

BOMBAY HIGH COURT

Dadarao Son of Kashiram

Vs.

State of Maharashtra

Special Civil Applns. Nos. 1026 of 1966 and 170 of 1968

(Abhyankar and Padhye, JJ.)

24.07.1969

JUDGMENT

Padhye, J.

1. The facts in the two cases slightly differ, but that does not make any difference in the legal position to be considered in these two cases and hence both these special civil applications are disposed of by this common judgment.

2. In Special Civil Appln. No. 1026 of 1966 one Parwatabai, wife of Pundlikrao Gawande, owned 114 acres and 38 acres of land at various village in taluq Akot, District Akola. The ceiling area for dry crops land in this area is 78 acres. That was the land held by Parwatabai as on 4-8-1959 and she continued to hold the same till 26-1-1962. Parwatabai submitted the return as required by Section 12 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter called the Ceiling Act) on 26-7-1962. On this return enquiry was started by the Deputy Collector, Akot and during the pendency of this enquiry, the holder Parwatabai died on 3-9-1963. Before her death, however, she executed a will on 1-9-1963 under which the present petitioners Dadarao, sons of Kashiram and Janabai wife of Rambhau were made the legatees of this area. On the death of Parwatabai Janabai and Dadarao both contended that each of them held an area less than the ceiling area and no land which was originally held by Parwatabai was liable to be declared as surplus land. As regards Parwatabai the surplus land which could be delimited came to 38 acres and 4 gunthas in accordance with Section 21 of the Ceiling Act. The Deputy Collector rejected the contention of the petitioners and took the view that the devolution of the property on the petitioners by the will dated 1-9-1963 could not be taken into consideration and the surplus area will have to be determined on the basis that the original holder Parwatabai was still alive. On this view, the Deputy Collector delimited 38 acres 4 gunthas of land as detailed by him in his order dated 18th October 1965 in the last paragraph as surplus.

3. The petitioners challenged this order by way of appeal before the Maharashtra Revenue Tribunal. The Revenue Tribunal by its order dated 16th September 1966 took the view that the ceiling area had to be determined for the persons who held the surplus land as on 26-1-1962 and the surplus land had to be determined in respect of that person. It was held that the will dated 1-9-1963 executed by Parwatabai will operate only with respect to the ceiling area held by her and subject to the delimitation of the surplus area under Section 21 of the Act'. It was further observed that

'If Parwatabai had been alive today the will dated 1-9-1963 executed by her would not have enabled her to escape the provisions of the Ceiling Act relating to loss of the surplus land to her and she would not have had any defense whatsoever to the delimitation of 38 acres and 4 gunthas of her land as surplus.'

It was also observed that 'her death during the pendency of the proceedings under the Ceiling Act does not enable her legatees to claim the lands which Parwatabai herself would have lost as surplus land under Section 21 of the Act'. Before the Revenue Tribunal, the petitioners had also urged that by reason of the death of Parwatabai during the enquiry proceedings, the proceedings for delimitation of the land abated and the proceedings which were started on the return of Parwatabai would not continue. The contention, it appears, was that after the death of Parwatabai only the legatees were obliged to file the returns in respect of their own property including the property they received under the will if such property held by them was in excess of the ceiling area. This contention was also negatived by the Revenue Tribunal and the appeal was dismissed. These orders are challenged by the petitioners in this special civil application.

4. In Special Civil Application No. 170 of 1968, one Vasantarao Dajipant Kahate was the holder of about 460 acres and 20 gunthas of land on 4-8-1959 and continued to hold the same on 26-1-1962, the appointed day. He filed a return as required by Section 12 of the Ceiling Act on 20-7-1962, which was far in excess of the ceiling area. During the enquiry proceedings on this return, the original holder Vasantrao Kahate died intestate on 31-10-1966 leaving his widow and two married daughters as his heirs. Besides, there were other members in the family with whom we are not concerned at present. On the death of Vasantrao his heirs or legal representatives, namely, the present petitioners, were required to file the returns and they filed separate return of the property which each of them held including the property which they inherited from Vasantrao. The Assistant Collector and sub-Divisional Officer, it appears, under instructions of the Commissioner wanted to treat three returns as one joint return on behalf of the three petitioners jointly to which the petitioners did not submit. The petitioners submitted their contentions before the Assistant Collector contending that they could not be treated jointly as they had inherited separate shares from the deceased Vasantrao and the land which each of them got had to be treated separately for the purposes of the Ceiling Act. This contention was not accepted by the Assistant Collector. Taking into consideration the other members of the family, the Assistant Collector held that the land which could be retained would amount to 160 acres and the joint holders were ordered to file their retention statement under Section 16 of the Ceiling Act and it

