Uttar Chand (Dead) By Lrs. vs State Of Maharashtra And Anr. on 14 February, 1980

Equivalent citations: AIR1980SC806, (1980)2SCC292, [1980]2SCR1048, 1980(12)UJ392(SC), AIR 1980 SUPREME COURT 806, (1980) MAHLR 151, 1980 UJ (SC) 392, 1980 (2) SCC 292, (1980) 1 SCJ 537

Author: S. Murtaza Fazal Ali

Bench: A.D. Koshal, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1.This appeal by certificate is directed against a judgment of the Bombay High Court dated 30-9-1969 dismissing the writ petition filed by the appellant against an order of the Commissioner.

2. The facts of the case lie within a narrow compass and may be stated as follows:

> Proceedings under Maharashtra Agricultural Lands (Ceiling of Holdings) Maharashtra Act No. XXVII 1961 and (hereinafter to be referred to as - the Act) which received the assent of the President on 16-6-1961 were taken against the appellant in order to determine whether the return filed by the appellant under the provisions of the Act was correct or not. In his return filed before the Deputy Collector, the appellant had shown the total lands to be 370 acres and 34 gunthas. It was however alleged by the appellant that some time in the year 1956, there was a partition between the appellant and his nephews as a result of which his family got 202 acres of land. The appellant had sold 51 acres of land to other persons before the Act came into force. The appellant further alleged that he gave some lands to his adopted son in lieu of the latter's share. The adopted son Nemichand thereafter gave 93.25 acres of land to his mother under a civil Court decree. All these transactions took place some time in the year 1956. The Collector after examining the return found that the total land owned by the appellant was 118 acres 36 gunthas and the excess was only 4 acres 36 gunthas which could be taken over under the Act. Against the order of the Deputy Collector, the Commissioner appears to have called for the records and interfered suo moto and after making some enquiry, he held that the land declared by the appellant in his return far-exceeded the ceiling limit. In computing the total lands owned by the appellant, the Commissioner appears to have taken into account even that land which had been given by Nemichand to his mother,

> the wife of the appellant. Against this order of Commissioner, the appellant filed a writ petition before the High Court which was dismissed as a result of which an application was filed for grant of certificate for appeal to this Court which was granted. Hence this Appeal.

3. The short point taken by Mr. V.M. Tarkunde, learned Counsel for the appellant is that under the provisions of the Act, land which was received by his wife from the adopted son was her personal property and could not be included in the ceiling of the appellant and that the Commissioner therefore had no jurisdiction to add that land and treat the same as the land of the appellant and proceed to set said the order of the Deputy Collector. The High Court in a short judgment refused to interfere mainly on the ground that the transfer of the land in favour of Nemichand, the adopted son, was held to be collusive as also the decree. There was neither any pleading nor any case made out either before the Deputy Collector or even before the Commissioner to indicate that the transfer of the lands in favour of the adopted son and the transfer of Nemichand in favour of his mother were collusive or tainted by fraud. In fact both these transactions took place as far back as 1956, that is to say, five years before the Act came into force. Even the Act clearly exempts lands which may have been acquired or transferred prior to 4-8-1959. Sections 8, 10 and 12 which deal with the subject clearly enjoin that only those transfers would be hit by the Act which are made at any time on or after 4-8-1959. As both the transfers mentioned above were prior to 4-8-1959, it is obvious that they fell completely outside the ambit of the provisions of the Act. The High Court was thus not justified in presuming that the transfer made by the appellant In favour of his adopted son towards his share and the transfer by the adopted son Nemichand to his mother were either collusive or fraudulent. There was neither any foundation in the pleadings nor any evidence to support this conjecture of the High Court.

4. Mr. Bhandare, learned Counsel appearing for the respondent submitted that the word 'person' defined in Section 2(22) of the Act includes family and that 'family' as defined in Section 2(11) of the Act includes, a Hindu undivided family, and in the case of other persons, a group or unit the members of which by custom or usage are joint in estate or possession or residence. Reliance was also placed on Section 6 of the Act which runs thus:

> Where a family unit consists of members which exceed five in number, the family unit shall be entitled to hold land exceeding the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five, so however that the total holding shall not exceed twice the ceiling area, and in such case, in relation to the holding of such family unit, such area shall be deemed to be the ceiling area.

5. These Sections are of no assistance to the Respondent because Section 6 takes within its fold lands belonging to the owner, or his family as a single unit and is not meant to cover the separate or individual property of a member of the family which is self-acquired property and cannot be clubbed together with land of owner or his family. To begin with the Act merely intended to include land within the ceiling limit of a person or his family which belonged to such a person or persons having different shares in that property. That is why all transfers made prior to 1959 were expressly exempted from the operation of the Act. The arguments advanced by the respondent appear to have

found favour with the Commissioner, but it was legally erroneous as indicated above. In these circumstances, therefore, the most important fact to be determined was whether or not any transfer that has been made by the person concerned was prior to or after 4-8-1959. If the transfer was prior to 4-8-1959 then the provisions of the Act would not apply at all. In the instant case, both the transfers being three years prior to the date mentioned above, the Act would not apply to the appellant, and the Commissioner and the High Court therefore erred in holding that the lands transferred by Nemichand to his mother should be included in the total area of the land owned by the appellant.

6. We, therefore, allow this Appeal, set aside the judgment of the High Court and also that of the Commissioner and restore the judgment of the Deputy Collector. In the special circumstances, there shall be no orders as to costs. The appeal is accordingly allowed.