State of Gujarat

Vs

Jat Laxmanji Talasji

Civil Appeal No. 681 of 1985

(M.P. Thakkar, K.N. Singh, N.D. Ojha JJ)

19.02.1988

JUDGMENT

THAKKAR, J. -

1. In the course of an exercise in interpretation of a provision [Section 6(3-B) of Gujarat Agricultural Land Ceiling Act of 1960], complains the appellant-State, the High Court has misinterpreted the said provision which had been correctly interpreted by the Tribunal [Gujarat Revenue Tribunal]. The debate in the present appeal has centred on this plea the meritlessness of which will become evident presently.

2. The provision in question viz. Section 6(3-B) is embodied in Chapter III of the Ceiling Act which bears the caption "Fixation of Ceiling on Holding Land, Determination of Surplus Land and Acquisition thereof". The concerned provision insofar as material to the problem posed by the present appeal deserves to be quoted :

> 6(3-B) Where a family or a joint family consists of more than five members comprising a person and other members belonging to all or any of the following categories, namely :
>
> (i) minor son,
>
> (ii) widow of a predeceased son,
>
> (iii) minor son or unmarried daughter of a predeceased son, where his or her mother is dead,

such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five, so however that the total holding of the family does not exceed twice the ceiling area; and in such a case, in relation to the holding of such family, such area shall be deemed to be the ceiling area :

#Provided * * *##

3. The philosophy of this provision stares one in the eyes. When a family is both large and comprises (which expression is employed in the sense of includes [Collins English Dictionary defines 'comprise as... 'to include'...]) amongst it members who are subject to one or other of the socio-economic handicaps, fairness demands that such family is permitted to retain some more land than other families which are not so handicapped. The very nature of the three categories which are

specified (minors, widow of a predeceased son, minor son or unmarried daughter of a predeceased son who has lost both parents) conveys this message of plight. Understandable it is, that for such a family which has to carry the burden of misery, the community acting through the legislature has a soft corner and pours milk of human kindness into this benevolent provision aimed at relieving their distress to an extent. Such is the design. Two tests must be satisfied cumulatively for being eligible to claim the benefit :

> (1) The size of the family (number of members should exceed five).
>
> (2) It must consist of members one or more of whom belong to one or other of the specified handicapped categories.

Now the factual backdrop in which the problem of interpretation has surfaced needs to be traced. The family of the respondent landholder consisted of nine members including himself. (The landholder, his mother, his wife, his three minor sons and his three minor daughters). The question which arose was whether the landholder was entitled to the benefit of Section 6(3-B) which provides that where a family or a joint family consists of more than five members comprising a person and other persons belonging to all or any of the specified categories, such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member of the specified category in excess of five, subject to the rider that the total holding of the family does not exceed twice the ceiling area. The Tribunal took the view that Section 6(3-B) was not attracted to the case of the said landholder notwithstanding the fact that his family consisted of nine members and also comprised of other members belonging to specified category (i) (minor son). The view taken by the Tribunal is reflected in the following passage extracted from its order dated January 24, 1978 which gave rise to the writ petition in the High Court which in turn has given rise to the present appeal by special leave :

> As regards the other contention of Shri R. K. Panchal, it may be observed that for the purpose of Section 6(3-B) family of the applicant consisted of not more than five members even though as a matter of fact there are nine members in his family because the applicant and his wife will count as one unit and his minor sons will count as four units for the purpose of Section 6(3-B) of the Act, and thus there are only five members in the family for the purpose of counting the unit. Therefore, the family is not entitled to hold more than 45 acres of land on the ground that there are nine members in the family as argued by Shri R. K. Panchal. In this view of the matter, the findings of the Mamlatdar and confirmed by the Deputy Collector do not deserve to be interfered with.