was further ordered that the remaining land should be declared as surplus. It may be mentioned that the petitioners had filed separate returns in pursuance of the order of the Assistant Collector dated 15-12-1966 which is in the following terms:

'The landholder Shri Vasantao Kahate is dead. As instructions contained in Revenue and Forest Department letter No. ICH-2566-20787-N (Spl) dated 10-8-1966, now that the landholder is dead there can be no question of holding an enquiry under the Act for deciding the extent of surplus land. However, the lands held by him devolve on the successors and it has thus become a joint holding held by them. The joint holders will be liable to submit a return under Section 12. On receipt of such return fresh enquiry will be started. This case be filed.'

Since the Assistant Collector was acting in pursuance of the instructions received from the Commissioner, that is, from the Government, the petitioners have directly come to this Court challenging the said order making the Commissioner and the State Government as parties to this petition.

5. It would thus be seen that the points arising in the two cases are the same and the fact that in one case the petitioners claim as legatees under a will from the deceased holder and in the other claims as heirs of the deceased holder, really makes no difference in the legal position.

6. The Ceiling Act has provided for fixing the ceiling acres for different areas or regions in the State and any person holding land in excess of the ceiling area fixed for any particular area is deemed to be a surplus holder and under the provisions of the Ceiling Act the land in excess of the ceiling area is delimited as surplus land and it is taken over by the State in which the title vests on possession of such surplus land being taken. If a person held land in excess of the ceiling area on 4-8-1959 and continued to hold the same on 26-1-1962, the appointed day, and further the enquiry was held and concluded during his lifetime and the possession of this surplus land was taken over by the Government, as envisaged by the Ceiling Act, no difficulty arises. It is only a matter of finding out the actual land which was held by the holder and after deducting the land upto the ceiling area from the land which the holder would retain with himself under the different provisions of Ceiling Act, the excess is to be declared as surplus area of which possession is to be taken by the Government. These two cases, however, are not cases of that type and the death of the holder during the enquiry proceedings changes the whole complexion. In order to appreciate the legal position, it would be necessary to take into consideration the object of the Ceiling Act and the various provisions thereof in order to find out whether the Ceiling Act seeks to deprive the legatees or the heirs of their land even if they do not hold land in excess of the ceiling area though the original holder hold surplus land. The object of the Ceiling Act is given in the preamble to the Act which reads as under :

'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.'

It is for this purpose that the Ceiling Act has been enacted which came into force on the 26th day of January 1962 which is also 'the appointed day' referred to in the Ceiling Act. The main purpose of the Ceiling Act, therefore, seems to be to distribute agricultural land amongst the landless and other persons to subserve the common good and for the purpose, to limit the extent of land to be held by a person and to take away the land in excess of the land which is allowed to be retained by the holder which is called a ceiling and the land in excess of the ceiling area is then to be distributed by the State to certain categories of persons according to priorities. The taking over of the surplus land is thus related to its distribution among the landless and other persons and among such landless persons could be also the heirs or legatees of the deceased holder, who held land on the appointed day and died during the enquiry proceedings.

