(1965) 08 BOM CK 0017

Bombay High Court

Case No: Special Civil Application No. 205 of 1964 with Special C.A. No''s. 206 of 1964 and 820, 1329 and 1704 of 1963

Devidasrao Janardanrao		APPELLANT
	Vs	
Rangnath Ramji Kirdat and Another		RESPONDENT

Date of Decision: Aug. 31, 1965

Citation: AIR 1967 Bom 155 : (1966) 68 BOMLR 164 : (1966) ILR (Bom) 872

Hon'ble Judges: Chainani, C.J; Kotval, J

Bench: Division Bench

Advocate: R.G. Bhadekar, for the Appellant; R.G. Nandapurkar, for the Respondent

Judgement

Chainani, C.J.

(1) These five applications have been heard together, as they raise a common question whether for the purpose of determining the area which a protected tenant is entitled to purchase under the provisions of section 38-E of the Hyderabad Tenancy and Agricultural Lands Act (hereinafter referred to as the Act), the area of land which the landholder holds outside the territory to which the Act applies can be taken into consideration.

(2) The facts in Special Civil Application No. 205 are that the petitioner is the landholder of survey No. 149-A measuring 7 acres and 38 gunthas. This land is being cultivated by opponent No. 1 (hereinafter referred to as the opponent) as a tenant, The area of a family holding in the local area in which the land is situated is 30 acres. The petitioner owns considerable land in Barsi Taluka exceeding 60 acres. The Tehsildar was of the opinion that as the total holding of the petitioner, including his lands in Barsi Taluka, was more than two family holdings the opponent was entitled to be declared as the owner of survey No. 149-A u/s 38-A of the Act. He therefore, made final the provisional declaration made in favour of the opponent. The Deputy Collector in appeal took a different view. He was of the opinion that the holding of

the petitioner in Barsi Taluka could not be taken into consideration and that as the holding of the petitioner in the Maharashtra region, to which the Act applies, was less than two family holdings, the opponent could not be declared to be the owner of the land. He therefore, set aside he order made by the Tehsildar. The Revenue Tribunal was inclined to agree with the view taken by the Tahsildar. The Revenue Tribunal was of the opinion that it was necessary to determine the exact extent of the land held by the petitioner in Barsi Taluka and as no finding on this point had been recorded by the Tehsildar the Revenue Tribunal set aside the orders made by the Tehsildar and the Deputy Collector and remanded the matter to the Tahsildar for determining the extent of the lands held by the petitioner and also whether his income would exceed the normal income from two family holdings. This order is being challenged in the present application.

(3) For considering the question of law which we have to decide, it is not necessary o mention the facts of the other applications. I will refer to them later.

(4) Sub-section (2) of section 1 of the Act states that it extends to the whole of the Hyderabad area in the State of Maharashtra. The application of the Act is therefore, restricted to the territories now forming part of the State of Maharashtra, which were formerly included in the Hyderabad State. Clause (h) in sub-section (1) of section 2 defines the expression "family holding" to mean a holding the area of which is equal to the area determined for any class of land u/s 4 as the area of a family holding for the class of which the holding consists in the local area in which it is situate. According to this definition "family holding" means a particular area of land (determined u/s 4) in the local area in which it is situated Section 3 provides that Government may by notification in the Official Gazette specify and delimit areas each of which shall constitute a local area. The only areas which Government could specify and delimit under this section are areas to which the Act applies. A local area must therefore, be within the territories to which the Act extends Sub-section (1) of section 4 state inter alia that the Government shall determine for all or any class of land in any local area, the area of a family holding. The determined for each local area. As a local area must necessarily be within the territories to which the Act applies, it follows that a family holding can only be comprised of lands which are situated within these territories. Sub-section (2) of section 4 provides that the Government shall be regarded as a family holding for each class in each kind of soil in all the local area which may be determined for the area to which this Act extends, subject to the limits specified in the section, and shall notify in the Official Gazette the local area and the extents so determined. This sub-section also makes it clear that all the local areas must form part of and be within the area to which the Act extends. In other words a local area can only be constituted out of the territories to which the Act has been extended. A family holding is a certain extent of land in a local area. It can therefore, include only those lands which are situated in the Marathwada region to which the Act extends. Lands which are situated outside this region cannot form part of a family holding.

