Bhikoba Shankar Dhumal (Dead) By Lrs. and Others

Vs

Mohan Lal Punchand Tathed and Others

Civil Appeal No. 1667 of 1981

(E. S. Venkataramiayh, A. Varadarajan JJ)

11.02.1982

JUDGMENT

VENKATARAMIAH, J. –

1. This appeal by special leave is directed against the judgment and order dated July 30, 1981 of the High Court of Judicature at Bombay in Special Civil Application No. 1931 of 1975.

2. The question for consideration in this appeal is whether the proceedings commenced with the filing of a return by a person holding on the appointed day land in excess of the ceiling area prescribed by the Maharashtra Agricultural Lands [Ceiling on Holdings] Act, 1961 [hereinafter referred to as the 'Act'] would become infructuous and would have to be dropped if such person dies before a notification containing the declaration regarding surplus land held by him is published in the Official Gazette under Section 21 of the Act and possession of such surplus land is taken over by the authorities concerned.

3. An extent of land measuring 21 A. 28G. bearing Survey No. 34 situated in village Manori, Taluka Rahuri of Ahmednagar district in the State of Maharashtra belonged to respondents 1 to 4 but was in the possession of their tenant by name Bhikoba on the date of the commencement of the Act, i.e. January 26, 1962, which was the appointed day as defined by Section 2 [4] of the Act.

4. The Act was passed for the purpose of imposing a maximum limit [or ceiling] on the holding of agricultural land in the State of Maharashtra; to provide for the acquisition and distribution of land held in excess of such ceiling; and for matters connected with the purposes aforesaid. Section 2 [16] of the Act defined the expression "land" as land which was used or capable of being used for purposes of agriculture and included the sites of farm building on, or appurtenant to such land and land on which grass grows naturally. Chapter II of the Act contained the provisions [Section 3 to 7] prescribing the ceiling on holding of land, Chapter III contained the provisions [Section 8 to 11] imposing restriction on alienation and acquisitions of land and laying down the consequence of contravention of those provisions, Chapter IV contained provisions [Section 12 to 21] for determining the extent of surplus land, Chapter V contained provisions [Section 22 to 26] for determination of compensation payable to expropriated persons and Chapter VI which included [Section 27 to 29] dealt with the mode of distribution of surplus land amongst those who were landless and who otherwise deserved to be granted land. These and the other provisions in the Act were enacted with the object of providing for the more equitable distribution of agricultural land amongst the peasantry in the State of Maharashtra.

5. It may be mentioned here that Chapter II and III of the act came to be sustained by new Chapters

II and III by Section 4 of the Maharashtra Act 21 of 1975. Section 5 of the said [amended] Act, however, reads as follows :

> Notwithstanding the substitution of the Chapters II and III by Section 4 of this Act, all proceedings pending immediately before the commencement date in any court or trial or before any authority for the purpose of determining the ceiling area in respect of any holdings and the surplus land in such holdings in pursuance of the provisions in the original Chapter II and III shall be continued and disposed of by or under the Principal Act, as if that Act had not bee amended by the Amending Act, 1972; and the amount of compensation for such surplus land acquired by the State Government under sub-section [4], or as the case may be, sub-section [5], of Section 21 shall be at the rate provided in the principal Act as unamended by this Act.

After the ceiling area is determined and the area delimited as surplus land declared finally under Section 21 of the principal Act, then, subject as aforesaid, the provisions of the principal Act as amended by this Act shall apply to such holding and land declared as surplus land.

6. There was a further modification made in the new Chapter II and III by the Maharashtra Act 47 of 1975. In view of the saving clause contained in Section 5 of the Maharashtra Act 21 of 1975 reproduced above this case has to be decided in accordance with the provisions contained in Chapters II and III as they stood before their substitution since the proceedings with which we are concerned had already commenced and were pending immediately before the commencement of the said amending Act. Hence reference will be made hereafter to the provisions contained in Chapters II and III as they stood before their substitution.

7. Section 3 of the Act as it was originally enacted read as follows :

> In order to provide for the more equitable distribution of agricultural land amongst the peasantry of the State of Maharashtra [and in particular, to provide that landless persons are given land for personal cultivation], on the commencement of this act, there shall be imposed to the extent, and in the manner hereinafter provided, a maximum limit [or ceiling] on the holding of agricultural land throughout the State.

