SUPREME COURT OF INDIA

Nagbhai Najbhai Khackar

Vs.

State of Gujarat

C.A.No.7519 of 2010

(S. H. Kapadia CJI., K.S. Radhakrishnan and Swatanter Kumar JJ.)

09.09.2010

JUDGEMENT

S.H.Kapadia, CJI

1. Leave granted.

2. A short question which arises for determination in this batch of cases is whether bid lands were required to be taken into consideration for the purpose of land ceiling under the *Gujarat Agricultural Lands Ceiling Act, 1960*, as amended vide Act 2 of 1974, which came into force from 1.4.1976.

3. At the outset, we may state that writ petitions were filed in the High Court inter alia challenging the provisions of the Gujarat Agricultural Lands Ceiling Amendment Act 2 of 1974 as violative of Articles 14 and 19 of the Constitution. We may state that Amending Act 2 of 1974 has been included as Item No. 71 in the Ninth Schedule to the Constitution of India by the Constitution Thirty-fourth Amendment Act. That inclusion was challenged before the Constitution Bench of this Court on the ground that Thirty-fourth Amendment to the Constitution violated the basic structure of the Constitution which challenge has now been given up in view of the judgment of this Court in the case of *I.R. Coelho (Dead) by Lrs. v. State of Tamil Nadu*[1].

4. As regards the question of includability of the bid lands in the lands ceiling is concerned, the case of the appellant(s) before us was, that bid lands held by the appellant(s) being uncultivable waste lands; being rocky and stony were not included in the definition of "land" in the 1960 Act as originally enacted; that "bid lands" held by the appellant(s) were sought to be included in the total holding of the appellant(s) to determine the ceiling under the 1960 Act only by reason of Amendment Act 2 of 1974. At this stage, it may be noted that the said Amendment Act 2 of 1974, which came into force from 1.4.1976, was challenged only for the reason that under Section 5(1)(a) of *Saurashtra Estates Acquisition Act, 1952* ("1952 Act" for short) no bid lands which were uncultivable waste vested in the State Government,

which bid lands are now sought to be covered by 1960 Act on account of the impugned Amendment Act 2 of 1974. According to the appellant(s), once such "bid lands" stood excluded from vesting under the 1952 Act, the same could not be included for calculating the total holding to determine the ceiling limit under the 1960 Act, as amended. It was contended on behalf of the appellant(s) that bid lands which were also uncultivable waste lands cannot be included for computing the total holding under the 1960 Act, as amended, as the object of the Ceiling Act was to impose ceiling on lands held for cultivation or agricultural purposes. It was further submitted on behalf of the appellant(s) that bid lands cannot fall within the definition of dry crop land in clause (e) of Explanation I to Section 2(6) as only "grass lands" which abound in grass grown naturally and which are capable of being used for agricultural purposes could be included in such definition of "dry crop" land and since the "bid lands" did not fall in any "class of land" under Section 2(6), such land could not be included for calculating the ceiling limit under Section 6 of the 1960 Act, as amended.

> "In this connection, Shri R.F. Nariman, learned senior counsel appearing on behalf of the appellant(s), submitted that the Act of 1960 (Unamended) was a useful guide in interpreting the definition of "dry crop land" under the Act. According to the learned counsel, the simple meaning of the said definition made it clear that "dry crop land" has been defined to include "grass land", that is to say, land which abounds in grass grown naturally and which is capable of being used for agricultural purposes. According to the learned counsel, unwittingly, the word "includes"
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> occurring in the unamended definition of `dry crop land' was left out of the amended definition. Such omission, according to the learned counsel, can always be supplied by the Court. Since, the lands specified in paras (a) to (c), to wit, perennially irrigated land, seasonally irrigated land and superior dry crop land are all lands on which agricultural operations are capable of being performed the expression "other than the land specified in paras (a) to (c)" obviously refers to lands other than those stated in paras (a) to (c) but which are capable of being used for agricultural purposes. According to the learned counsel, the appellant(s) had specifically pleaded that their lands were barren, rocky and uncultivable but the Authorities proceeded on the basis that the said fact was irrelevant in view of the definition of the word "land" under Section 2(17) of the 1960 Act. According to the learned counsel, even as per the revenue records, the subject lands have been described as "Pot Kharaba" i.e. waste lands, barren lands or uncultivable lands and, consequently, the same cannot fall within the definition of dry crop land under Section 2(6)(iv). According to the learned counsel, the said Act had to be interpreted in the context of agricultural land ceiling and in the context of the said 1960 Act being part of agrarian reforms and unless lands were capable of being used for agricultural purposes, the bid lands which were also uncultivable waste lands cannot fall within the ambit of the 1960 Act.
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> According to the learned counsel, the impugned judgment of the High Court was erroneous as it has placed interpretation on the proviso to Section 5(1) and so read the High Court has held that even desert and hilly areas where no cultivation is possible

