

Sanjay Dinkar Asarkar

Vs

State of Maharashtra and Another

Civil Appeal No. 66 of 1972

(D. P. Madon, G. L. Oza JJ)

20.11.1985

JUDGMENT

MADON, J. -

1. Prior to August 6, 1965, the appellant, Sanjay Asarkar, and his father Dinkar, the second respondent, were members of a joint and undivided Hindu family. The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (Maharashtra Act No. XXVII of 1961) was brought into force with effect from January 26, 1962, by Government Notification in the Revenue Department No. ICH 1062-M (Spl.) dated January 16, 1962. This Act will hereinafter be referred to in short as "the Act". As required by the Act, Dinkar filed on July 26, 1962 a return showing all the lands held by him. On August 6, 1965, the appellant who was at that time a minor aged about one and a half years old, through his mother as his next friend, filed in the court of the Civil Judge, Junior Division, Akot, in the District of Akola, a suit for partition of the joint family properties against Dinkar and the other members of the joint family. On September 30, 1965, the Collector determined the surplus land held by Dinkar. Under Section 16 of the Act, a person is entitled to select the land which he wishes to retain with himself up to the ceiling area and on October 12, 1965, Dinkar exercised the said option given to him. On November 19, 1965, the Collector made an order accepting the option and made a declaration stating therein inter alia the total area of land which Dinkar was entitled to hold and the area, description and full particulars of the land which was delimited as surplus land. This declaration was notified in the Official Gazette on November 20, 1965. On November 19, 1966 the learned Civil Judge passed a partition decree. The fields which came to the share of the appellant were those which had been declared as surplus lands. The appellant thereupon filed under the Act a return in respect of these fields. The Deputy Collector held that the partition decree was of no effect and was invalid and that, if the said surplus lands had fallen to the appellant's share, he should make a claim for compensation in respect of the said lands as provided in the Act. The appellant thereupon filed an appeal before the Maharashtra Revenue Tribunal, Nagpur, which appeal was dismissed. The appellant then preferred a writ petition under Article 227 of the Constitution of India before the Nagpur Bench of the Bombay High Court. The said writ petition was summarily rejected. It is against this order that the present appeal by special leave granted by this Court has been filed.

2. Learned counsel for the appellant contended that the land which was declared surplus land vested in the State Government only when the government took possession of it and that, as shown by Sections 8 and 9 and sub-section (2) of Section 21, what was prohibited during the intervening period was inter partes dealing with such land, and that a partition decree was not hit by any of the provisions of the Act. Before we refer to the sections relied upon by the appellant, it will be necessary to advert to the other relevant provisions of the Act. The Act was considerably amended

by the Maharashtra Act 21 of 1975. As we are concerned in this appeal with the provisions of the Act prior to the said amendments, it is to the unamended provisions to which we will refer. The object of the Act is stated in the Preamble thereof which reads as follows :

Whereas, for securing the distribution of agricultural land as best to subserve the common good, it is expedient in the public interest to impose a maximum limit (or ceiling) on the holding of agricultural land in the State of Maharashtra; to provide for the acquisition of land held in excess of the ceiling, and for the distribution thereof to landless and other persons; and for matters connected with the purposes aforesaid.

3. Section 2 is the definition section and certain definitions therein are material for our purpose. There are the definitions of the terms "appointed day", "family", "to hold land", "member of a family" and "owner", given in clauses (4), (11), (14), (20) and (21) of Section 2. These clauses provide as follows :

(4) "appointed day" means the day on which this Act comes into force;

(11) 'family' includes, a Hindu undivided family, and in the case of other persons, a group or unit the members of which by custom or usage, are joint in estate or possession or residence;

(14) "to hold land", with its grammatical variations and cognate expressions, means to be lawfully in actual possession of land as owner or as tenant; and 'holding' shall be construed accordingly;

(20) "member of a family" means a father, mother, spouse, brother, son, grandson, or dependent sister or daughter, and in the case of a Hindu undivided family a member thereof and also a divorced and dependent daughter;

(21) 'owner', in relation to any land, includes the person holding the land as occupant, superior holder, tenure-holder or land-holder as defined in the relevant Code, or as lessee of Government, a mortgagee-in-possession, and a person holding land for his maintenance.

4. Sections 3 and 4 as originally enacted provided as follows :

3. Ceiling on holding of agricultural land throughout Maharashtra. - 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.

4. Prohibition on holding land in excess of ceiling area and area in excess of ceiling to be surplus land. - (1) Subject to the provisions of this Act, no person shall hold land in excess of the ceiling area, as determined in the manner hereinafter provided.

Explanation. - A person may hold exempted land to any extent.

(2) Subject to the provisions of this Act, all land held by a person in excess of the ceiling area, shall be deemed to be surplus land, and shall be dealt with in the manner

hereinafter provided for surplus land.

Section 5 specified the ceiling area in respect of different classes of lands. Under Section 6 where a family consists of members which exceed five in number, the family becomes entitled to hold land exceeding the ceiling area to the extent of one-sixth of the ceiling area for each member in excess of five, but in such a case the total holding was not to exceed twice the ceiling area. Sections 8 and 9 as originally enacted provided as follows :

8. Restriction on transfer, etc. - No person who, on or after the appointed day, holds land in excess of the ceiling area, shall on or after that day transfer or partition any land until the land in excess of the ceiling is determined under the Act;

Explanation. - In this section 'transfer' means transfer by act of parties (whether by sale, gift, mortgage with possession, exchange, lease or any other disposition) made inter vivos; and 'partition' means any division of land by act of parties made inter vivos.