8. Section 4 of the Act prohibited holding of land by any person in excess of the ceiling area and declared that subject to the provisions of the Act, all land held by a person in excess of the ceiling area should be deemed to be surplus land and dealt with in the manner provided by the Act. Sections 5 to 7 of the act laid down the principles for the computation of the ceiling area in various cases.

9. As required by Section 12 of the Act as it stood at the commencement of the Act Bhikoba, the tenant concerned in this case, filed before the Special Deputy Collector [specially empowered by the State Government to exercise the powers and perform the functions of the Collector under the Act] a return in the prescribed form furnishing particulars of land including the extent of 21 A. 28 G. bearing Survey No. 34 referred to above in his possession on the appointed day. After recording the statement of Bhikoba and considering all the other relevant material before him the Special Deputy Collector found that Bhikoba was in possession of surplus land to the extent of 132 A. 1 G. and he made an order accordingly on March 27, 1965. Against that order Bhikoba filed an appeal and the appellate authority by its order dated April 13, 1966 partly allowed the appeal and remanded the matter with some direction. Thereafter Bhikoba died on January 31, 1969. On June 27, 1969, the Special Deputy Collector after hearing the legal representatives of Bhikoba held that Bhikoba was a

surplus holder of land to the extent of 16 A 26 G. Against that order Daulatram, Trimbak, Dattatraya and Madhukar, the four sons of Bhikoba who are shown as the legal representatives [a to d] in this case filed an appeal before the Maharashtra Revenue Tribunal. That appeal was dismissed on November 4, 1970 on the ground that it was a premature on as the holders had not yet exercised their choice under section 16 [2] of the Act and a declaration under Section 21 had not yet been made. Thereafter a notice was issued to the heirs of Bhikoba under Section 16 of the act to exercise their choice in respect of land to be retained by them out of Bhikoba's holding to the extent of the ceiling area. The heirs of Bhikoba filed objections to the said notice on November 23, 1971 pleading inter alia that a holder of land in excess of the ceiling prescribed by the Act would be divested of his title to the surplus land only when its possession was taken from him after the publication of the notification under Section 21 of the Act and since such notification had not yet been published and possession of surplus land had not been taken, Bhikoba continued to be the owner of the entire land [including the extent determined as surplus land] till his death and that as inheritance could not remain in abeyance, his heirs at law became entitled to the entire land. They contended that if a fresh determination was then made there would be no surplus land at all in their hands, which had to be surrendered. They, therefore, prayed that the proceedings which were commenced with the return filed by Bhikoba should be dropped as they had become infructuous. The Special Deputy collector accepted the plea of the heirs of Bhikoba and dropped further proceedings as prayed for by them by his order dated March 13, 1973.

10. Respondents 1 to 4 who would have become entitled to claim relief under the Act at the time when the distribution of surplus land held by Bhikoba was taken up for consideration preferred an appeal against the order of the Special Deputy Collector dropping the proceedings as mentioned above before the Maharashtra Revenue Tribunal. The Tribunal by its judgment dated January 31, 1975 dismissed the appeal following the decision of the High Court of Bombay [Nagpur Bench] in Dadarao v. State of Maharashtra. Aggrieved by the decision of the Tribunal, respondents 1 to 4 filed a petition under Article 227 of the Constitution in Special Civil Application No. 1931 of 1975 before the High Court of Bombay. That petition was allowed by the High court by its judgment dated July 30, 1980 by which the order of the Tribunal was set aside and the matter was remanded to the Special deputy Collector to continue the proceedings commenced on the basis of the return filed by Bhikoba in the pursuance of his legal representatives to determine the surplus land held by Bhikoba as on the appointed day and to dispose of the same in accordance with law. This appeal by special leave is filed against the aforesaid judgment of the High Court.