4. Upon the jurisdiction of the High Court, under Articles 226/227 of the Constitution of India being invoked, the High Court reversed the Tribunal. Because, the reasoning unfolded in the aforesaid passage was inconsistent with the exposition of law made by the High Court in its earlier pronouncement. Reliance was placed on Nathekhan case [Nathekhan v. Mamlatdar, Vadgam, (25)3 Guj LR 1473] wherein Ahmadi, J. had earlier taken a contrary view. Says Ahmadi, J. :

> With respect the Tribunal's thinking is confused, sub-section (3-B) of Section 6 merely lays down that where a family consists of more than five members comprising a person and other members of the categories mentioned therein, namely (i) minor son, (ii) widow of a predeceased son, (iii) minor son or unmarried daughter of a predeceased son, where his or her mother is dead, such family shall be entitled to

> hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five provided the total holding of the family does not exceed twice the ceiling area. A bare perusal of this sub-section makes it clear that in order to avail two conditions must be satisfied, namely, (i) the family should consist of more than five members and (ii) it should have amongst it the categories of members mentioned in the three sub-clauses. If the family does not consist of more than five members but has amongst it any of the members mentioned in the three sub-clauses, it will not be entitled to the benefit of enlargement of the ceiling area. Therefore, the benefit of enlargement of the ceiling area will ensure to only that family where the total number of members is more than five and amongst them are members belonging to the categories mentioned therein. However, there is nothing in the sub-section wherefrom it can be inferred that the wife, widowed mother and unmarried daughters are intended to be excluded from the family, that is group or unit constituting the family. I am, therefore of the opinion that all the authorities including the Tribunal were wrong in coming to the conclusion that the aforesaid female members of the family had to be excluded for the purpose of determining the size of the family.

5. We fully concur with this view. The reasons are not far to seek.

6. It is not in dispute that the family of the landholder consisted of nine members if the heads of the members of the family are counted. The first condition required to be satisfied in order to attract Section 6(3-B) is that the family must consist of more than five members. The debate has centred round the question as to how the number of the members constituting the family should be counted. In counting the members of the family the Tribunal has excluded from consideration the mother and the three minor daughters of the landholder. Excluding these four persons the family consisted of five members. In that event Section 6(3-B) will not be attracted because one of the conditions precedent for the applicability of the provision is that the family must consist of more than five members. The High Court on the other hand has upheld the contention of the landholder that his family in fact consisted of nine members inasmuch as his mother and his wife as also his minor daughters were members of his family. The Tribunal in terms observed that :

> For the purpose of Section 6(3-B) family of the applicant consisted of not more than five members even though as a matter of fact there are nine members in his family.

7. This reasoning is obviously fallacious. The expression 'family ' has not been defined in the Act. One has therefore to go by the concept of family as it is commonly understood, taking into account the dictionary meaning of the expression. Collins English Dictionary defines family as :

> a primary social group consisting of parents and their offspring, the principal function of which is provision for its members.
>
> a group of persons related by blood; a group descended from a common ancestor.
>
> all the persons living together in one household.

8. Having regard to this definition it can be safely concluded that the landholder, his wife and his offspring consisting of three minor sons and three minor daughters would certainly constitute a family even if the mother of the landholder is excluded from consideration. Thus in any view the

