Raghunath Laxman Wani And Ors vs State Of Maharashtra And Ors on 6 August, 1971

Equivalent citations: 1971 AIR 2137, 1972 SCR (1) 48, AIR 1971 SUPREME COURT 2137, 1973 2 SCJ 469, 1971 U J (SC) 737, 1971 MAH LJ 877, 1972 (1) SCR 48, 1975 BOM LR 442

Author: J.M. Shelat

Bench: J.M. Shelat, A.N. Ray

PETITIONER:
RAGHUNATH LAXMAN WANI AND ORS.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA AND ORS.

DATE OF JUDGMENT06/08/1971

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
RAY, A.N.

CITATION:
1971 AIR 2137 1972 SCR (1) 48

ACT:
Maharashtra Agricultural Lands (Ceiling on Holdings Act) 1961-ss. 3, 4, 6-Ceiling area-Act does not contemplate refixation on account of increase or decrease in the number of members of family after appointed day-Additional 1/6th in excess of ceiling area for each member of family in excess of five-Section 6, proviso.

HEADNOTE:
In proceedings held under s. 14 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, the Deputy Collector rejected the appellants' case of partition and determined the surplus land to be surrendered under the Act. He also held that of the 14 members of the family, three of them were born after January 26, 1962, that is, the appointed day under the Act, that appellant M had purchased

11 acres of land separately on March 11, 1960 and therefore they could not be treated as members of the family under s. 6 for the purpose of the additional 1/6th of the basic ceiling area. On appeal, the Revenue Tribunal accepted the findings of the Deputy Collector. But the Tribunal made a modification in the order of the Deputy Collector in that it held that though the property was acquired in the name of M there was nothing to show that the acquisition was from his separate funds or was to be held by him separately and, hence he could not be excluded from the family for the purpose of s. 6. The Tribunal consequently modified the ceiling area.

HELD : (i) The Deputy Collector and the Tribunal have, after an examination of the materials placed before them, arrived at the concurrent finding that the appellants' case of severance of status and partition of the family land was not acceptable. This Court will not be justified in an appeal under Art. 136 in interfering with such a concurrent finding of fact. [54G]

(ii) The scheme of the Act is to determine the ceiling of each person including a family with reference to the appointed day. The ceiling area so fixed would not be liable to fluctuations with the subsequent increase or decrease in number of the family members, for there is, apart from the explicit language of ss. 3 and 4 no provision in the Act providing for the redetermination of the ceiling area of a family on variations in the number of its members. The argument that variations in the number of the members of a family required a redetermination of the ceiling area would mean an almost perpetual fixation and re-fixation in the ceiling area by the revenue authorities, a state of affairs that could not have been contemplated by the lagislature. [57H;58B-D]

State v. Dinkarrao Rarayanrao Deshmukh, (1969) 72 Bom, L.R-237 and Murari Rao S. Gube Patil v. State, Spl. C.A. No. 767/68, dt.

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18-4-1968 referred to; view contra in Civil Application No 1578 of 1969 decided on 16-7-1969,(Bombay) held incorrect.

(iii) Under the proviso to s. 6 for the purpose of increasing the holding of a family in excess of the ceiling area, if a member there of holds any land separately he cannot be regarded as a member of that family for such purpose. The proviso is clear, since there was no evidence that M or the family had treated the lands purchased in the name of M on March 11, 1960 as the separate property of M, the tribunal was right in regarding M as a member of the family and consequently holding that the family would be entitled to an additional 1/6th of the ceiling area so far as M was concerned. [59E-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5 of 1967. Appeal by special leave from the judgment and order dated September 2, 1966 of the Maharastra Revenue Tribunal, Bombay in Appeal No. ALC-A 12 of 1966.

V. M. Tarkundey, V. M. Limaye and S. S. Shukla, for the appellant.

V. S. Desai, S. B. Wad and S. P. Nayar, for the repondents Nos. 1 and 2.

The Judgment of the Court was delivered by Shelat, J. This appeal by special leave, is against the judgment and order passed by the Maharashtra Revenue Tribunal, dated September 2, 1966, in proceedings held by the Deputy Collector under S. 14 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as the Act) in respect of lands held by the appellants.