7. It is contended by Mr. Natu who argued for the petitioners in both the special civil applications that the scheme of the Ceiling Act shows that the provisions regarding the determination of the surplus land as on 26-1-1962 referred only to a holder who was alive on 26-1-1962 and who filed a return under Section 12 or Section 13 of the Ceiling Act and was living on the day the enquiry concluded and the surplus land was declared by an order of the Collector in the enquiry proceedings, but the provisions of the Ceiling Act do not affect the persons who got the property either by inheritance or as legatees under a will from the holder who was alive on the appointed day, but died during the enquiry proceedings and before the declaration of surplus land was made. In order to understand the scheme of the Ceiling Act, it would be well to refer to a few provisions thereof and to see what the Ceiling Act intends and how the object of the Ceiling Act can be achieved or defeated. It will then have to be seen whether the contention raised on behalf of the petitioners in any way defeats the object of the Ceiling Act or in a way achieves it and whether the contention on behalf of the petitioners is well founded on the reading of the various provisions of the Ceiling Act.

8. Section 3 of the Ceiling Act reiterates the preamble of the Act given at the beginning. Section 4, sub-section (1) prohibits a person from holding land in excess of the ceiling area as determined in the manner provided by the Ceiling Act. Sub-section (2) of Section 4 provides that 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 provided in the Ceiling Act for surplus land. How the surplus land is to be dealt with is given in Chapter VI of the Ceiling Act. By an explanation to Section 4 (1) it is provided that a person may hold exempted land to any extent. This, however, must be to the exclusion of any other land which is not exempted. This will be clear from the provisions of Section 7 which apply to a case where a person holds both exempted and other land. If a person holds both exempted and other land, then in determining the surplus

land the exempted land is also taken into consideration along with the other land and the surplus is then determined.

Coming then to Chapter III which deals with restriction on alienations and acquisitions of land and consequences of contraventions, reference will be made to Section 8 which provides :

'8. 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.'

This provision puts a check on a surplus holder preventing him from defeating the object of the Ceiling Act by prohibiting him from transferring or effecting a partition of any land held by him on or after the appointed day until the land in excess of the ceiling is determined under the Ceiling Act. If such a provision had not been made, then a surplus holder would have divested himself of the excess property by transferring the same to various persons, with the sole object of defeating the provisions of the Ceiling Act so that no land of his could be taken as surplus land. If such a restriction had not been placed, then the object of the Ceiling Act could be defeated even by making nominal or bogus transfers and just with a view to avoid such result that this provision has been specifically made in the Ceiling Act. It has, however, to be noted that Section 8 deals only with the transfers inter vivos including a partition and has no reference whatsoever to any devolution of property on the death of a person either by inheritance or by a will. Section 9 then puts another restriction on the acquisition of land in excess of the ceiling area. It reads as under :

'9. No person shall, at any time on or after the appointed day, acquire by transfer or partition any land if he already has land in 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.' The words 'transfer' and 'partition' have been given the same meaning as in Section 8. The idea underlying is that after the appointed day no person shall hold any land in excess of the ceiling area under any circumstances and if a person comes to hold or comes into possession of any land in excess of the ceiling area after 26-1-62, that excess land will be taken over as surplus land leaving with the person only the ceiling area. This provision is thus meant to permit a holder to hold maximum land which is permissible to him under the ceiling Act and the rest of the land will be utilized for distribution among the needy persons.

Section 10 provides for the consequences of certain transfers and acquisitions of land. It provides for contingency such as the holders owning land in excess of the ceiling area having come to

know of the contemplated Act should not dispose of the excess land with a view to avoid or defeat the objects of the Ceiling Act. It refers to transfers made after the 4th day of August 1959 but before the appointed day. It provides that if any person transfers or partitions after the 4th day of August 1959 but before the appointed day any land in anticipation of, or in order to avoid or defeat, the objects of this Act, then, in calculating the ceiling area which that person is entitled to hold, the area so transferred or partitioned shall be taken into consideration, and land exceeding the ceiling area so calculated shall be deemed to be in excess of the ceiling area for that holding, notwithstanding that the land remaining with him may not in fact be in excess of the ceiling area. It also applies to lands transferred or partitioned in contravention of the provisions of Section 8. In cases of transfers made between these two dates, the burden is placed on the landholder to show that the transfers are not made in anticipation of, or in order to avoid or defeat, the objects of the Ceiling Act. Sub-sec. (2) of Section 10 then provides :

