(1975) 07 BOM CK 0029

Bombay High Court

Case No: Special Civil Application No. 1573 of 1970

Gopal Ramkrishna Chandole		APPELLANT
	Vs	
State of Maharashtra		RESPONDENT

Date of Decision: July 3, 1975

Acts Referred:

- Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 - Section 12

Citation: (1976) 78 BOMLR 353 : (1976) MhLj 120

Hon'ble Judges: Mukhi, J; Deshpande, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Mukhi, J.
This special civil application, Which has been filed by one Gopal Ramkrishna Chandole, raises an interesting question of law under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as "the said Act").

2. The facts of the case are that the petitioner held certain lands and an enquiry u/s 14 of the said Act was, therefore, held in respect of the said holdings of the petitioner.

3. It would appear that the petitioner held 188 acres 30 gunthas out of which 1 acre 4 gunthas had already been acquired under the land acquisition proceedings and, therefore, the holding of the petitioner came to 187 acres 26 gunthas.

4. On the basis of the fact that there were eight members in the family of the petitioner at the relevant time the ceiling area in respect of the petitioner''s land came to be determined at 171 acres so that 16 acres 26 gunthas were declared as surplus land under the provisions of the said Act.

5. It is necessary to notice that the final order in this behalf was passed on July 14, 1966.

6. Reference may now be made to the two events which had taken place: one of those events was that on March 1, 1962, i.e. to say, after the appointed day under the said Act, which is January 26, 1962, the petitioner''s daughter had got married and had gone out of the family with the result that for the purpose of the said Act the petitioner''s family was reduced to seven members.

7. However, as we have already stated, the final order was passed on July 14, 1966 fixing the ceiling area at 171 acres on the basis of the petitioner''s family as on the appointed day.

8. The second event, which took place was that on August 26, 1966 the petitioner purchased 2 acres 26 gunthas at a Court auction. It is this purchase of land at the Court auction that has created difficulties for the petitioner leading to this special civil application.

9. Now, by reason of Section 12 of the said Act the petitioner was once again required to submit a return, i.e. after he had acquired the additional land of 2 acres 26 gunthas purchased by him at the Court auction.

10. Now, it is obvious that as a result of filing the fresh return the authorities under the said Act were required to hold a new enquiry so as to determine the land in excess of the ceiling area which would then be the surplus land.

11. As a result of the proceedings u/s 14 of the said Act, which were commenced on the filing of the fresh return by the petitioner, the Special Deputy Collector came to the conclusion that it was necessary to reappraise the ceiling area because the petitioner''s family had by then been reduced by one member as a result of his daughter''s marriage. In the view that he took, the Special Deputy Collector redetermined the ceiling area and came to the, conclusion that the surplus land now came to be 21 acres: 14 gunthas.

12. In other words, it was not as if the only additional land of 2 acres 26 gunthas which the petitioner had acquired, were taken away from him, but the surplus land was re-determined at 21 acres 16 gunthas instead of the original surplus determined earlier at 16 acres 26 gunthas.

13. The petitioner filed an appeal against the decision dated. September 5, 1968 of the Special Deputy Collector declaring an excess of 21 acres 14 gunthas and delimiting the said area out of the Survey No. 374 as surplus.

14. The learned tribunal dismissed the appeal and held that the decision of the Special Deputy Collector was correct in so far as he had reappraised the ceiling area as a result of the fact that the petitioner''s family was reduced in number from eight to seven, so that in the re-determination of the ceiling area only seven members were to be taken into consideration. The contention of the petitioner that the Special Deputy Collector as the Enquiry Officer could not reappraise the ceiling area on the basis of the reduced number of members in the family was rejected. The learned

tribunal accordingly held that it Was the number of family members at the time when the acquisition took place which had to be considered for the calculation of surplus land. The petitioner is aggrieved by that decision and has come to this Court for relief.

15. Mr. Damle, the learned advocate for the petitioner has very ably argued the matter and has contended that the change in the number of members in the family cannot be taken into account and further that this case is directly covered by a decision of the Supreme Court in Raghunath v. State of Maharashtra. AIR [1971] S.C. 2187 : 75 Bom L.R. 442 s.c..

16. According to Mr. Damle, the Supreme Court has held that under the scheme of the said Act the ceiling area is to be determined with reference to the state of affairs of a person on the appointed day, i.e. January 26, 1962, and that once the ceiling area was so fixed, it would not be liable to fluctuation with subsequent increase or decrease in the number of his family members.

