

BOMBAY HIGH COURT

State of Maharashtra

Vs.

Dinkarrao Narayanrao Deshmukh

Special Civil Appln. No. 777 of 1967

(Abhyankar, J.)

14.02.1969

JUDGMENT

Abhyankar, J.

1. The petitioner is the State of Maharashtra in this petition under Article 227 of the Constitution. The State challenges an order of the second respondent, the Maharashtra Revenue Tribunal, in proceedings arising under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961.

2. On 26-7-1962 the first respondent Dinkarrao furnished a return in respect of the land held by his family under Section 12 of the Ceiling Act. The return was in prescribed form I under Rule 4(1)(a) of the Rules framed under the Ceiling Act. In this return he showed himself, his wife, two daughters, Vinabai and Rewati Rama, and two sons, Prakash and Umashankar. In all six persons comprised as members of his family. A daughter was born to the first respondent on 21-1-1964. In calculating the ceiling area available to this family out of the total area of 115 acres 16 gunthas situated at two villages Warud and Temburkheda, the Sub-Divisional Officer determined the average ceiling limit to be 92 acres 22, gunthas. He allowed that much for the family of 5 members and added to it 1/6th on account of the sixth member in the family and declared 8 acres as surplus.

3. Against this order the first respondent preferred an appeal before the Maharashtra Revenue Tribunal. A Full Bench of the Tribunal took the view that if during the enquiry, which Collector holds, a member is born in the family, a landholder is entitled to additional area on account of birth of such a member even if it takes place after appointed day. On this basis the appeal preferred by the respondent No. 1 was allowed and it was held that respondent No. 1 did not hold any surplus land. This decision is challenged in this Court on behalf of the State.

4. In support of the petition it is urged that the number of members in the family to be taken into

account for the purpose of determining the ceiling area, which a family can hold under Section 6 of the Ceiling Act, the size and members of the family as existing on appointed day, that is, 26th January 1962, alone has to be taken into account. It was not permissible for the Sub-divisional Officer to take cognizance of the fact of birth of another daughter subsequently and thus to add to the membership of the family for determining the total area which could be kept by the family. The State relies on a decision of this Court in Special Civil Appln. No. 767 of 1968, D/d. 18-4-1968 at Bombay. Apart from the position that I am bound by the decision, I do not think the view taken by the Tribunal is sustainable.

5. Section 3 of the Ceiling Act makes a provision for imposing a maximum limit of ceiling on the holding of Agricultural Lands in the manner thereafter provided. The section speaks of 'on the commencement of this Act' the duty to impose limit of the maximum extent or ceiling up to which land may be held. This reference to the commencement of the Act, which, it is admitted, synchronizes with the appointed day, namely, 26th January 1962, indicates in no uncertain terms the date with respect to which the ceiling limit or maximum limit of the land which can be held is to be found. The duty to file a return under Section 12 is cast among other persons on a person, who (a) has at any time after the 4th day of August 1959 but before the appointed day, that is, before 26th January 1962, held land causing his holding to exceed the ceiling area; and (b) any person who on or after the appointed day acquires, holds or comes into possession of any land in excess of the ceiling area to file a return in the first case within 6 months from the appointed day and in the second case within 3 months from the date of taking possession of any land in excess of the ceiling area. Thus so far as the requirement of sub-clause (b) of sub-section (1) of Section 12 is concerned, the duty imposed to file a return will always be enforceable so long as the Act remains in force. A perusal of the form prescribed for making such a return shows that the return maker has to indicate the number of members in his family. The purpose of furnishing this information is to enable the Collector to find out what will be the extent of ceiling area available to the family if the claim is on behalf of the family. Section 8 restricts transfers in respect of persons who held land in excess of the ceiling area either on the appointed day or after the appointed day from transferring any portion of the land until determination of the land in excess of the ceiling area is determined. If Section 8 imposes this restriction it must be with respect to the persons who are to be found to hold land in excess of ceiling area on the appointed day. Thus the number of members in the family which is relevant for determining the ceiling area, will be the members in the family as on the appointed day. I fail to see how with reference to any other date the infraction of Section 8 can be brought home on a landholder unless the ceiling area is to be determined with reference to the number of members in the family on the appointed day. Similarly Section 9 prohibits a person, that is, a family, from acquiring any land if already it has land in excess of the ceiling area. The prohibition is to be operative on or after the appointed day. Here again the injunction will operate only in respect of that family or person, who, with reference to the appointed day, can be said to have land in excess of ceiling area on the basis of calculation of members in the family on the appointed day.