If any land is possessed on or after the appointed day in excess of the ceiling area or if as a result of the acquisition (by testamentary disposition, or devolution on death or by operation of law including by, or in execution of a decree or order of a Court, tribunal or authority) of any land one may make during the session in which they are so laid or the session immediately following and publish in the Official Gazette, so that if the requirements of sub-section (3) of Section 46 are complied with, the rules made by the State Government have the force of law and are to be treated as if they are part of the Ceiling Act itself. Under this rule-making power the State Government has framed rules, the validity of which has not been challenged, and under the rules several forms have also been prescribed which include the forms in which returns had to be filed and also the notice to be issued to the holders under sub-section (2) of Section 17 of the Ceiling Act. On the basis of the provisions of the Ceiling Act referred to consideration the matters given in Section 20 and it is only then that a declaration under Section 21 has to be made by the Collector. In making such a declaration the Collector has to find out the area of land which the person is entitled to hold as a ceiling area, the total area of land which is in excess of the ceiling area, the name of the person to whom possession of land is to be restored under Section 19, the area and particulars of such land, the area which is to be delimited as surplus land and the area which is to be forfeited to the State Government and it is only after such a declaration is made under sub-section (1) of Section 21 that a notification has to be made as to the land which is delimited as surplus land and also of the land to be forfeited to the State Government. After this is done, the Collector has to take possession of the land which is delimited as surplus land under sub-section (4) of Section 21 and it is only from the date on which the surplus land has been taken possession of, the surplus land is deemed to be acquired by the State Government for the purposes of the Ceiling Act and vest in the State Government. Till such vesting takes place, the holder of the land continues to be the owner of all the land he owned and possessed and is entitled to enjoy the same without any let or hindrance except that there are certain restrictions or prohibitions with respect to the transfer of any land by act of parties inter vivos. For example, a holder is precluded from transferring any land subsequent to 26-1-1962 and any such transfer will be at his peril while determining the surplus land. Similarly, from and after the date of the notification in

pursuance of the declaration made under sub-section (1) of Section 21, no transfer such as sale, gift, mortgage, exchange, lease etc., can be made of the land which is delimited as surplus land and if any transfer is made in respect of the land which is delimited as a surplus land after the notification, then such transfer or disposition will be invalid and of no effect. It should also be noticed that the vesting is further postponed till the final decision of the appeal, if any is filed against the declaration or any part thereof, or the final decision of the State Government if it calls for the record or proceedings of the declaration under sub-section (2) of Section 45.

14. It will thus be seen that the holder of the land is not divested of the surplus land on 26-1-1962 but continues to be the owner of land till the final declaration is made by the Collector, or by the Revenue Tribunal, or the State Government, as the case may be and continues to be the owner and in possession and enjoyment of all his land till the date of vesting of the surplus land in the State Government. The said declaration has to be made on the basis of the return filed by 'a person' which includes a family and that return has to be filed with respect to the land which he held on and after 4-8-1959 and continues to hold till 26-1-1962. With respect to such a return of 'a person' the land to be retained by him and the land to be declared as surplus land is determined. If that person dies or ceases to be in existence after the return is filed, then the determination of the ceiling area to be retained by the holder cannot be with respect to that 'person' because a dead person cannot hold or retain any property. There is no provision in the Ceiling Act for substitution of the legal representatives of the deceased holder who files a return or dies after 26-1-1962 so that the legal representatives would step into the shoes of the deceased holder. The vesting of the property cannot remain in abeyance and as such, as the holder dies before the vesting in the State Government takes place, the property which he held must pass to his heirs or if there is a 'will' to his legatees and after such passing of the property the heirs or the legatees take the property in their own rights either as heirs or legatees and do not simply step into the shoes of the deceased holder. The Ceiling Act nowhere makes a provision that the ceiling is to be determined as on the state of affairs existing on 26-1- 1962 even if the holder who was alive on 26-1-1962 dies after that date. In the absence of any such provision, it must be taken that the Ceiling Act contemplates 'a person' who is alive not only on the date 26-1-1962, the appointed day, but at the time of the filing of the return and till the date of the declaration made by the Collector under Section 21 of the Ceiling Act. Contemplate a case, where a holder of property in excess of the ceiling area as on 26-1-1962 dies after that date but before the filing of the return. The property will naturally pass on such an event to his heirs or legatees. In such a case, the person who was alive on 26-1-1962 cannot naturally file a return and the return will have to be filed by the heirs or legatees who take the property. That return must necessarily be of the person who holds the property on that date and it is with respect to that person who files the return that the ceiling area and the surplus land have to be determined. There appears to be no obligation under any of the provisions of the Ceiling Act on the heirs or the legatees to file a return in respect of a person from whom they inherit. If there is no such obligation, then evidently there can be no return in respect of the property held by a deceased holder on 26-1-1962 and the only return that may be filed will be by a living person who can be called upon to file a return only in