17. Mr. R.W. Adik, the learned Advocate-General, who appears for the respondent-State, has, however, contended that on a closer scrutiny of the judgment of the Supreme Court cited by Mr. Damle it would be clear that although there has to be no redetermination of the ceiling area on the basis of any changes in the family, when a fresh return is filed by reason of Section 12 of the Act, there would have to be a reappraisal of the ceiling area.

18. In the judgment of the Supreme Court cited the Court has discussed the various sections and the scheme of the said Act and it is not necessary to once again set out the relevant sections of the Act in order to ascertain the scheme of the Act and the purpose thereof. But it is appropriate to notice that the underlying and the basic object of the said Act, as expressed in Section 4 is that at no time should any person hold any land in excess of the ceiling; area as determined under the said Act.

19. Now, in the case before the Supreme Court the question that arose, apart from the factum of the alleged partition, was whether the authorities under the said Act were bound to take into consideration the three children born in the family after the appointed day, while determining the ceiling area to which the appellant''s family was entitled.

20. The Supreme Court held that the scheme of the Act was: to determine the ceiling area of each person including the family with reference to the appointed day, i.e. to say, January 26, 1962.

21. The Supreme Court observed (p. 2142):

...The policy of the Act appears to be that on and after the appointed day no person in the State should be permitted to hold any land in excess of the ceiling area as determined under the Act and that ceiling area would be that which is determined as on the appointed day. Therefore, if there is a family consisting of persons

exceeding live in number on January 26, 1962, the ceiling area for that family would be the basic ceiling area plus 1/6th thereof per member in excess of the number five. The ceiling area so fixed would not be liable to fluctuations with the subsequent increase or decrease in the number of its members, for, there is, apart from the explicit language of Sections 3 and 4 no provision in the Act providing for the redetermination of the ceiling area of a family on variations in the number of its members. The argument that every addition or reduction in the number of the members of a family requires redetermination of the ceiling area of such a family would mean and almost perpetual fixation and re-fixation in the ceiling area by the Revenue authorities, a state of affairs hardly to have been contemplated by the legislature. The argument would also mean that where a surplus area is already determined and allotted to the landless persons such area would have to be taken back and given to a family, the number of whose members subsequently has augmented by fresh births.

22. The aforesaid observations of the Supreme Court substantially established the law to be that there is to be no refixation in the ceiling area by the revenue authorities merely because there is a change in the number of members in the family.

23. If this had been the only finding of the Supreme Court, then Mr. Damle would have been clearly right, but the matter was not left at that position and the Supreme Court clearly considered the position that arose as a result of events that are set out in Section 12 of the said Act.

24. It is to be noticed that Section 12 lays down the obligation of submission of returns and it provides in terms: in Sub-section (i)(b) that if any person on or after the appointed day acquires, holds or comes into possession of any land in excess of the ceiling area thereby causing his holding to exceed Ms ceiling area, then he has to submit a return within three months from such acquisition.

25. It appears to be substantially clear that Section 12 casts a duty on the person concerned to file a fresh return, if as a result of acquisition of extra land the ceiling area is exceeded. Thus in the case before us when the petitioner acquired and came to be in possession of 2 acres 26 gunthas of land which he had purchased in Court auction, it immediately came to pass that he was now holding land in excess of the ceiling area which had already been fixed in his case so that his duty to file the return came into existence.

26. As we have mentioned, there had been a change in the petitioner''s family after the appointed day so that when fresh proceedings u/s 14 wore taken by the revenue authorities the question arose whether there was to be not only a determination as to surplus land now in possession of the petitioner but also a reappraisal of the ceiling area by reason of the reduction in the number of members in the family of the petitioner.

27. Mr. Adik, the learned Advocate-General, pointed out that in a passage which appears immediately after the observations of the Supreme Court referred to and cited above, the Supreme Court clearly held that although there was to be no refixation in the ceiling area merely as a result of fluctuation or increase or decrease in the members of the family, the said Act did contemplate cases where there would have to be a reappraisal of the ceiling area.