The following pedigree explains the relationship between the appellants:

Tukaram (dead)

Narayan, d. about 1920=Laxmibai Madhav=Maltibai Alka (minor) Laxman, d. 5-6-1954=Warubai Raghunath=Rukhminibai Ramesh Suresh ShailaMukand (minor) (minor)(minor) (minor) It is not in dispute that, until at any rate 1956, appellant Raghunath and the other members of the family formed a joint and undivided Hindu family of which Raghunath, on the death of his father Laxman in June 1954, became the karta and the manager. The family then held 523.03 acres of lands situate at Ranjangaon, Sangwi, Karajgaon, Shindi and Odhre villages. In 1956, appellant Raghunath gave a vardhi (intimation) to the talathi stating that he and the other members of his family had entered into a partial partition whereunder Laxmibai, the widow of Narayan, received 41.13 acres of land of Karajgaon, Kashinath, named Madhav Narayan after his adoption, 74.20 acres of land in Shindi village and Warubai, his mother, 64.03 acres of land of Shindi and Odhre villages. The balance of 343.07 acres of the said lands still stood in his name. But his case was that the members of the family had separated and ceased to constitute a joint and undivided family, and therefore, held the said balance in equal shares as tenants-in-common. The position thus was that on August 4, 1959 343-07 acres of land comprising of 180-20 acres of Rajangaon and 162-27 acres of Sangwi villages remained in his name. It was said that out of these 343 -07 acres of land, 75 -27 acres had come to his share thus leaving 267-20 acres of land held by them all as tenants-in-common.

On April, 1, 1960, Raghunath sent another vardhi (intimation) to the talathi of Ranjangaon stating that the partition by metes and bounds, which had remained partial in 1956, had been completed on that day. He also intimated that under this partition 75 -27 acres of land of Rajangaon village went

to Rukhminibai and Ramesh, his wife and son respectively, 53 -29 acres of Ranjangaon village to Madhav and his wife, Maltibai and 8 .36 acres of Ranjangaon village to Warubai, his mother, i.e., the widow of Laxman. According to the appellants, all the lands, which were partitioned and allotted in 1956 to Laxmibai, Madhav and Warubai had been sold away most of them before August 4, 1959 and the rest in 1960 and 1961. Likewise between October, 17, 1960 and May 30, 1962 Raghunath had sold 150-13 acres out of the remaining lands. The result of the alleged partition and the sales was that Raghunath held only 54-22 acres of lands at Rajangaon and Sangwi and that therefore, there was no surplus land for him to declare, the ceiling for this area under the Act being 96 acres for an individual or a family consisting of five members.

In support of their case of partition in 1956 and 1960 and the sales of lands which had come to the shares through it of the different members of the family, the appellants relied on their own affidavits, the statements of the various transferees, the said vardhis by Raghunath, certain market receipts showing sales of agricultural produce by the members of the family, extracts from village forms 7, 7A and 12 showing the different crops grown in the lands and the names of the different members of the family set out therein as occupants, and lastly, a consent deed dated April 11, 1960 executed by Madhav, Laxmibai and Warubai which recited the said partial partition in 1956, the fact of their being tenants-in-common in respect of the rest of the lands and the authority given by them to Raghunath to sell the lands for himself and on their behalf and on Such sales having been effected each of them having become entitled to 1/4th share in the sale proceeds.

The Deputy Collector, however, rejected the appellants case of partition, firstly in 1956 and then in 1960, and held that the family at the material time held 343 -07 acres of lands. He also held that out of the 14 members of the family as three of them had been- born after January 26, 1962, that being the appointed day under the Act and as appellant Madhav had purchased 11 -20 acres of land separately on March 11, 1960, they Could not be treated as members of the family under sec. 6 for the purpose of additional 1/6th of the basic ceiling area. Thus on the basis that the family consisted of 10 members only he allowed 96 acres plus 5/6th thereof, in all 176 acres and declared the remaining 167 -07 acres as surplus. On an appeal under sec. 33 of the Act, the Revenue Tribunal accepted the findings of the Deputy Collector rejecting the appellants' case of partition and held that the said sales effected by the members of the family were made to defeat the objects of the Act. The Tribunal, however, made one modification in the order of the Deputy Collector, in that, it held that though Survey No. 81 was acquired in the name of Madhav on March 11, 1960, there was nothing to show that that acquisition was from his separate funds or was to be held by him separately, and therefore, he could not be excluded from the family for the purposes of sec. 6. In this view the Tribunal held that the family held 343 07 acres plus II -20 acres purchased in the name of Madhav, i.e., 354 -27 acres, that the family members being II in number, each of them in excess of five members was entitled to an additional 1/6th of the ceiling area, and that consequently, the ceiling area for the family would be 192 acres. The surplus area thus would be 162 -27 acres and not 167 -07 acres as declared by the Deputy Collector. The present appeal challenges the correctness of these conclusions of the Tribunal.