11. There is no merit in the first contention urged in support of the above appeal viz. that respondents 1 to 4 had no locus standi to file an appeal against the order of the Special Deputy Collector dated March 13, 1973 dropping the proceedings which commenced with the return filed by Bhikoba. It is no doubt true that at the first instance the land which is declared as surplus land in the hands of any person would vest in the state Government. But the said land has to be distributed in accordance with the provisions contained in Chapter VI of the Act. Any person who is entitled to grant of land under any of the provisions of the Act may question any order which would have the effect of reducing the extent of total surplus land in any village. Respondents 1 to 4 were the former landlords of the land bearing Survey No. 34 which formed part of the holding of the Bhikoba. They cannot, therefore, be characterised as just strangers to these proceedings. It cannot, therefore, be said that respondents 1 to 4 had no locus standi to file an appeal before the Maharashtra Revenue Tribunal and then a petition under Article 227 of the Constitution before the High Court. This contention is, therefore, rejected.

12. The next contention of the appellant is based on the judgment of High Court of Bombay in

Dadarao case. It is no doubt true that the said decision sports the catenation of the appellants that the proceedings initiated by a return filed by a holder of land would become infructuous on his death if it takes place before a notification is issued under Section 21 of the Act. The said decision was rendered by the High Court relying upon the decision of the Bombay High Court in C. I. T. v. Ellis C. Reid and the decision of this Court in C. I. T. v. Amarchand N. Shroff both of which arose under the Indian Income Tax Act, 1922. We do not have provisions corresponding to the Indian Income Tax Act, 1922 in the Act. It is very hazardous to decide cases in which proprietary rights arise for determination on the basis of decisions rendered under taxation laws which have their own peculiarities. The Act is not one leaving tax on the income during the previous year or previous years or of a period other than the previous year in the hands of an assessee but a law imposing a ceiling on the holding of a person or a family as on a specified dated. The Act has to be construed in accordance with its scheme and object which, as stated earlier, is equitable distribution of land amongst the landless by taking over surplus land in the hand of those who held land in excess of the ceiling limit on the appointed day, or those who would acquire subsequently land in excess of the ceiling or those who own lands which exceed the ceiling limit by reason of their conversion into a different class. In order to achieve that object, the legislature enacted Sections 3 and 4 of the act declaring that no person could on or after the appointed day hold land in excess of the ceiling area and compelling every person acquiring or coming into possession of any land in excess of the ceiling area on or after the appointed day to file a return before the Collector furnishing particulars of all hand held by him. Section 18 of the act requires the Collector to hold an enquiry into the several matters set out therein including the total area of land held by a person on the appointed day. Section 19 and 20 of the Act provide for the restoration of land to a landlord in certain cases. Section 21 provides that, as soon as may be, after the Collector has considered the matters referred to in Section 18 and the questions, if any, under sub-section [3] of Section 20, he shall make a declaration stating therein his decision on [a] the total area of land which the person [who had filed a return] is entitled to hold as the ceiling area, [b] the total area and particulars of land which is in excess of the ceiling area, [c] the name of the person to whom possession of land is to be restored under Section 19, and area and particulars of such land, [d] the area, description and full particulars of the land which is delimited as surplus land and [e] the area and particulars of the land which is delimited as surplus land and [e] the area and particulars of the land which is delimited as surplus land and [e] the area and particulars of the land which is to be forfeited tot he State Government under sub-section [3] of Section 10 or under the provisions of sub-section [3] of Section 13 of the Act. After a declaration under sub-section [1] of Section 21 is made, as stated above, the Collector has to notify in the prescribed form in the Official Gazette the area, description and full particulars of the land which is delimited as surplus land, and also of the land which is to be forfeited to the State Government. Any declaration made under Section 21 of the act is subject to the decision of the Maharashtra Revenue Tribunal in appeal and subject to any decision that may be made in such appeal, the Collector is empowered to take possession of the surplus land and with effect from the date of taking over possession, such surplus land vests in the State Government.