respect of the property which he holds which may include the property which he already owned on 26-1-1962 and which he inherited after 26-1-1962, but before the filing of the return and it is with respect only to such return and on this basis that a declaration can be made under Section 21. It is true that if a person liable to file a return does not file a return within the time prescribed and if the Collector considers that such a person is liable to file a return being in possession of land in excess of the ceiling area, the Collector can levy a penalty on such person and can call upon that person to file the return within the prescribed time and if he fails to file such a return, then he determines the ceiling area and the surplus land in the absence of the holder and the holder is further penalised by forfeiting the surplus land to the State Government, thus depriving the holder of the compensation which he would have normally got for the surplus land. But here again, Section 13 under which this action is taken postulates a living person because the person who was liable to file a return and does not file it as required by Section 12, because of his death in the meanwhile, cannot be proceeded against under Section 13 and the heirs or legatees of the deceased holder could not be penalized under Section 13 for non-filing of the return, nor can be called upon to show cause why penalty should not be imposed for the non-filing of the return by the deceased holder, nor can the penalty of forfeiture be levied against the heirs or the legatees for their failure to file the return since there is no duty or obligation on the heirs or the legatees to file any return in respect of the property held by the deceased holder.

15. The Legislature has made specific provisions which will be found in Sections 8 and 10 of the Ceiling Act inhibiting any person from transferring or partitioning only land on or after the appointed day until the land in excess of the ceiling is determined under the Ceiling Act. Even with respect to transfers between 4-8-1959 and the appointed day, 26-1-1962, a provision has been made throwing the burden on the holder to show that such transfers were not made in anticipation of, or in order to avoid or defeat, the objects of the Ceiling Act. However, these transfers relate only to transfers inter vivos made by act of parties. That means the Legislature did not want the holders of excess land to divest themselves of the excess land after the Ceiling Act came into force or in anticipation of the Ceiling Act coming into force in order to defeat the objects of the law, by voluntarily transferring their excess lands either by transfer or partition as that would prompt the holders to defeat the objects of the Ceiling Act by entering into nominal or fraudulent transactions or to benefit their relations or friends, who would not otherwise be entitled to the property and defeat the very purpose of the Ceiling Act namely distribution of the surplus land to the landless persons. If the Legislature wanted to extend this inhibition even to heirs or the legatees, it would have been very easy for the Legislature to include those contingencies also and it was open to the Legislature to specifically provide that the surplus land will be determined in relation to the property held by a person who was alive on 26-1-1962 and died subsequently before the declaration is made. In the absence of any such provision, it will be stretching the language of the Ceiling Act too far to include even such cases where the persons taking the property on the death of the holder have no hand in getting such property which comes to them because of the accident of their being the heirs or the legatees and in the latter case on account of the voluntary act of the testator to which the legatee is not a party.