The Act was brought into operation as from January 26, 1962, which is the appointed day under sec. 2(4). Sec. 3 provides:

> "In order to provide for the more equitable distribution of agricultural land amongst the peasantry of the State of Maharashtraon the commencement of this Act, there shall be imposed to the extent, and in the manner hereinafter provided, a maximum limit (or ceiling) on the holding of agricultural land throughout the State."

Sec. 4(1) lays down that subject to the provisions of the Act no person shall hold any excess over the ceiling area, as determined "in the manner hereinafter provided". Under sec. 4(2), all land held by a person (which expression includes a family) in excess of the ceiling area, shall be deemed to be surplus land. Sec. 5 provides for the ceiling area, in the several local areas and for each class of land, fixed having regard to the soil classification, climate, rainfall and other factors enumerated therein. Under sec. 6, if a family consists of members exceedings five in number, such family is entitled to hold land exceeding the ceiling area to the extent of one-sixth of the ceiling area for each-member in excess of five, so however that the total holding is not to exceed twice the ceiling area, and in such a case, in relation to the ceiling of that family, such area shall be deemed to be in the ceiling area. The proviso to sec. 6 runs as follows.

> "Provided that for the purpose of increasing the holding of a family in excess of the ceiling area as aforesaid, if any member thereof holds any land separately he shall not be regarded as a member of that family for such purpose."

Sec. 8 provides that 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. Sec. 9 prohibits any person at any time, on or after the appointed day, from acquiring 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. Sec. 10 provides that if a person after August 4, 1959 but before the appointed day, transfers or partitions any land in anticipation of, or in order to avoid or defeat the objects of this Act, or if any land is transferred or partitioned in contravention of sec. 8, then, in calculating the ceiling area of such a person the land so transferred or partitioned shall be taken into consideration and the 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 is not in fact in excess of the ceiling area. If by reason of such transfer or partition the holding of that person is less than the area so calculated to be in excess of the ceiling area, then all his land shall be deemed to be surplus land and out of the land so transferred or partitioned and in possession of the transferee land to the extent of such deficiency shall be deemed to be surplus. Sec. 12 then provides that if any person (i) has at any time between August 4, 1959 and January 26, 1962 held, or (ii) on or after January 26, 1962 acquires, holds or comes into possession any land in excess of the ceiling area, or (iii) whose land is converted into any other class of land as a result of the expiry of the period or the date set out in sec. 2(5), or (iv) whose land is converted into any other class of land in the circum- stances described in sec. 11, e.g., as a result of irrigation from a source constructed by Government, thereby causing his holding to exceed the ceiling area, then, he shall furnish within the respective periods prescribed therein to the relevant Collector a report containing particulars of all lands held by him. In such cases, the Collector has to hold an enquiry under sec. 18 in respect of the matters set out in that section, namely, the area of land held by such a person on August 4, 1959, whether any acquisition by him

between August 4, 1959 and January 26, 1962 should be considered in calculating the ceiling area, the total area held by him on January 26, 1962, whether any transfer or partition is made by him contrary to sec. 8, whether any land has been acquired or possessed on or after January 26, 1962 by transfer or partition, whether there has been any acquisition on or after January 26, 1962 by testamentary disposition, devolution on death or operation of law, the total area held by him on the date of enquiry and the area he is entitled to hold etc. At the end of such enquiry, the Collector has to make the declaration in terms of sec. 21. The first question which emerges for determination is whether there was severance of the joint family and a partition in respect of some of the lands in 1956 and a completion of that partition in 1960 as alleged by the appellants. It is true that in support, of their case of partition partly in 1956 and then in 1960, the appellants relied on (1) the two mutation vardhis by Raghunath to the talathis, (2) sales of lands which came to the shares of and which were allotted to certain members of the family, (3) market receipts showing sales by such members of the agricultural produce of lands, and (4) the affidavits by the members of the family and their transferees. It is also true that in the vardhi (intimation) to the talathi of Rajangaon on April 1, 1960, appellant Raghunath recited the fact of the partial partition having been made on May 1, 1956 and the said affidavits also mentioned the fact of the severance of status and the fact of the members of the family holding thereafter the family properties as tenants- in-common. Both the Deputy Collector and the Tribunal, however, arrived at a concurrent finding for reasons given by both of them after an examination of the materials placed before them that the appellants' case of the severance of status and partition of the family lands partially in 1956 and then in 1960 was not acceptable. The question is whether we would be justified in an appeal under Art. 136 in interfering with such a concurrent finding of fact.