can be subjected to ceiling. According to the learned counsel, Section 5 states that lands in deserts or hilly areas must first be dry crop lands as defined under Explanation I(e) after which such lands falling in a desert or hill may be accorded a larger ceiling area by the State Government. In any event, according to the learned counsel, Section 5(1) proviso has no bearing on the definition of dry crop land except to the extent that the dry crop land may also fall in hilly or desert areas; example, hilly or desert areas which abounds in grass and which are capable of being used for agricultural purposes. Consequently, hilly or desert areas which do not abound in grass or which are incapable of being used for agricultural purposes are not covered by the Ceiling Act, 1960. Thus, according to the learned counsel, bid lands are excluded from the definition of dry crop land and they do not fall within any of the categories of classes of land under the Act and, therefore, cannot be subjected to ceiling under the 1960 Act."

5. Shri Preetesh Kapur, learned counsel appearing on behalf of the State of Gujarat, submitted that it has been the admitted case of the appellant(s) all through the proceedings that the lands in question were in fact bid lands; that, only argument raised before the Tribunal as well as the High Court, besides the constitutional challenge, was two-fold; (i) that the subject lands were not fit for "agriculture" and since the 1960 Act is an agricultural ceiling Act, the subject lands had to be excluded from the purview of the Act; (ii) that, the definition of "dry crop land" did not specifically cover bid lands and must be construed to cover only such bid lands as "abound in grass" and, therefore, the lands in question stood outside the Ceiling Act. According to the learned counsel, the definition of "land" stood specifically amended by the Amendment Act (No. 2 of 1974) to include "bid lands" of Girasdars and Barkhalidars in Section 2(17)(ii)(c). According to the learned counsel, the Statement of Objects and Reasons for enacting the Amending Act also made it clear that the Amendment Act stood enacted for including the bid lands of Girasdars and Barkhalidars within the definition of "land". Therefore, according to the learned counsel once the definition of "land" stood specifically amended to include "bid lands", without limiting the same to cultivable bid lands, the specific intention of the Legislature must be given its full meaning. By the said Amending Act No. 2 of 1974, according to the learned counsel, a proviso was also inserted after Section 5 which increased the ceiling limit in respect of "desert" and hilly areas by 12 = per cent which indicates that even deserts and hilly areas have been sought to be brought within the ambit of the Agricultural Ceiling Act. Therefore, the said proviso negates the contentions of the appellant(s) that only such bid lands which were "capable of agriculture" or which abound in grass alone were meant to be covered under the Act. It was further submitted that the lands in question are in fact "agricultural" lands. They survived acquisition under the earlier three Acts only because they were "bid lands" which by definition under those Acts were lands "being used" by Girasdars/Barkhalidars for grazing cattle. That, under the Ceiling Act, Section 2(1) defines the use of land for the purposes of grazing cattle as agricultural purpose and thus, according to the learned counsel, by their very definition "bid lands" are capable of being used for agricultural purpose, namely, grazing cattle. On the question of classification of lands, learned counsel submitted that Sections 4 and 5 of the 1960 Act expressly made two-fold

division by dividing the State into local areas as well as classes of lands. For the ceiling area in Schedule I, the land had to fall under one of the classes, namely, perennially irrigated land, seasonally irrigated land, superior dry crop land and dry crop land which have been defined in Explanation I to Section 2(6) of the Act. Learned counsel submitted that there is no merit in the argument of the appellant(s) that "bid land" is not specified in the class of lands under Section 2(6) and that even if bid lands were included in "dry crop land" it must be only such bid lands which "abound in grass" which would fall under the 1960 Act.

