

State of Maharashtra

Vs

Harishchandra and Others

Civil Appeal No. 1390 of 1986

(A. P. Sen, B. C. Ray JJ)

29.04.1986

JUDGMENT

RAY, J. –

1. Special leave granted. Delay in filing the application for special leave under Article 136 of the Constitution is condoned. Heard learned counsel for both the parties. The only question that poses itself for decision in this appeal is whether the High Court under Article 227 of the Constitution of India can set aside the findings of facts arrived at by the Surplus Land Determination Tribunal, Jalna pursuant to an order of remand made by the Maharashtra Revenue Tribunal, even though respondent 1 submitted to the order of remand without questioning its propriety and validity.

2. Respondent 1 Harishchandra was the owner of survey Nos. 143, 144 and half portion of 161 situated at village Reogaon Taluka, District Jalna, Maharashtra. He was in statutory possession of the same under the provisions of Section 38-E of the Hyderabad Tenants and Agricultural Land Act, 1950. The total land in his possession on the appointed day i.e. on January 26, 1962 when the Maharashtra Agricultural Land (Ceiling and Holding) Act, 1961 came into force was 64 acres and 23 gunthas. In accordance with the provisions of Sections 12 of the said Act, respondent 1 having in his possession lands more than the ceiling prescribed under the said Act, submitted a return declaring therein that 4 acres of land out of the said lands was potkharab and uncultivable and 3 acres of land was occupied by public road passing through his land bearing survey No. 143. The Surplus Land Determination Tribunal, Jalna after enquiry held that the area of survey No. 143 be excluded and the area of survey No. 144 be taken into account. It was also held that 2 acres of land from survey No. 144 is pot-kharab area. On these findings, respondent 1 was held to be holding surplus land to the extent of 9 acres and 23 gunthas.

3. Respondent 1 preferred an appeal against the said order of the Surplus Land Determination Tribunal before the Maharashtra Revenue Tribunal. The State did not file any cross-objection against any of the findings arrived at in the said judgment. It was, however, contended on behalf of the State that certain other land held by respondent 1 was not taken into consideration while determining the ceiling limit of the lands respondent 1 was entitled to hold and retain in his possession in accordance with the provisions of the said Act and as such it was contended that the findings arrived at by the Surplus Land Determination Tribunal by its order dated March 26, 1976 were erroneous. The Revenue Tribunal after hearing both the parties accepted the contention of the State and remitted the case back on remand to the Surplus Land Determination Tribunal, Jalna for fresh enquiry and decision after setting aside the judgment and order of the Surplus Land Determination Tribunal. Respondent 1, however, did not make any objection against the order of remand made by the Tribunal and on the other hand submitted to it.

4. The Surplus Land Determination Tribunal pursuant to the order of remand heard both the parties and revised its earlier findings by including survey No. 143 in the holding of respondent 1. The Tribunal also held that respondent 1 had in his possession surplus land to the extent of 30 acres and 31 gunthas.

5. Feeling aggrieved by the said judgment and order dated December 25, 1976, respondent 1 preferred an appeal before the Maharashtra Revenue Tribunal. The Tribunal dismissed the appeal and confirmed the findings of the Surplus Land Determination Tribunal by its order dated April 5, 1977. No objection, however, was raised on behalf of respondent 1 as to the validity of the order of the remand of the case either before the Surplus Land Determination Tribunal when the Tribunal heard the matter on remand, or before the Maharashtra Revenue Tribunal at the time of hearing of the appeal against the said order.

6. Respondent 1, thereafter, filed an application under Article 227 of the Constitution of India before the High Court of Judicature, Bombay, challenging the legality and validity of the order made on December 25, 1976 by the Surplus Land Determination Tribunal as well as the order dismissing the appeal made by Maharashtra Revenue Tribunal affirming the findings of the Surplus Land Determination Tribunal after the said order of remand. The said Special Civil Application 6 of 1978 was allowed by the High Court, Bombay by its order dated June 23, 1983 setting aside the judgment and order dated March 26, 1976 passed after remand by the Surplus Land Determination Tribunal, Jalna and also the judgment and order passed by the Maharashtra Revenue Tribunal confirming the said judgment and order on holding that the Maharashtra Revenue Tribunal acted in excess of its jurisdiction to remand the matter on the issue, which was not the subject matter before the appellate authority. It was held that the order of remand was erroneous and it required to be rectified by the court. The exercise of powers under Article 227 of the Constitution was held to be justified on the ground of advancement of justice.

7. On a consideration of the facts and circumstances of the case, we are constrained to hold that the judgment and order made by the High Court, Bombay cannot be sustained for the reasons stated hereinbelow :

8. The Maharashtra Revenue Tribunal undoubtedly held that the decision rendered by the Surplus Land Determination Tribunal by its order dated March 26, 1976 was erroneous as the Tribunal had excluded certain lands held by respondent 1 while determining the surplus land in possession of the petitioner in accordance with the provisions of Section 12 of the Maharashtra Agricultural (Ceiling and Holdings) Act, 1961. The Tribunal, therefore, sent the case back on remand to the Surplus Land Determination Tribunal, Jalna on setting aside its aforesaid judgment and order for deciding the matter afresh. It is not disputed that the State of Maharashtra did not file any cross-objection before the Maharashtra Revenue Tribunal questioning or assailing any of the findings made by the Surplus Land Determination Tribunal. It is also pertinent to mention in this connection that respondent 1 did not also raise any objection against passing of the said order of remand by Maharashtra Revenue Tribunal on setting aside the order of the Surplus Land Determination Tribunal at the instance of State of Maharashtra. On the other hand respondent 1 submitted to the order of remand and waived its right to object against the order of remand. Thereafter the Surplus Land Determination Tribunal, Jalna made the aforesaid order after hearing the parties holding that respondent 1 had in his possession at the relevant date surplus land to the extent of 30 acres and 31 gunthas after including the land of survey No. 143 reversing its earlier findings. The said judgment and order was confirmed by the Maharashtra Revenue Tribunal.

9. Considering all these circumstances and specially the fact that respondent 1 waived his right to object to the order of remand by submitting to it, the judgment and order rendered by the High Court of Judicature, Bombay is set aside and the order of remand made by the Maharashtra Revenue Tribunal on July 30, 1976 as well as the order dated December 25, 1976 passed by the Surplus Land Determination Tribunal and confirmed by the judgment and order of the Maharashtra Revenue Tribunal dated April 5, 1977 after remand are hereby affirmed. There will, however, be no order as to costs in the peculiar facts and circumstances of the case.

</html