16. It was contended on behalf of the State that the determination of the surplus, land has to be made as on the appointed day on which the holder was living and the heirs or legatees will succeed only to the extent of the land which the holder would have been entitled to retain had he been alive on the date of determination and the surplus land must in any case vest in the State. Reliance is placed on the deeming provision of sub-section (2) of Section 4 in which it is said that all land held by a person in excess of the ceiling area shall be deemed to be surplus land and it is contended that under this provision the date 26-1-62 is to be taken as a date with reference to which the surplus land is to be determined, whether the holder of land on 26-1-1962 was thereafter living or dead. In the first place, sub-section (2) of Section 4 has no reference to the appointed day and also it does not make any provision to say that in spite of the death of the holder the determination of the surplus land will have reference to the appointed day. The deeming provision introduces a legal fiction that a position which otherwise would not obtain is deemed to obtain under those circumstances; see *Kamaraja Nadar v. Kunju Thevar*¹, and *Additional Income-tax Officer v. E. Alfred*², where the effect of such a legal fiction is stated thus : 'When a thing is to be deemed to be something else it is to be treated as if it is that thing, though in fact it is not.' However, the legal fiction has to be applied only for the purpose for which it is intended and cannot be carried further than that; construing this deeming provision in sub-section (2) of Section 4, it has only a limited application. The deeming provision refers only to land which is under the Ceiling Act deemed to be surplus land. But for the Ceiling Act, there was no bar to a person holding any amount of land and no land with him could be said to be surplus land. By the Ceiling Act a bar is put on a person holding land in excess of the ceiling area in any particular area and the remaining land, though it is not in fact surplus with the holder, is deemed and declared to be surplus land in the hands of the holder for the purposes of the Ceiling Act so that that

¹ AIR 1958 SC 687

² AIR 1962 SC 663

surplus land can be taken away by the Government and distributed to the landless persons. The introduction of this legal fiction is, therefore, only to this extent and it cannot be applied to mean that it applies with reference to property held on 26-1-1962 by a holder who dies subsequently but before the declaration is made. Section 4 (2) refers to a person who must be living at the date of the determination of the surplus land because the surplus land can only be determined after the enquiry contemplated by Sections 18 to 20 after which a declaration is to be made under Section 21. If the intention of the Ceiling Act was to treat the land in excess of the ceiling area as surplus as on 26-1-1962 irrespective of the existence or non-existence of the person after 26-1-1962, then suitable provisions could have been made requiring the heirs or the legatees to file the return in respect of the property held by the deceased holder as on 26-1-1962 and provision could also have been made for determining the surplus land on the basis of such return, deeming that person to be alive even at the date of the declaration though he is dead. In the absence of any such provision and looking to the purpose and intent of the Ceiling Act from the other provisions to which we have already referred, it does not appear to us that the surplus land was intended to be

determined and declared as on the basis that the holder was alive on 26-1-1962 and continued to live on the date of the declaration.

17. The provisions of the Ceiling Act may be contrasted with the provisions of other Acts by which there has been expropriation of land. We may refer in this connection to the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No. 1 of 1951) by which the lands and other things which were previously held by the erstwhile proprietors were expropriated and vested in the State. It may be seen that in this Act there is no reference to 'a person' but it deals only with properties and certain kinds of properties which the proprietors held which were deemed to vest in the State from a particular date and the proprietors were to cease to hold those properties from the specified date. Reference may be made to Section 3 of that Act which provides :

'3 (1). Save as otherwise provided in this Act, on and from a date to be specified by a notification by the State Government in this behalf, all proprietary rights in an estate, mahal, alienated village or alienated land, as the case may be, in the area specified in the notification, vesting in a proprietor of such an estate, mahal, alienated village, alienated land, or in a person having interest in such proprietary right through the proprietor, shall pass from such proprietor or such other person to and vest in the State for the purposes of the State free of all encumbrances.' By notifications, dates from which the property was to vest in the State were notified and Section 4 of the said Act gives the consequences of such vesting. Thus, by this Act a clear provision has been made that all the properties which are of the categories mentioned in Section 4 (1) and the proprietary rights vest in the State from the specified date and all rights, title and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor shall cease from that date. It has no reference to the person at all and nothing is to be determined for the purpose of vesting the property in the State. Vesting takes place with immediate effect from the specified date unlike the vesting under the Ceiling Act which can only take place after the declaration is made, the notification is issued and the possession of the property is taken by the State. The vesting under the Ceiling Act takes effect only after certain stages have been gone into and after making an enquiry into the several matters upon which only the ceiling area and the surplus land can be determined. If no restrictions were placed as in Sections 8 and 10 of the Ceiling Act, then the property which would vest even in respect of a person living on 26-1-1962 would be that which would be left as surplus at the date of the declaration and would have no reference to the date 26-1-1962. It is only because of the restrictions put by Sections 8 and 10 of the Ceiling Act that the property of the holder who continues to live till the date of declaration has to be taken for the purposes of determination of the ceiling area and the surplus land as on 26-1-1962. It will thus be seen that 26-1-1962 cannot be taken to be the date for determining the surplus area which vests in the heirs or the legatees after 26-1-1962, but before any declaration could be made.