As noted by both the authorities, no partition deed was admittedly executed by the parties either in 1956 or in 1960. The only documentary proof adduced in support of the alleged partition consisted of the vardhis, sales of lands, the market receipts for sales of agricultural produce said to be the produce of the lands allotted to some of the members of the family unaccompanied, however, with any proof that the sale proceeds thereof were appropriated by or accounted to those members. The vardhis merely intimated the talathis of a partition having been made and asked for the consequential 'mutations. By themselves they were not regarded by the authorities as conclusive proof of' the severance of status or a partition by metes and bounds. It is somewhat strange that though the family was said to have been disrupted and its severance brought about and the members thereof were said to hold the rest of the lands as tenants-in-common. (i) No proof was adduced of the division of other properties, such as the houses which numbered ten,

(ii) the shares allotted in 1956 to Laxmibai, the widow of Narayan, Kashinath alias Madhav and Warubai, the widow of Laxman, were so unequal as to afford no principle or basis for such distribution. and (iii) even in 1960 when the partition by metes and bounds was said to have been completed, the inequality in shares was not sought to be removed, nor was any case of the division of the other family properties set up. It is true that a consent document was produced which purported to give Raghunath the authority to sell the lands which were said to have come to the shares of the members of the family. But that document also would be of no avail unless its premise,. of the partition, was acceptable on its own merits. In considering that premise, it is important to bear in mind, that under the alleged partial partition of 1956 Laxmibai was allotted 41 acres,

Madhav, adopted by her in or about 1954, was allotted 74 acres and Warubai, the widow of' Laxman was allotted about 64 acres. The rest of the lands continued to stand in the name of Raghunath but in which all the members of the family were alleged to, have equal shares as tenants- in-common. Yet, when in 1960 the partition was said to have been completed, there remaining lands were divided between the wife of Raghunath, Madhav and his son and Warubai only, and no further lands were allotted to Laxmibai although in 1956 only 1245 SupCI/71 41 acres were given to her. It is thus difficult to compre hend the basis or the principle upon which the lands were said to have been divided amongst the various members of the family. But, apart from this circumstance, the question is would Raghunath, who admittedly was the karta of the family and as such held all the lands in his name, have agreed to give 41 acres of lands to Laxmibai in 1956 ? Narayan, we were told, had died in or about 1920 leaving him surviving as his only heir his widow, Laxmibai. As the law then stood, Laxmibai would not have been entitled to any share in the joint family properties. Under the Hindu Women's Rights to Property Act, XVIII of 1937, a widow governed by the Mitakshra school became entitled in a joint family property, to the same interest as her husband, such interest being, however, only a Hindu women's estate. But the Act, by reason of S. 4 thereof, applied to the property of a Hindu dying intestate after the commencement ,of the Act. There is nothing on record to show and it appears no effort was ever made to establish that notwithstanding Laxmibai's legal disability there was any agreement between the parties whereunder she was given 41 acres ;Absolutely in her own right over and above 74 acres given to Madhav, her adopted son.

The absence of any document regarding the alleged severance of the family and the partial partition in 1956, the inequality of shares allotted to some of the members ,of the family both in 1956 and in 1960, the absence of any principle or basis for such alleged distribution, the sale of the whole of the lands said to have come to them as a result of the alleged partial partition, the emergence for the first time in 1960 through Raghunath's said vardhis and the consent deed that each of the four parties were to have an equal 1/4th share in the properties remaining after the alleged partial partition, the total absence of any reference to the other properties such as houses and move- ables as subject matter of the partition, the absence of evidence showing appropriation of the sale-proceeds by the members to whose shares the lands sold were said to have come, all these factors rendered the appellant's case ,of partition first in 1956 and then in 1960 doubtful. If in consideration of these factors the two authorities con- ,currently declined to accept the case of partition, we on our part would be more than reluctant to interfere and upset such a finding. The appellants, in our view, accord- ingly must fail on that count.

As already noticed, sec. 3 provides that there shall be imposed to the extent and in the manner provided herein- after a ceiling on the holding of agricultural land on the commencement of the Act, i. e. , on and from January 26, 1962. Under sec. 4, no- person can hold land in excess of the ceiling area and all land held in excess of the ceiling area would be surplus land and would be dealt with in the manner provided for such surplus land. Sec. 5 provides for the ceiling area in each of the local areas and for each class of land as set out in the Schedule. Since a family is included in the definition of 'person, a family which consi sts of five persons would be entitled to the ceiling area as laid down in sec. 5. In cases of families having more than five members, they would be entitled to hold land exceeding the ceiling area to the extent of 1/6th of such ceiling area for each member in excess of five. In such a case, the ceiling area for such a family would be the area so calculated. But the proviso

to sec. 6 lays down that if any member of such a family holds any lands separately, he is not to be treated as a member of that family for the purpose of increasing the holding of that family to the extent as aforesaid, i. e., 1/6th of the basic ceiling area. Having provided thus for the fixation of a ceiling area for every person and having provided that there shall be imposed on every person a ceiling on and from the appointed day, the Act, by secs. 8 and 9 lays down that (i) no person who "on or after the appointed day" holds excess lands shall, on or after that day, transfer or partition any land until the excess land held by him is determined, and (ii) that no person at any time on and after the appointed day shall acquire by transfer or partition any land if the has land in excess of the ceiling area or land which together with any other land already held by him would exceed in the total the ceiling area.