(5) Sub-section (1) of section 38-E of the Act provides that the Government may by notification in the Official Gazette declare in respect of any area and from such date as may be specified therein that ownership of all lands held by protected tenants which they are entitled to purchase from the landholders in such area under any provisions of Chapter IV-A shall stand transferred to and vest in the protected tenants holding them and from such date the protected tenants shall be deemed to be the full owners of such land. The proviso to this sub-section states that the transfer under this sub-section shall be subject to the . . . . condition that the extent of the land remaining with the landholder after the purchase of the land by the protected tenant . . . shall not be less than twice the area of a family holding. This proviso originally contained the words " for the local area concerned" after the words "a family holding." In view of these words, it was held by a single Judge of this Court in Wamanrao Trimbakrao Vs. Bhaurao Mahadu, that what a protected tenant was entitled to purchase was land which was in excess of double the family holding fixed for the particular local area and not which was in excess of the total holding of the landholder in the area to which the Act applies and that regard must be had only to the extent of the landholder''s holding in the particular area. A contrary view was subsequently taken by a Division Bench of this Court in Special Civil Appln. No. 995 of 1960 D/-24-2-1961 (Bom). In the meantime the proviso was amended by the deletion of the words "for the local area concerned" with retrospective effect. The deletion of these words, however, does not make any difference because, as pointed out above, a family holding can only mean a certain area of land in a local area and a local area can only be formed out of the territories in which the Act is in force.

(6) In our opinion, therefore, lands which are situated outside Marathwada region, cannot be taken into consideration for determining the area of two family holdings, which under the proviso to sub-section (1) of section 38-E of the Act have to be left with the landholder. This view is in accordance with that taken in Chhanubhai Karansang Vs. Sardul Mansang and Others, . That was a case under the Bombay Tenancy Act. S. 34 (2) (a) of which as it then stood provided that a landlord shall not be entitled to terminate the tenancy of a protected tenant if the landlord at the date on which the notice was given or at the date on which the notice expired had been cultivating personally other land 50 acres or more in area. It was held that the expression, "other land" must be restricted to land in the State of Bombay, that it did not include any land situated outside the State, and that consequently the holding of the landlord outside the State could not be taken into consideration for determining whether he could terminate the tenancy of his tenant.

(7) In the above application No. 205 the land held by the petitioner landholder in Marathwada region is only 7 acres and 38 gunthas, that is, very much less than the area of a family holding. The opponent cannot consequently be deemed to have become the owner of this land under sub-section (1) of section 38-E of the Act. We therefore, set aside the order made by the Revenue Tribunal and restore the order made by the Deputy Collector.

(8) The facts of Special Civil Application No. 206 of 1964 are similar to those of application No. 205. For the reasons given above, we set aside the order made by the Revenue Tribunal and restore the order made by the Deputy Collector.

(9) In Special Civil Application No. 820 of 1963, the third petitioner was declared to be the owner of 15 acres and 2 gunthas out of survey No. 31 u/s 38 -E of the Hyderabad Tenancy Act. The landholder of the land, opponent No. 1, (hereinafter referred to as the opponent) appealed to the Collector. During the pendency of the appeal the third petitioner presented an application surrendering his rights in favour of the opponent.. This surrender was objected to by the first and second petitioners, who are the brothers of the third petitioner. The Collector therefore, remanded the matter for inquiry. From the Tehsildar''s order it appears that the inquiry was restricted to the question whether there had been a partition between the three petitioners. NO question then appears to have been raised before the Tehsildar that the opponent and his son were joint and that they together were the holders of land considerably in excess of two family holdings. The Tehsildar found that the three petitioners were members of a joint family. He therefore, held that the surrender was ineffective. He found that the opponent possessed 48 acres and 2 gunthas of land. He also found that the opponent is the owner of 15 acres and 2 gunthas of land situated at Masrul in Berar. In view of the fact that the third petitioner had surrendered his rights, the Tehsildar declared the first and the second petitioners to be the owners of survey No. 31 to the extent of 15 acres and 2 gunthas. Against this order the opponent appealed to the Deputy Collector, but his appeal was dismissed. Thereafter he applied in revision to the Revenue Tribunal. The Revenue Tribunal took the view that only the area to which the Act applies could be taken into consideration for the purpose of section 38-E of the Act. The Revenue Tribunal therefore, set aside the orders made by the Deputy Collector and the Tehsildar and declared that the tenants had become the owners to the extent of 2 gunthas out of survey No. 31. A review application was filed before the Revenue Tribunal, but that was rejected.