> "According to the learned counsel the argument of the appellant(s) is fallacious as it overlooks the specific legislative intent. In this connection, learned counsel submitted that from a bare reading of the definition of "dry crop lands" in Explanation I(e) it was clear that the said definition stood in two parts, namely, (i) "land other than the land specified in paragraphs (a) to (c) and" (ii) "grass land". Thus, according to the learned counsel, the first part of the definition included all lands other than those specified in paragraphs (a) to (c) provided they fall under the definition of land under Section 2(17). According to the learned counsel, the reason why "grass land" had to be separately defined in clause (e) was because under the proviso to Section 5 a further distinction was made between grass land included within "dry crop land" and other barren/desert/drought- prone areas which also fell within "dry crop land".
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> Further, according to the learned counsel, under clause (f) to the said Explanation under Section 2(6), "grass land" and not all "dry crop lands" were deemed to be rice lands in certain situations which also necessitated a separate definition of grass lands. Finally, learned counsel submitted that once bid lands fall within the ambit of the Agricultural Ceiling Act by virtue of the specific inclusion of all bid lands in Section 2(17), the ambit of inclusion should not be read down by reference to the classification under Section 2(6) of the 1960 Act."

6. For deciding this matter, we quote hereinbelow Section 2(6) of 1960 Act (unamended) in juxtaposition with the 1960 Act (as amended by the Amending Act 2 of 1974):

> "Gujarat Agricultural Lands Ceiling Act, 1960 Unamended Act (Pre - 1974) Amended Act (Post - 1974) (Inserted by Guj. 2 of 1974)
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> 2. Definitions- In this Act, unless the context 2. Definitions- In this Act, unless the context requires otherwise- requires otherwise- (6) "class of land" means any of the following (6)"class of land" means any classes of land, that is to say :- of the following classes of land, that is to say:- (i) perennially irrigated land; (ii) seasonally irrigated land; (iii) dry crop land; (i) perennially irrigated (iv) rice land; land; (ii) seasonally irrigated Explanation--For the purpose of this Act- land; (d) rice land means rice land situated in a local area (iii) superior dry crop land; where the average rainfall is not less than 35 inches (iv) dry crop land; a year, such average being calculated on the basis of the rainfall in that area during the five years Explanation I-

For the purpose immediately preceding the year 1959 but does not include perennially or seasonally irrigated land used of this Act - for the cultivation of rice;

(d) "rice land" means land which is situated in a local area where the average (e) "dry crop land" means land other than rainfall is not less than 89 perennially or seasonally irrigated or rice land and centimeters a year such includes grass land, that is to say, land which average being calculated on abounds in grass grown naturally and which is the basis of rainfall in that capable of being used for agricultural purposes; area during the five years immediately preceding the (f) grass land referred to in paragraph (e) shall, year 1959 and which is used notwithstanding anything contained in that for the cultivation of rice paragraph, be deemed to be rice land, if, is it situated in a local area referred to in clause (d) and or which, in the opinion of in the opinion of the State Government it is fit for the State Government, is fit the cultivation of rice." for the cultivation of rice but does not include perennial or seasonally irrigated land used for the cultivation of rice; (e) "dry crop land" means land other than the land specified in paragraphs (a) to (c) and grass land, that is to say, land which abounds in grass grown naturally and which is capable of being used for agricultural purposes; (f) "grass land" referred to in paragraph (e) shall, notwithstanding anything contained in that paragraph, be deemed to be rice land if it is situated in a local area referred to in paragraph (d) and in the opinion of the State Government it is fit for the cultivation of rice;"

7. We also quote hereinbelow the relevant provisions of Section 2(17) of the 1960 Act (Post-1974) which reads as follows:

"2(17) "land" means- (i) in relation to any period prior to the specified date, land which is used or capable of being used for agricultural purpose and includes the sites of farm buildings appurtenant to such land; (ii) in relation to any other period, land which is used or capable of being used for agricultural purposes, and includes - (b) the lands on which grass grows naturally; (c) the bid lands held by the Girasdars or Barkhalidars under the Saurashtra Land Reforms Act, 1951 (Sau. Act XXV of 1951), the Saurashtra Barkhali Abolition Act, 1951 (Sau. Act XXVI of 1951), or the Saurashtra Estates Acquisition Act, 1952 (Sau. Act III of 1952), as the case may be."