13. A close reading of the aforesaid provisions of the act shows that the determination of the extent of surplus land of a holder has to be made as on the appointed day. If any person has at any time after August 4, 1959 but before the appointed day held any land [including any exempted land] in excess of the ceiling area, such person should file a return within the prescribed period from the appointed day furnishing to each of the Collectors within whose jurisdiction any land in his holding in situated, in the form prescribed containing the particulars of all and held by him. If any person acquires, holds or comes into possession of any land [including any exempted land] in excess of the ceiling area on or after the appointed day, such person has to furnish a return as stated above within

the prescribed period from the date of taking possession of any land in excess of the ceiling area. If any person whose land is converted into another class of land in the circumstances described in Section 11-A [formerly numbered as Section 11] thereby causing his holding to exceed the ceiling area then such person has to file a return as mentioned above within the prescribed period from the date of such conversion [such date being a date to be notified in the Official Gazette by the State Government in respect of any area]. It is obvious from the foregoing requirements prescribed under Section 12 of the act that the crucial date with reference to which the extent of the surplus land held by a person is to be determined is the appointed day in the case of persons holding land in excess of the ceiling area at any time after August 4, 1959 but before the appointed day and in the case of those acquiring, holding or coming into possession of such excess land on or after the appointed day, the date on which they acquire possession of any land in excess of the ceiling area. In the case of those who are affected by Section 11-A of the Act, the crucial dated is the date of conversion. If a person is found to be in possession of land in excess of the ceiling are at any time after August 4, 1959 but before the appointed day, he incurs the liability to surrender any surplus and as on the appointed day on the appointed day itself even though the actual extent of such surplus land is determined on a subsequent date. Similarly those who acquire land in excess of the ceiling area on of after the appointed day would become liable to surrender surplus land on the date of taking possession of any land in excess of the ceiling area. A person whose case falls under section 11-A of the act becomes liable to surrender any surplus land in his possession as on the date of conversion of land into irrigable land. This liability to surrender surplus land would not in any way come to an end by reason of the death of such holder before the actual extent of surplus land is determined and notified under Section 21 of the Act. It is no doubt true that Section 21 of the Act states that the title of the holder in the surplus land would become vested in the State Government only on such land being taken possession of after a declaration regarding the surplus land in published in the Official Gazette. But the liability to surrender the surplus land, however, relates back to the appointed day in the case of those who fall under section 12 [2] of the Act. Any other construction would make the Act unworkable and the determination of the extent of surplus land of a holder ambulatory and indefinite. It is significant that Section 8 of the act prohibits transfer or partition of any land held by a person holding land in excess of the ceiling area on or after the appointed day until the land in excess of the ceiling is determined under the act. Section 10 provides that if any person after August 4, 1959 but before the appointed day transferred or partitioned any land in anticipation of or in order to avoid or defeat the objects of the Act or any land is transferred or partitioned in contravention of provisions of Section 8 then in calculating the ceiling area which that person is entitled to hold the area so transferred or partitioned should be taken into consideration and land exceeding the ceiling area so calculated hold be deemed to be in excess of the ceiling area for the holding - notwithstanding the land remaining with him may not is fact be in excess of the ceiling area. The expression 'holding' used in Sections 3, 5, 6 and 10 shows that the statute treats a holding as a unit for purposes of determination of surplus land which can be acquired from such holding. Section 2 [14] which defines the expression 'to hold land' as "to be lawfully in actual possession of land as owner or as tenant" requires that the expression 'holding' should be construed accordingly. Section 3 of the Act expressly imposes a limit on the holding of agricultural land on the commencement of the act. The extent of surplus land which the Government can acquire under the act from a holder cannot therefore be made to depend upon the date on which a declaration indicating the extent of surplus land is notified in the Official Gazette under section 21 and the date on which such surplus land is taken possession of. It cannot also be made to depend upon the holder who has incurred the liability on the relevant date being alive on the date on which the declaration is made under Section 21 and possession of surplus land is taken. The acceptance of the contention urged on behalf of the appellants that the proceedings initiated by a return filed by a holder have to be dropped if such

holder dies before a declaration is made under section 21 and surplus land is taken possession of would frustrate the very object and purposes of the Act.

14. In Raghunath Laxman Wani v. State of Maharashtra, this Court had to examine the scheme of the Act while considering the question whether in the case of a family, the ceiling area would be liable to fluctuation with the subsequent increase or decrease in number of the family members. Dealing with that question the Court observed thus : [SCC p. 397, para 17].