(10) For the reasons which we have given above, the view taken by the Revenue Tribunal that u/s 38-E of the Act only the area of land which a landholder holds in Marathwada region can be taken into consideration, is correct. Mr. Nandapurkar has, however, urged that the opponent and his son are joint and that they together hold about 97 acres of land. He has therefore, contended that the petitioners are entitled to be declared the owners of the entire area of survey No. 31. The question whether the opponent and his son, who has been joined in the petition as opponent No. 2, are joint is a question of fact. It does not appear to have been raised either before the Tehsildar or before the Deputy Collector or when the Revenue Tribunal first considered the matter. The point appears to have been raised for the first time in the review application to the Revenue Tribunal. The Revenue Tribunal declined to go into it on the ground that it had not been urged before the Tribunal when the revision application filed by the opponent was heard. The question is one of fact and

as this point was not raised earlier and as no evidence appears to have been led about it, we do not think that we can allow Mr. Nandapurkar to argue this point before us.

(11) In the result, therefore, this application falls. Rule discharged.

(12) Special Civil Applications Nos. 1329 and 1704 of 1963 arise out of the same order made by the Revenue Tribunal. the landholder, who is the petitioner in Application No. 1329, is the owner of two lands survey Nos. 143 and 144 measuring 30 acres. The original opponent No. 1 in this application Sidram was a tenant of these lands. He was provisionally declared to be the owner of 15 acres out of these lands u/s 38-E of the Hyderabad Tenancy Act, against this order he (the tenant) filed an objection petition. The Tehsildar found that the landholder also possessed over 67 acres of land at Yedsi in Barsi Taluka. He, therefore, held that the tenant was entitled to be declared to be the owner of 30 acres of land. Accordingly he declared the tenant to be the owner of 15 acres 16 gunthas out of survey No. 143 and of 14 acres and 24 gunthas out of survey No. 144. That order was confirmed in appeal by the Deputy Collector. It was modified in revision by the Revenue Tribunal. The Revenue Tribunal took the view that as the holding of the landholder in Marathwada region was less than two family holdings the tenant was entitled to a declaration of ownership u/s 38-E of the Act. As, however, the landholder had not objected to the provisional declaration of ownership in favour of the tenant to the extent of 15 acres, the Revenue Tribunal confirmed the declaration of 15 acres only. Against the order made by the Revenue Tribunal the landholder had filed Special Civil Application No. 1329 while the tenant has filed Special Civil Application No. 1704.

(13) For the reasons given above the application filed by the tenant No. 1704 of 1963, must be rejected.

(14) In the other application filed by the landholder, Mr. Nandapurkar has urged that no declaration of ownership even to the extent of 15 acres should have been made in favour of the tenant. Mr. Nandapurkar is right on this point, but after a provisional declaration to the extent of 15 acres was made in favour of the tenant the landholder did not file any objection petition. The provisional declaration was object to by the tenant who contended that he should have been declared to be the owner of 30 acres. In that proceeding the landholder filed a written statement. He prayed that the application made by the tenant should be dismissed, but he did not ask for the declaration made in favour of the tenant to the extent of 15 acres to be set aside. In view of these facts, the Revenue Tribunal was right in refusing to interfere with the declaration of ownership made in favour of the tenant to the extent of 15 acres. Rule in this application is therefore, discharged.

(15) There will be no order as to costs in any application.

(16) Order accordingly.