family of the landholder consisted of eight members including himself, his wife, three minor sons and three minor daughters. The Tribunal was therefore clearly in error in taking the view that the family consisted of not more than five members. Learned counsel for the appellant however contended that in applying the test whether or not the family consisted of five members regard must be had only to the members of the family belonging to the specified category namely minor sons insofar as the composition of the family of the landholder in the present case is concerned. In other words the contention is that the landholder, his wife and his three minor sons are the only five persons of the family for the purposes of Section 6(3-B). In our opinion there is no warrant for reading Section 6(3-B) in this artificial and truncated manner. On a plain reading, Section 6(3-B) is attracted where a family consists of more than five members "comprising a person and other members belonging to all or any one of the following categories viz. (i) minor son... ". In the present case the family of the landholder consists of more than 5 members. The family also includes persons of one of the specified categories viz. the minor sons. Thus, all the ingredients of Section 6(3-B) are satisfied. In order to claim benefit of Section 6(3-B) the test which must be satisfied is a two-fold test. First, whether the claimant's family consists of more than five persons. In the present case the answer to this test is in the affirmative. The second test that is required to be answered in favour of the person who claims the benefit of Section 6(3-B) is that such family must also comprise of one individual and other members besides himself who must belong to all or any of the three specified categories. This test is also answered in favour of the respondent inasmuch as the family does comprise of the respondent and other members and from out of the other members, three belong to one of the specified categories viz.'minor son'. In other words access to Section 6(3-B) is barred by two doors. In order to secure entry the family must consist of more than five persons. If there are more than five persons including the landholder himself, the first door will be opened and the landholder will be entitled to have an access provided the second door does not bar his entry inside the beneficial area. The second door will also be opened provided that some of the other members meaning thereby members other than individual landholder belong to one of the three categories specified in the section. The second door would be opened provided he has got minor sons. Admittedly, the respondent has three minor sons. Therefore both the doors which bar the access of the landholder to the benevolent provisions are opened. It is not possible to accede to the submission that in ascertaining whether or not the precondition is satisfied only the members of the specified category should be taken into account. For, to do so would be to kill the letter as well as the spirit of the concerned provision. We are therefore not prepared to uphold the plea of the appellant-State that the High Court has not correctly interpreted the relevant provision in the case giving rise to the present appeal.

9. Under the circumstances the appeal deserves to fail. But before we conclude we must set aright an inadvertent error made by the High Court in making computation of the extent of the additional land which the respondent was entitled to hold in excess of the prescribed ceiling in the context of Section 6(3-B). Computation in this behalf must be made by applying the formula embodied in Section 6(3-B) viz. that the family shall be entitled to hold land in excess of the ceiling area to the extent of "one-fifth of the ceiling area for each member in excess of five" subject to the rider that the total area does not exceed twice the ceiling area. It needs to be clarified that on a true interpretation of the provision "each member in excess of five" must of logical necessity mean each 'such' member of the specified handicapped category. In the present case there were eight members in the family and it comprised of three members of the specified category viz. three minor sons. Under the circumstances for each minor son in excess of the five members the holder was entitled to one-fifth of the ceiling area in excess of the prescribed ceiling. That is to say he was entitled to three-fifth of the prescribed ceiling over and above the ceiling area subject to the rider that the total

retainable holding of the family did not exceed twice the ceiling area. This aspect was lost sight of by the High Court in making the computation. Of course in the ultimate result in the facts of the present case nothing turns on it as in any view of the matter the extent of the land held by the family computed on this basis would not exceed twice the ceiling area. The holding of the family consisted of 60 acres and 4 gunthas. And making a computation on the aforesaid basis having regard to the fact that the ceiling area was 45 acres, the family would be entitled to additional 27 acres (45/5 = 9 x 3 = 27). Thus he would be entitled to hold 72 acres (45+27 = 72) whereas the holding of respondent consisted of only 60 acres. Therefore the holding of the family was not in excess of the prescribed ceiling as computed in the aforesaid manner. While the High Court in terms followed its earlier decision in Nathekhan case (Section 6(3-B) of Gujarat Agricultural Land Ceiling Act of 1960) it overlooked the ratio of the decision in this behalf. What was overlooked was the ratio reflected in the passage from para 6 of the decision extracted hereinbelow which is in accord with formula indicated by us :

> There were two minor sons in the family of Nathekhan and one minor son in the family of Majamkhan. Since the family unit of each brother exceeded five in number so far as Nathekhan is concerned, he was entitled to hold land in excess of the ceiling area to the extent of two-fifth of the ceiling area and Majamkhan with one minor son was entitled to hold land in excess of the ceiling area to the extent of one-fifth thereof. Since the excess land in the case of each brother was of 4 acres and 38.5 gunthas being less than even one-fifth of the ceiling area, it could not be held that their holding exceeded the permissible ceiling.

10. We are therefore of the opinion that this appeal deserves to fail subject to the clarification in regard to the true position as regards computation of the permissible extent of land which can be held in the context of Section 6(3-B) of the Act. The appeal is disposed of accordingly. There will be no order regarding costs.

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