The scheme of the Act seems to be to determine the ceiling area of each person [including a family] with reference to the appointed day. 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 five in number on January 26, 1962, the ceiling area of the 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 numbers, for, there is, apart from the explicit language of Section 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 its member of the members of a family requires redetermination of the ceiling area of such a family would mean an 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.

15. The above view supports our conclusion that the surplus land in the case of a person who at any time after August 4, 1959 but before the appointed day held any land [including any exempted land] in excess of the ceiling area has got to be determined as on the appointed day even though such person may die before the actual extent of surplus land is determined and notified under Section 21 of the Act. The persons on whom his 'holding' devolves on his death would be liable to surrender the surplus land as on the appointed day because the liability attached to the holding of the deceased would not come to an end on his death. The heirs of the deceased cannot be permitted to contend to the contrary and allowed to get more land by way of inheritance than what they would have got if the death of the person had taken place after the publication of the notification under Section 21.

16. At this stage it is necessary to refer to another contention of the appellants based on the second paragraph of sub-section [2] of Section 3 of the new Chapter II of the Act which was substituted in the place of the original Chapter II by the Maharashtra Act 21 of 1975. The relevant part of the said paragraph reads :

> In determining surplus land from the holding of a person, or as the case may be, of a family unit, the fact that the person or any member of the family unit has died [on or after the commencement date or any date subsequent to the date of which the holding exceeds the ceiling area, but before the declaration of surplus land is made in respect of that holding] shall be ignored; and accordingly, the surplus land shall be determined as if that person, or as the case may be, the member of a family unit had not died.

17. It is contended that because for the first time the legislature by introducing the above said

paragraph directed that if a person dies after the commencement of the act but before the declaration of surplus land is made is respect of his holding, the fact of his death should be ignored and the surplus land should be determined as if that person had not died, it should be held that before the introduction of that paragraph the proceedings needed to be dropped on the death of the person taking place before the declaration was made. It appears to us that the said paragraph was introduced by way of abundant caution to get over the possible objection raised on the basis of the decision in the case of Dadarao. The said paragraph is merely declaratory of what the true legal position had always been even from the commencement of the Act. The introduction of an express provision to the above effect does not have the effect of altering the true legal position as explained by us above even without the aid of such express provision. This becomes further clear from the observations found in the decision of this Court in Raghunath Laxman Wani case. It may be noticed that the said paragraph in the new Section 3 [2] refers to two contingencies - [i] the death of a person who was holding land in excess of the ceiling limit and [ii] the death of any member of a family unit owning land in excess of the ceiling on the appointed day. It provides that the death of the person or the death of a member of the family unit as the case may be should be ignored. One of the contentions urged before this Court in that case was that the Tribunal was wrong in not taking into consideration the three children born in the family after the appointed day while determining the ceiling area to which the family of the appellants therein was entitled to. This Court rejected that plea and upheld the decision of the Tribunal observing that "the argument that every addition or reduction in the number of the members of the family requires redetermination of the ceiling area of such a family would mean an 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". This conclusion was reached by this Court without the aid of any provision in the act at the relevant time corresponding to the second paragraph of the new Section 3 [2] of the act. This case was no doubt one relating to a claim based on the birth of three children. In principle it applies to the case where the number of members of a family decreases on account of death of any of its members, as observed by the Court. On the same analogy it has to be held that the death of a person after the appointed day also would make no difference so far as the liability of his holding to part with the surplus land is concerned. Hence it has to be held that the introduction of the second paragraph of the new Section 3 [2] does not lead to any conclusion different from the one which we have reached in this appeal.

18. In view of the foregoing, the decision of the High Court of Bombay in Dadarao case cannot be considered as a correct one and we, therefore, overrule it.

19. The High Court was right in the present case in holding that the proceedings commencing with the return filed by Bhikoba could not be dropped merely because he died before a notification was issued under section 21 of the Act. The proceedings have to be continued and the surplus land in the hands of Bhikoba as on the appointed day should be determined and taken possession of in accordance with law. The heirs of Bhikoba are entitled to participate in the said proceedings representing the estate of Bhikoba. They would be entitled as heirs at law only such and that may remain after surrendering the surplus land as may be determined under the Act.

20. In the result, the appeal fails and is hereby dismissed. No costs.

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