

State Of Maharashtra vs Annapurnabai And Ors. on 2 May, 1985

Equivalent citations: AIR1985SC1266, 1985CRILJ1488, 1985(2)SCALE85, 1985SUPP(1)SCC273, 1986(1)UJ476(SC), AIR 1985 SUPREME COURT 1403, (1985) 2 BOM CR 550 1985 SCC (SUPP) 273, 1985 SCC (SUPP) 273

Bench: A.N.Sen, P.N. Bhagwati

JUDGMENT

1. One Abhimanji Chipadaji Kamlesh owned a piece of land admeasuring 137 acres 39 gunthas. He filed a return Under Section 12 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 on 27.7. 1962. Before any order could be made by the Sub Divisional Officer declaring any part of the land belonging to Abhimanji as surplus land, Abhimanji died on 3rd April 1963 leaving him surviving his widows Respondent Nos. 1 and 4, his daughters Respondents Nos. 3 and 5 and his son Respondent No. 2 as also the heirs and legal representatives of his pre-deceased son, Maruti, namely, Respondents Nos. 9, 10 and 11 and the heirs and legal representatives of his deceased daughter Kashi, namely, Respondents Nos. 6 to 8.

2. During the course of the enquiry before the sub Divisional Officer, it came to his notice that Abhimanji had died and notices were accordingly issued to the respondents as heirs and legal representatives of Abhimanji and they were asked to file return u/s 16 of the Act. The respondents raised a contention before the Sub Divisional Officer that Abhimanji having died before the publication of a notification declaring any part of his land as surplus, the land belonging to him at the time of his death had devolved on the respondents as his heirs and legal representatives and thereupon they had become independent tenure holders in their own right and since each of them held land within the ceiling applicable to him or her, notices were liable to be discharged. The Sub Divisional Officer, however, by an order dated 31st August 1965 rejected this contention of the respondents and held that it was with reference to the appointed day namely, 26th January 1962 that surplus land belonging to a tenure holder was liable to be determined and since on the appointed day, Abhimanji held 136 acres 39 gunthas of land, 53 acres 39 gunthas of land belonging to him was liable to be declared as surplus land. The respondents being aggrieved by this order passed by the sub Divisional Officer preferred a revision application before the Maharashtra Revenue Tribunal, but the learned member of the Tribunal hearing the revision application, agreed with the view taken by the Sub Divisional Officer and confirmed the order declaring 53 acres 39 gunthas of land to be surplus by an order dated 12.2.1968.

3. The respondents were obviously dissatisfied with this order passed by the learned Member of the Tribunal and they accordingly filed a 1 Writ Petition in the High Court challenging the decisions of both the Sub Divisional Officer and the learned Member of the Tribunal. The High Court by its judgment dated 24th October 1970 reversed the order passed by the learned Member of the Tribunal and remanded the case to the Sub Divisional Officer for disposal according to Law. The High Court found that the point arising in the present case was concluded by its own earlier decision

in Dadarao v. State of Maharashtra (1969) Maharashtra Law Journal 813 and following that decision, the High Court held that on the death of Abhimanji before the declaration of any part of his land as surplus land, the respondents inherited the land belonging to Abhimanji and thereupon each of the respondents was liable to be treated as an independent tenure holder in his or her own right and the ceiling should have been applied on that basis. The State of Maharashtra being aggrieved by this view taken by the High Court preferred the present appeal with special leave obtained from this court.

4. The question arising in this appeal is no longer *res integra* it is concluded in favor of the State by the decision of the court in *Vicobar Shankar v. Mohan Lal*. It was held by this Court in that case that the liability to surrender surplus land does not in any way come to an end by reason of the death of the holder before the actual extent of surplus land is determined and notified Under Section 21 of the Act. Section 21 of the Act no doubt states that the title of the holder of the surplus land would become vested in the State Govt. only on such land being taken possession of after a declaration regarding the surplus land is published in Official Gazette. But the liability to surrender the surplus land relates back to the appointed day in case of those who held land in excess of the ceiling on the appointed day. Therefore, even if the holder dies before declaration of any part of his land as surplus land, the surplus land is liable to be determined with reference to his holding on the appointed day and it is not open to the heirs and legal representatives of the holder to contend that they have inherited the land belonging to the holder and that the surplus land should be determined on the footing that each of them is an independent tenure holder in his or her own right. The High Court was, therefore, clearly in error in taking the view that the respondents being the heirs and legal representatives of Abhimanji should have been treated as independent tenure holders and the ceiling should have been fixed on that basis.

5. We, therefore, allow the appeal and set aside the judgment and order passed by the High Court. This would ordinarily have the effect of restoring the order made by the Sub Divisional Officer and confirmed by the learned Member of the Maharashtra Revenue Tribunal. But we feel that the ends of justice require that the respondents should be given an opportunity of raising any other contentions which may be available to them while determining the extent of surplus land in the hands of Abhimanji on the appointed day. We would, therefore, also set aside the order passed by the Sub Divisional Officer and confirmed by the learned Member of the Tribunal and remand the case to the Sub Divisional Officer for determining the surplus land as on the appointed day in the light of the observations contained in this judgment, after considering the contentions which may be raised by the respondents and the evidence which may be produced by them in support of their contentions.

6. There will be no order as to costs.