18. Reference may be made to some provisions of the Estate Duty Act, 1953. Section 5 of the said Act is the charging section which provides for the levy of estate duty on the death of a

person leaving property. The property as on the death of that person is the subject matter of the charge and the provision has been made specifically in Section 53 of the Act for the liability of the legal representatives and other persons to whom such property passes. But for this provision, the legal representatives would not perhaps have been liable for payment of the estate duty on the property left by the deceased. A similar provision has been made in the Income-Tax Act, 1922 after the decision of this Court in *Commissioner of Income Tax v. Ellis C. Reid*³, The facts of this case were that a notice was issued to an assessee to make a return for income-tax. After the receipt of notice the assessee had 30 days' time in which to comply with the notice. After the expiration of the period of 30 days but before any return could be filed, the assessee died. Question was whether the assessment could be continued with respect to the estate in the hands of his legal representatives and whether the income-tax payable by the deceased assessee could be determined after his death and the income-tax could be recovered from the estate of the deceased in the hands of the legal representatives? In construing the provisions of the Income-tax Act, the Division Bench observed that having regard to the definition of 'assessee' as being a person who is liable to pay income-tax, the word is not appropriate to a dead man, so that if an assessment is to be made on a dead man, as was done here, under Section 23 (4), some violence must be done to the language of the section. We may refer to the following pertinent observations made by Beaumont C. J. in the judgment, at p. 335, column 2 : 'these are, I think, the only material provisions of the Act. It is to be noticed that there is throughout the Act no reference to the decease of a person on whom the tax has been originally charged, and it is very difficult to suppose the omission to have been unintentional. It must have been present to the mind of the legislature that whatever privileges the payment of income-tax may confer, the privilege of immortality is not amongst them. Every person liable to pay tax must necessarily die and in practically every case, before the last instalment has been collected, and the legislature has not chosen to make any provisions expressly dealing with assessment of, or recovering payment from, the estate of a deceased person. In order that the Government may succeed and assessment made in this case may be held legal I think, one must do a certain amount of violence to the language of Section 23 (4); I should say a considerable amount of violence to the language of Section 27, or else hold that the privilege conferred on a living person assessed under Section 23 (4) of getting the assessment set aside if not to be enjoyed by the estate of a deceased person distinction for which I can see no logical reason.' Later it was further observed: 'In my judgment, in construing a taxing Act the Court is not justified in straining the language in order to hold a subject liable to tax. If the legislature intends to assess the estate of a deceased person to tax charged on the deceased in his life-time, the legislature must provide proper machinery and not leave it

³ AIR 1931 Bom 333

to the Court to endeavour to extract the appropriate machinery out of the very unsuitable language of the statute. We are not concerned with the case which may arise on the death of a person after assessment but before payment.' It is after this judgment that a specific provision came to be made in the Income-tax Act by adding Section 24B by which assessment of the year in which an assessee died could be made even after the death of the assessee and the property of

the deceased in the hands of the legal representatives could be made liable for the assessment. This was because by Section 24B legal personality of a deceased assessee is extended for the duration of the entire previous year in the course of which he died and therefore the income received by him before his death and that received by his heirs and legal representatives after his death but in that previous year becomes assessable to income-tax is the relevant assessment year. While dealing with these provisions, the Supreme Court in *Commissioner of Income Tax v. Amarchand*⁴, observed : 'The section was enacted by the Legislature to bring to tax, after his death, income received during his lifetime, and fill up the lacuna which was pointed out by the High Court in 5 ITC 100 : AIR 1931 Bombay 333.' It was further observed in paragraph 7 of the judgment :