9. Restriction on acquisition of land in excess of ceiling area. - No person shall, at any time on or after the appointed day, acquire by transfer or partition any land if he already has land excess of the ceiling area, or land which together with any other land already held by him will exceed in the total the ceiling area.

Explanation. - In this section 'transfer' and 'partition' have the same meaning as in Section 8.

Under Section 10, any person who 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 if any land was transferred or partitioned in contravention of the provisions of Section 8, then in calculating the ceiling area which the person was entitled to hold, the area so transferred or partitioned was to be taken into consideration, and the land exceeding the ceiling area so calculated was to be deemed to be in excess of the ceiling area for that holding, notwithstanding that the land remaining with him might not in fact be in excess of the ceiling area. Section 10(3) provides that where any land is acquired in wilful contravention of the provisions of Section 9, or is obtained by collusive proceedings in any court, then as a penalty therefor, the right, title and interest of that person in the land is, subject to the provisions of Chapter IV, to be forfeited and is to be deemed to be transferred to and to vest without further assurance in the State Government. Under Section 12, a duty was cast upon a person who inter alia held on the appointed day land in excess of the ceiling area to file a return in the prescribed form containing particulars of land held by him. Under Section 14, after such return was filed, the Collector was to hold an inquiry to determine such surplus land held by such person and under Section 16, when a person held land in excess of the ceiling area, he was to be entitled to select the land he wished to retain with himself up to the ceiling area. Section 18 requires the Collector to consider in the course of the inquiry to be held by him amongst other matters whether any land had been acquired or possessed on or after the appointed day by transfer or partition and whether any land had been acquired on or after the appointed day by testamentary disposition, devolution on death or by operation of law. Under Section 21(1), after the Collector has completed the inquiry, he has to make a declaration stating his decision on the various matters set out in that sub-section. The material provisions of sub-sections (2) and (4) of Section 21 are as follows :

(2) After a declaration under sub-section (1) is made the Collector shall, in the prescribed form, notify 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. On the date of the publication of such notification, the land which is liable to forfeiture shall stand forfeited to and vest in the State Government. On and after that date no sale, gift, mortgage, exchange, lease or any other disposition (including any transfer in execution of a decree or order of a court, tribunal or authority) shall be made of the land which is delimited as surplus land. If any such disposition or transfer is made, it shall be invalid, and of no effect.

(4) As soon as may be after the expiry of a period of sixty days from the date of publication of the notification under sub-section (2), (or if an appeal is filed against the declaration, after a final decision is given thereon) the Collector shall take, in the prescribed manner, possession of the land which is delimited as surplus. The surplus land shall, with effect from the date on which the possession thereof is taken as aforesaid be deemed to be acquired by the State Government for the purposes of the Act and shall accordingly vest without further assurance and free from all encumbrances in the State Government.

5. Learned counsel for the appellant strongly relied upon sub-section (4) of Section 21. Under sub-section (4) of Section 21, the surplus land vests in the Government only when it takes possession thereof. Learned counsel contended that while Sections 8, 9 and 10 talked of partition, Section 21(2) did not. He referred to the definition of the term "partition" given in the explanation to Section 8 as originally enacted which also applied to Section 9, according to which "partition" meant "any division of land by act of parties made inter vivos". Learned counsel submitted that these provisions clearly showed that what was hit was partition by act of parties made during their lifetime and not by a decree of a court. Yet another submission was that partition by a decree of a court would not fall within the meaning of the expression "any other disposition (including any transfer in execution of a decree or order of a court, tribunal or authority)" occurring in Section 21(2) and, therefore, the partition decree passed by the court of the Civil Judge would not be a disposition and would not be invalid and of no effect.

6. We find ourselves unable to accept these submissions. The object of the Act is clear. Under it any land in excess of the ceiling area ceases to belong to the owner with effect from the appointed day. It is no doubt true that Sections 8 and 9 refer only to partition by act of parties but there is no such qualification in Section 21(2). Though ordinarily the word 'disposition' in relation to property would mean disposition made by a deed or will, the qualifying phrase, namely, "including any transfer in execution of a decree or order of a court, tribunal or authority" used in Section 21(2) extends the meaning of that term to include any disposition made by or under a decree or order of a court. Under Section 54 of the Code of Civil Procedure, 1908, where a decree for the partition of an undivided estate assessed to the payment of revenue to the government or for the separate possession of a share of such an estate is passed, the partition of the estate or the separation of the share is to be made by the Collector or any gazetted subordinate of the Collector deputed by him in that behalf. Rule 18(1) of Order XX of the Code makes a similar provision. Thus, in the case of a partition decree of land assessed to the payment of revenue to the government, the execution of such decree by actually effecting partition and giving separate possession of a share of such land is to be effected by the Collector or any gazetted subordinate deputed by him in that behalf. The partition decree in the suit filed by the appellant declared that the appellant was entitled to get a one-half share in the suit properties partitioned by metes and bounds and that he was entitled to get possession thereof on ascertaining his half share. The decree further directed that the properties which were agricultural lands mentioned in the schedule thereto were to be partitioned by metes and bounds by

the Collector, Akola, under Section 54 of the Code of Civil Procedure. The land declared as surplus land or any part thereof possession of which was obtained by the appellant under the said decree would be thus in execution of the partition decree and would be a disposition within the meaning of Section 21(2) of the Act and would be invalid and of no effect.

7. It may be mentioned that at no stage of the proceedings the fact that ceiling proceedings were pending was brought to the notice of the learned Civil Judge, and that as appears from the decree, there was no contest in the suit. The suit filed by the appellant through his mother was obviously a collusive suit.

8. For the above reasons, this appeal fails and is dismissed.

9. There will be no order as to the costs of this appeal.

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