28. This is what the Supreme Court said while referring to those cases which contemplate a reappraisal of the ceiling area (p. 2142):

It is true that Section 12 does lay down an obligation on a person to furnish to the Collector a report containing particulars of all lands held by him if he has held at any time after August 4, 1959 but before the appointed day or has on or after the appointed day acquired or held or has come into possession of any land in excess of the ceiling area as envisaged by Section 10(2) or whose lands are converted into any other class of land as a result of the expiry of the period or date specified in Section 2(5) or whose land is converted into any other class for the reasons given in Section 11 and the Collector then has to hold an enquiry and declare his excess land u/s 21. But these are the only cases contemplated where there would have to be a re-appraisal of the ceiling area, otherwise the Act, as aforesaid, visualises the ceiling area of every person with reference to the conditions prevailing on and the land held by him as on the appointed day. Such a construction appears to be borne out by the provisions of Sections 3 and 4 as also of Sections 8 and 9 of the Act. This is also the view taken by the High Court of Bombay on more than one occasion. (See State of Maharashtra, Revenue and Forest Department Vs. Dinkarrao Narayanrao Deshmukh and Another, also Marutirao Shankarrao Ghule-Patil v. The State of Maharashtra (1968) Special Civil Application No, 767 1968, decided by Patel and Nain JJ. on JJ. on April 18, 1968 (Unrep.) and also Bhausaheb Babaji Thete v. The State of Maharashtra. (1969) Special Civil Application No. 229 of 1968, decided by K.K. Desai and Vaidya JJ., July 7, 1969 (Unrep.). A view contrary to that taken in the above mentioned cases was adopted in Asaram Ananda Shinde v. The State of Maharashtra (1909) Civil Application No. 1518 of 1959, decided by Tarkunde and Chitale JJ., on July6, 1969 (Unrep.) by another Division Bench of that High Court. But that does not appear to be a correct view as the learned Judges there failed to appreciate that Section 12 contemplates a limited number of cases where a ceiling area has to be refixed by reason of the intervening events. Except for those cases, the scheme of the statute is that a ceiling area is to be ascertained with reference to the state of affairs existing on the appointed day. In this view, the Revenue Tribunal was right in not taking into consideration the three children born in the family after the appointed day while determining the ceiling area to which the appellants'' family v/as entitled to.
(Italics mine).

29. Mr. Adik, the learned Advocate-General seems to be right when he contends that when a fresh return is filed tinder Section 12 of the Act as a result of happening of any event stated therein and a second enquiry is to be held, then Section 12 does envisage eases where the ceiling area had to be refixed by reason of the intervening'' events.

30. In the light of the decision of the Supreme Court it is substantially clear that although the scheme of the statute is that the ceiling area is to be ascertained with reference to the state of affairs existing on the appointed day, in the limited number of cases contemplated by Section 12, the ceiling" area has to be refixed.

31. Now, this re-appraisal or refixing of the ceiling area is contingent only on the number of members in the family, as provided by in Section 6 so that when proceedings are commenced after a fresh return has been filed as a result of the cases contemplated by Section 12, the revenue authorities are bound to consider the increase or reduction in the number of faintly members and refix the ceiling area and then determine in the light of the circumstances and facts leading to the filing of the fresh return as to what is the surplus land.

32. This no doubt creates an anomalous situation in that any increase or decrease in the faintly after the appointed day is not relevant at the first enquiry even if the order therein is passed after such change. Yet the increase or decrease in the family becomes relevant when there is another enquiry at the later date, occasioned by any acquisition of land thereafter or other event mentioned in Section 12.

33. In hard cases like the one under consideration before us, this anomaly may well lead to unjust consequences:.

34. However, this is how the provisions of the said Act have been construed by the Supreme Court in the case cited and we are bound by the law so laid down. Yet it is difficult to see how the provisions of the said Act could have been interpreted differently in the light of the mandate of Section 4,-namely that no person is to hold land in excess of the ceiling area at any time after the appointed day. Now, the "ceiling area" cannot be fixed unless some date is determined with reference to which facts as required by Section 6 are required to be ascertained. We apprehend that procedural difficulties would be innumerable, resulting perhaps in worse situations if the ceiling area is not fixed with -reference to the appointed day at the first enquiry and with reference to the date of the happening of the event contemplated in Section 12 at the fresh enquiry.

35. In the result, the order of the learned tribunal does not require to be interfered with. The petition is dismissed and the rule discharged. In the circumstances of the case, there will be no order as to costs.