6. Reference was made during argument to clauses (f) and (g) of Section 18 which lay down the procedure and the findings required to be recorded by the Collector in determining the ceiling area. Under clause (f) the Collector has to find out whether any land has been acquired on or after the appointed day by testamentary disposition, devolution on death or by operation of law. This is necessary because there is a statutory prohibition in Section 9 on acquiring land by transaction inter vivos, that is, by purchase etc. But if a family has its land increased on account of any these modes of acquisition, namely, testamentary disposition, devolution on death or by operation of law, then the Collector is bound to take that fact into account. Under clause (g) the Collector is also required to find the total area of the land held at the time of enquiry and what is the area of land which the person is entitled to hold. Much reliance was placed on this sub-clause (g) in support of the contention that the entitlement of the landholder or the family has to be determined with reference to the date of enquiry because the sub-clauses speak of determination of the entitlement to the person after the enquiry. I do not think this interpretation is sustainable.

7. The scheme of the ceiling Act is that a person or a family is allowed to keep land upto the ceiling limit with respect to the state of affairs as on the appointed day, that is, 26th January 1962. With respect to transactions which took place voluntarily between 4-8-1959 and the appointed day, certain rules of evidence have been prescribed to determine whether those transactions or transfers are *bona fide* so as to affect the total area of land held by the family on the appointed day. If there are any transfers effected after the appointed day, but before determining of the ceiling limit under the Act, that is, under Section 18, those transfers are declared invalid and ineffective and in spite of the transfers the area so alienated are required to be taken into account. On the other hand, if any land is acquired by any of the involuntary process like testamentary disposition, or devolution or by operation or law, then that fact has also to be taken into account. But I do not understand how this provision requiring the Collector or Enquiry Officer to determine the total land possessed by the family on the date enquiry is made has any relevance in determining the date with reference to which the entitlement, that is, the quantity of the land that the family can retain, or the limit of ceiling area up to which it can hold land is to be found. If the interpretation urged on behalf of the respondent were to be accepted, it will lead to nothing short of chaotic condition. The right to land and the limit to which it can be held can be never made to depend on the exigencies of time when enquiries were held or orders were passed. That also is not the intention of this Legislation. It was suggested that if there is a diminution in the members of the family between the appointed day, that is, 26th January 1962, and the date on which enquiry is held and order comes to be passed, whether that would affect the right of the family to claim ceiling area or limit on the basis of the members in existence on the appointed day. In my opinion neither subsequent deaths nor subsequent births affect the determination of the ceiling area in a family, that is, births or deaths subsequent to 26th January 1962. Just as a landholder cannot claim more land because there are additions to the family, the State also cannot deprive landholder or a family of land on the basis of members existing on the date of enquiry or order, merely because there has been diminution in the members of the family after the appointed day. The ceiling limit has been fixed with reference to a fixed point of time and it is with reference to

that point of time, that is, 26th January 1962, that the number of members in the family while the family was a unit of ownership has to be determined. I, therefore, do not think that the view taken by the Tribunal correctly interprets the scheme of the provisions of the Ceiling Act and cannot be upheld.

8. The result is the petition is allowed. The order of the Tribunal is set aside and that of the Sub-Divisional Officer is restored. The petitioner will be entitled to costs from the first respondent.
Petition allowed.