

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

Citation: (1982) 1 BomCR 675

Hon'ble Judges: R.D. Tulpule, J

Bench: Single Bench

Advocate: R.M. Agrawal, for the Appellant; A.C. Agrawal, A.G.P. for respondent Nos. 1 and 2, S.S. Badve, for the Respondent

Final Decision: Allowed

Judgement

R.D. Tulpule, J.

The only question which survives in this petition is in regard to delimitation of the lands held by the petitioner as surplus over the ceiling area.

2. The total holding of the petitioner is held to be 116 acres 20 gunthas comprising of various survey numbers mentioned in the order of the Surplus Lands Determination Tribunal situated at villages Salimba and Laxmipur in Manjlegaon Tahsil, District Bhir.

3. The contention raised before the Surplus Lands Determination Tribunal seeking exclusion of two pieces of land from the total holding of the petitioner is that those lands were Survey Nos. 35 and 52 both of village Salimba. The ground on which the petitioner sought exclusion of these lands was in regard to Survey No. 35, that the said land had been taken over and has been in possession of a third person Trimbak Laxmanrao Desmukh, the former Inamdar and in whose favour the occupancy rights have been granted. He pointed out that possession of that land was taken over on the 23rd June, 1975 in accordance with the orders passed by the Deputy

Collector he also pointed out, however, that against that order of the Deputy Collector, he had approached the Maharashtra Revenue Tribunal which set aside the order of the Deputy Collector.

4. The second ground for exclusion of Survey No. 52 was urged on the ground that Survey No. 52 admeasuring 5 acres 29 gunthas consisted of Pot Kharab land of 3 acres and the remaining 2 acres 29 gunthas of land has been given by him in gift to the Maharashtra Government for being distributed amongst the soldiers who had lost their lives during the Indo-Pak conflict. According to him, that gift was accepted on behalf of the State Government.

5. At the time of hearing of this petition, it was stated by Mr. Badve who has appeared for respondent No. 4, that Trimbak's petition in the High Court against the decision of the Maharashtra Revenue Tribunal has been summarily rejected. It is, therefore, clear that land Survey No. 35 which was in possession of the petitioner as a tenant is now available again and can be resumed by him, though temporarily he had lost its possession. With regard to Survey No. 35, it appear that the Surplus Lands Determination Tribunal and the Revenue Tribunal did not accept the contention that this land was gifted to the soldiers who had lost their lives during the Indo-Pak conflict.

6. Mr. R.M. Agrawal who appeared for the petitioner, in these circumstances, submitted that if land Survey No. 35 is taken into account as his holding and can be resumed by him, he is entitled to offer that land for the purpose of delimitation. He pointed out that the total holding declared to be surplus is 42 acres 38 gunthas. He has, therefore, to give land in area of 42 acres 38 gunthas. He says that he is willing to delimit and surrender land Survey No. 35 as well as land Survey No. 52, admeasuring 5 acres 29 gunthas. His offer in respect of both these lands can be accepted. That will make a total area of 39 acres 30 gunthas. In addition, Mr. Agrawal says that his client is willing to surrender and delimit area of 2 acres and 20 gunthas from Survey No. 8-A. That would make a total area of 42 acres 10 gunthas for delimitation. That leaves a balance of 22 gunthas to make up the surplus land to be delimited by him. That being fragment, he says that this excess land of 28 gunthas could be excluded.

7. Having heard Mr. Badve and Mr. Agarwal A.C. appearing for the State, I am satisfied that the petitioner is entitled to delimit these lands for the purpose of being declared as surplus and taken over. It is not necessary to take over 28 gunthas of land as it will cause a fragment. The petitioner is, therefore, allowed to delimit lands Survey Nos. 35, 52 and 8-A together making a total area of 42 acres 10 gunthas. To that extent the petition succeeds and is allowed.

8. Rule accordingly. No order as to costs.