8. We also quote hereinbelow Section 5 of the 1960 Act (Post-1974) with the proviso which was not there prior to the amendment:

"5. - Ceiling areas (1) Subject to the provisions of sub-sections (2) and (3), in relation to each class of local area as specified in Schedule I, the ceiling area with reference to each class of land shall be as specified in the said schedule against the respective class of local area;

Provided that in areas which in the opinion of the State Government are desert or hill areas of drought-prone areas and which are specified by the State Government from

time to time, by notification in the Official Gazette, as such areas, the ceiling area with reference to dry crop land shall be such area as is twelve and a half percent more than the ceiling area as specified with reference to dry crops land against the class of local area in which the said areas fall, provided however that such ceiling area shall in no case exceed an area of 21.85 hectares (54 acres), and for the purpose of determining whether any area is a desert or hill area or a drought-prone area, regard shall be had to the soil classification of the land, the climate and rainfall of the area, the extent of irrigation facilities in the area, the average yield of crop and the agricultural resources of the area, the general economic conditions prevalent therein and such other factors.

(2) Where a person holds land consisting of different classes in the same class of local area, then for determining the question whether the total land held by him is less than, equal to, or more than, the ceiling area, the acreage of each class of land held by such person shall be converted into the acreage of dry crop land on the basis of the proportion which the ceiling area for the class of land to be so converted bears to the ceiling area for dry crop land.

(3) Where a person holds, lands, whether consisting of different classes of land or not, in different classes of local areas, the question whether the total land held by him is less than, equal to, or more than, the ceiling area, shall be determined as follows, that is to say-- (i) the acreage of each class of land held by the person in each class of local area shall be first converted into the acreage of dry crop land in that local area in accordance with sub-section (2) and the total acreage so arrived at shall be expressed in terms of a multiple or, as the case may be, fraction of such ceiling area;

(ii) the multiple or fraction so expressed in the case of each of the local areas shall be added together:

(iii) the person shall be deemed to hold land less than equal to, or more than, the ceiling area according as the sum total of the multiples and fractions under clause (ii) is less than equal to, or more than one”

(emphasis supplied)

9. The short question which is inborn in this batch of cases concerns applicability of the Gujarat Agricultural Lands Ceiling Amendment Act, 1972 which came into force w.e.f. 1.4.1976 to the "bid lands". It is the case of the appellants before us that the "bid lands" of the appellants do not fall within the definition of "dry crop land" under Explanation I(e) to Section 2(6) of the 1960 Act principally because the said definition under the unamended Act included grass lands, that is to say, lands which "abounds in grass grown naturally and which is capable of being used for agricultural purposes".

“According to the appellants, in the amended Act, through over-sight, the word "includes" in Explanation I(e), which defines "dry crop land" stood omitted and, therefore, this Court could always fill in the omission by reading the word "includes" in the said clause. According to the appellants, the legislative intent behind enacting clause (e) of Explanation I was to include only cultivable lands in the definition of "dry crop lands" as the ultimate object of the 1960 Act is to fix a ceiling on lands held for agricultural purpose and consequently "bid lands"

which are uncultivable waste lands cannot be included in Explanation I(e). We find no merit in this argument. The definition of "land" is specifically amended by the Amendment Act 2 of 1974 to include "bid lands" of Girasdars or Barkhalidars in Section 2(17)(ii)(c). The Statement of Objects and Reasons of the Amending Act also makes it clear that there was a specific legislative intent of including "bid lands" of Girasdars or Barkhalidars within the definition of "land". This inclusion does not make any distinction between cultivable and uncultivable bid lands. The insertion of bid lands in Section 2(17) is without any such qualification.

Therefore, this specific intent of the Legislature must be given its full meaning. If the argument of the appellants is to be accepted, it would defeat the very purpose of the 1960 Act because in that event a holder could hold lands to an unlimited extent by including waste lands in drought-prone areas, hill areas and waste lands within their holdings. There is one more reason for not accepting the argument of the appellants. The subject lands survived acquisition under the 1952 Act only because they were "bid lands" which by definition under those Acts were treated as lands being used by the Girasdars for grazing cattle (see Section 2(a) of the 1952 Act). Now, under the present Ceiling Act, Section 2(1) defines the use of land for the purpose of grazing cattle as an agricultural purpose. Thus, "bid lands" fall under Section 2(1) of the Ceiling Act. This is one more reason for coming to the conclusion that the Ceiling Act as amended applies to "bid lands". It is also important to note that under Section 5(1) of the 1952 Act all lands saved from acquisition had to be "bid lands" which by definition under Section 2(a) of the 1952 Act were the lands being used by a Girasdar or a Barkhalidar for grazing cattle or for cutting grass. If the lands in question were put to any other use, they were liable to acquisition under Section 5(2). Because the subject lands were used for grazing cattle, they got saved under the 1952 Act and, therefore, it is now not open to the appellants to contend that the subject lands are not capable of being used for agricultural purpose.”