The scheme of the Act seems to be to determine the ceiling area of each person (including a family) with reference to the appointed day. The policy of the Act appears to be that on and after the appointed day no person in the State should be permitted to hold any land in excess of the ceiling area as determined under the Act and that ceiling area would be that which is determined as on the appointed day. Therefore, if there is a family consisting of persons exceeding five in number on January 26, 1962, the ceiling area for that family would be the basic ceiling area plus 1/6th thereof per member in excess of the number five. The ceiling area so fixed would not be liable to fluctuations with the subsequent increase or decrease in the number of its members, for, there is, apart from the explicit language of secs. 3 and 4, no provision in the Act providing for the redetermination of the ceiling area of a family on variations in the number of its members. The argument that every addition or reduction in the number of the members of a family requires redetermination of the ceiling area of such a family would mean an almost perpetual fixation and re-fixation in the ceiling area by the Revenue authorities, a state of affairs hardly to have been contemplated by the legislature. The argument would also mean that where a surplus area is already determined and allotted to the landless persons such area would have to be taken back and given to a family, the number of whose members subsequently has augmented by fresh births. It is true that sec. 12 does lay down an obligation on a person to furnish to the Collector a report containing particulars of all lands held by him if he has held at any time after August 4, 1959 but before the appointed day or has on or- after the appointed day acquired or held or has come into possession of any land in excess of the ceiling. area as envisaged by sec. 10 (2) or whose lands are converted into any other class of land as a result of the expiry of the period or date specified in sec. 2 (5) or whose land is converted into any other class for the reasons given in sec. 11 and the Collector then has to hold an enquiry and declare his excess land under sec. 21. But these are the only cases contemplated where there would have to be a re-appraisal of the ceiling area, otherwise the Act, as aforesaid, visualises the ceiling area of every person with reference to the conditions prevailing on and the land held by him as on the appointed day. Such a construction appears to be borne out by the provisions of secs. 3 and 4 as also of secs. 8 and 9 of the Act. This is also the view taken by the High Court of Bombay on more than one occasion. (See State v. Dinkarrao Narayanrao Deshmukh (1), also Maruti Rao S. Gube Patil v. State (2) and also Special C.A. No. 229 of 1968, dec. on July 11, 1969. A view contrary to that taken in the above mentioned cases was adopted in Civil Application No. 1578 of 1969 decided on July 16, 1969 by another Division Bench of that High Court. But that does not appear to be a correct view as the learned Judges there failed to appreciate that sec. 12 contemplates a limited number of cases where a ceiling area has to be refixed by reason of the intervening events. Except for those cases, the

scheme of the statute is that a ceiling area is to be ascertained with reference to the state of affairs existing on the appointed day. In this view, the Revenue Tribunal was right in not taking into consideration the three children born in the family after the appointed day while determining the ceiling area to which the appellants' family was entitled to.

As regards the land purchased in March 1960 in the name of Madhav, the proviso to sec. 6 is clear. For the purpose of increasing the holding of a family in excess of the ceiling area, if a member thereof holds any land separately he cannot be regarded as a member of that family for such purpose. There would be in such a case two alternatives only. Either that land is held to be the separate property of Madhav, in which case he cannot be regarded as a member of the family for the purpose of sec. 6. or it is treated as a family property although it might have been purchased for some reason or the other in Madhav's name. In the latter event, though it would be added to the total holding of the family, Madhav would be regarded as a member of the family and the family being one having more than five members, it would be entitled to an additional 1/6th of the ceiling area so far as Madhav is concerned. The Tribunal rightly took this view and included the additional 1/6th area, as there was no evidence that Madhav or the family had treated the said land as a separate property of Madhav.

For the reasons here in above contained the appeal fails. It is, therefore, dismissed with costs.

K.B.N Appeal dismissed.

(1) (1969) 72 Bom. L.R. 237.

(2) Spl. C.A. 767 of 1968, dec. on April 18, 1968, (Patil and Nain, JJ. (Unrep.)