'By Section 24B the legal representatives have, by fiction of law, become assesseees as provided in that section but that fiction cannot be extended beyond the object for which it was enacted. As was observed by this Court in *Bengal Immunity Co. Ltd. v. The State of Bihar*⁵, legal fictions are only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond that legitimate field. In the present case the fiction is limited to the cases provided in the three sub-sections of Section 24B and cannot be extended further than the liability for the income received in the previous year.'

19. It will thus be found that neither there is any specific provision for a contingency, such as it occurs in the present case namely, on the death of a holder subsequent to 26-1-1962 but before making of a declaration, nor is there any legal fiction created by which the property of the holder as on 26-1-1962 has to be taken into consideration for determining the surplus area even though that person dies after 26-1-1962 but before either filing the return or before making of the declaration, and the legal fiction, as we have said above, extends only to declare certain land as surplus which otherwise could not be said to be surplus with the holder. The position, therefore, that emerges is that where a holder of property dies after 26-1-1962 and before any declaration is made by the Collector under Section 21 of the Ceiling Act, the heirs of the legatees are under an obligation to file a return in respect of the property which they may already hold as on 26-1-1962 and which they may get on the death of the deceased either by succession or under a will if these together are in excess of the ceiling area and it is only with respect to such property that the surplus has to be found. In such cases, the surplus cannot be found with respect to the property the Collector under Section 21 of the Ceiling Act, the heirs of the legatees are under an obligation to file a return in respect of the property which they may already hold as on 26-1-1962 and which they may get on the death of the deceased either by succession or under a will if these together are in excess of the ceiling area and it is only with respect to such property that the surplus has to be found. In such cases, the surplus cannot be found with respect to the property which the deceased holder held on

⁴ AIR 1963 SC 1448

⁵ 1955-2 SCR 603 at p. 646 : AIR 1955 SC 661 at p. 680

26-1-1962 and would have held on the date of the declaration had he been alive on that

date.

20. We are thus unable to agree with the contentions raised by the learned counsel for the Sth of the deceased either by succession or under a will if these together are in excess of the ceiling area and it is only with respect to such property that the surplus has to be found. In such cases, the surplus cannot be found with respect to the property which the deceased holder held on 26-1-1962 and would have held on the date of the declaration had he been alive on that date.

20. We are thus unable to agree with the contentions raised by the learned counsel for the State and the view taken by the Revenue Authorities.

21. The orders of the Deputy Collector and the Maharashtra Revenue Tribunal (in Special Civil Application No. 1026/66) and of the Assistant Collector (in Special Civil found with respect to the property which the deceased holder held on 26-1-1962 and would have held on the date of the declaration had he been alive on that date.

20. We are thus unable to agree with the contentions raised by the learned counsel for the State and the view taken by the Revenue Authorities.

21. The orders of the Deputy Collector and the Maharashtra Revenue Tribunal (in Special Civil Application No. 1026/66) and of the Assistant Collector (in Special Civil Application No. 170/68) are quashed and set aside. The respective cases are sent to the Deputy Collector and the Assistant Collector who will deal with these cases in accordance with law and proceed on the basis that the heid by the learned counsel for the State and the view taken by the Revenue Authorities.

21. The orders of the Deputy Collector and the Maharashtra Revenue Tribunal (in Special Civil Application No. 1026/66) and of the Assistant Collector (in Special Civil Application No. 170/68) are quashed and set aside. The respective cases are sent to the Deputy Collector and the Assistant Collector who will deal with these cases in accordance with law and proceed on the basis that the heirs or the legatees are the persons in respect of whom the ceiling area is to be determined and the surplus land declared. The returns which can be called from the heirs and legatees will be their individual returns and not joint returns.

22. In the result, both the petitions succeed and are allowed with costs.
Petitions allowed.