10. Now, coming to the question of interpretation of the definition of the words "dry crop land" in Explanation I(e), one finds that the definition has two parts, namely, (i) "land other than the land specified in paragraphs (a) to (c)" and (ii) "grass land". Thus, the first part includes all lands other than those specified in paragraphs (a) to (c). Therefore, once the subject land falls in the first part of definition of the word "dry crop land" which land comes under Section 2(17) and which falls outside paragraphs (a) to (c) then such lands would fall within the definition of the words "dry crop land".

> "Further, there are two reasons why "grass land" stood separately defined in Explanation I(e). Firstly, under the proviso to Section 5, which is also inserted by the Amending Act, a distinction is made between "grass lands" included within "dry crop land" and "grass lands" falling in the desert or hill areas of drought-prone areas for fixing the ceiling of dry crop land in those areas.
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> Secondly, under clause (f) to Explanation I, "grass land" and not all "dry crop land" is deemed to be rice land in certain situations. The proviso to Section 5 itself makes it clear that by the Amending Act of 1974 the Legislature was placing a ceiling even on desert and hill areas. The proviso inter alia states that the ceiling limit with reference to "dry crop land" shall be 12 = per cent more than that specified in the Schedule which makes it clear that the Legislature intended to include even desert and hills in drought-prone areas within the definition of "dry crop land". Once such lands are used for grazing of cattle, Section 2(1) of the Ceiling Act would kick in and consequently the "bid lands" would stand covered by the Ceiling Act. The definition of "dry crop land" under Section 2(6) is relevant for the purpose of ascertaining the extent of ceiling limit under Schedule I. It is important to note that the subject lands got saved from acquisition under the 1952 Act only because the appellants were the holders of "bid lands" which were put to use for grazing of cattle or cutting of grass. It is these very lands which are now sought to be covered by the 1960 Act, as amended."

11. We also do not find any merit in the argument advanced on behalf of the appellants that the Legislature unwittingly through over-sight left out the word "includes" in the definition of "dry crop land" in Explanation I(e). If one looks at the Pre-1974 Act under Section 2(6) which defined "class of land", it covered four items, namely, perennially irrigated land, seasonally irrigated land, dry crop land and rice land, whereas under the Post-1974 Act, rice land has been deleted from the "class of land". Under the Pre-1974 Act, "dry crop land" was defined by clause (e) of Explanation to mean "land other than perennially or seasonally irrigated or dry crop land or rice land" and it included "grass land", whereas under Post-1974 Act, not only the word "includes" but even the words "rice land" do not find place in the definition of "dry crop land" in clause (e) of Explanation I. One of the reasons for this structural change is indicated by the judgment of the Gujarat High Court in the case of *Krishnadas Vithaldas Sanjanwala v. The State of Gujarat and Ors.*[2] in which it has been laid down that ordinarily "grass lands" would be "dry crop lands" within the meaning of clause (e) of Explanation to Section 2(6) of Pre-1974 Act as the definition of "dry crop land" included "grass land", however, in a given case the Tribunal could promote the grass land by declaring it to be a rice land falling under Section 2(6)(iv) (see Explanation I(f) to Section 2(6) of the Pre-1974 Act).

> "According to the said decision, which has been consistently followed thereafter, "grass land" of the kind mentioned in clause (e) could be promoted to the category of rice land if the Tribunal found that such grass land was situated in a local area referred to in clause (d) and if in the opinion of the State Government such land was

found fit for cultivation of rice. Therefore, the promotion of the grass land to the category of rice land, according to the said decision of the High Court, was dependent upon an objective fact which was justiciable and the determination of a subjective fact by the State Government. Consequently, clause (d) and clause (e) of the Post-1974 Act are drastically different from the structure of the said clauses in the Pre-1974 Act. There is no merit, therefore, in the contention advanced on behalf of the appellants that the Legislature had through over-sight omitted the word "includes" from Explanation I(e).”

12. For the afore-stated reasons, we find no merit in this batch of cases. Accordingly, the same are dismissed with no order as to costs.

[1]*2007 (2) SCC 1*
[2]*(1966) 7 GLR 244*