Supreme Court of India
Shrikant B. Karulkar vs State Of Gujarat on 13 July, 1994
Equivalent citations: 1994 SCC (5) 459, JT 1994 (5) 91
Author: K Singh
Bench: Kuldip Singh (J)

PETITIONER:
SHRIKANT B. KARULKAR

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT13/07/1994

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
YOGESHWAR DAYAL (J)

CITATION:
1994 SCC (5) 459 JT 1994 (5) 91
1994 SCALE (3)190

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by KULDIP SINGH, J.- The appellants challenged the validity of Sections 6(3-A), 4, 10 and 11 of the Gujarat Agricultural Lands Ceiling Act, 1960 (the Act) by way of writ petitions under Article 226 of the Constitution of India before the Gujarat High Court on the ground that these provisions were extraterritorial in their operation and, as such, were beyond the legislative competence of the State Legislature under Article 245(1) of the Constitution of India. The High Court upheld the validity of the provisions and dismissed the writ petitions. These appeals by way of special leave are against the judgment of the High Court.

2. The appellants are the owners of agricultural lands in the State of Gujarat. They also hold agricultural land in another part of India outside the State of Gujarat. Section 6(3-A) of the Act was inserted by the Gujarat Agricultural Lands Ceiling (Amendment) Act, 1972 which provides for computing the ceiling area of a person who also owns land in another part of India outside the State of Gujarat. It lays down that for computing the ceiling area of such a person in the State of Gujarat,

his holding in another part of India has also to be taken into account. In respect of some of the appellants notices were issued by the State of Gujarat for reopening the ceiling cases under the amended provisions. In respect of other petitioners either notices were issued under the amended provisions to enable them to file their objections or final orders were passed pursuant to the said provisions.

3. Section 6(3-A) of the Act is reproduced hereunder:

> "6(3-A). Where any person holds any land in any other part of India, outside the State, then, the area of land so held by him in suc h other part, not exceeding the maximum area of land which such person is entitled to hold in such other part of India under any law, if any, relating to ceiling on land, used or capable of being used for agricultural purposes, shall be excluded from the ceiling area in excess of which a person is not entitled to hold land under this section and the extent of land determined after so excluding such area shall in relation to such person, be deemed to be the ceiling area, to be held by him in this State: Provided that where any such person disposes of, at any time before the determination of ceiling area under this Act, any land or part thereof so held by him in any other part of India outside the State in accordance with the provisions of law in force in such part, the area equal to the land or part thereof so disposed of shall not be excluded while determining the ceiling area, to be held by him in this State."

It is clear from the plain language of Section 6(3-A) of the Act that for the purpose of computing the permissible area of a person in the State of Gujarat the area held by him in any other part of India, not exceeding the maximum area of land which such person is entitled to hold there, is to be excluded from the permissible ceiling area under the Act. In other words, the ceiling area of land permissible under the Act is reduced by deducting the area of the land owned by a person in another State not exceeding the maximum area of land which such person is entitled to hold in the other State and whatever is the balance would be the ceiling area in the State of Gujarat under the Act. If a person already holds land in other State/States in excess of the ceiling provided under the Act, he becomes disentitled to hold any land in the State of Gujarat. Holding agricultural land outside the State of Gujarat is, thus, considered as a relevant factor for deciding whether a person can hold agricultural land in the State of Gujarat and, if so, to what extent.

4. Mr G. Ramaswamy and Mr R.F. Nariman, Senior Advocates, appearing for the appellants, have vehemently contended that in pith and substance Section 6(3-A) of the Act has extraterritorial operation in the sense that the land owned by a person outside the State of Gujarat is taken into consideration while determining the ceiling area of a landowner in the State of Gujarat. Mr Nariman further contended that while examining the question of extraterritorial operation of a statute the effect of the provisions of the statute on the rights of a citizen has to be taken into consideration. We have given our thoughtful consideration to the arguments advanced by the learned counsel. We are not inclined to agree.

5. The Act has been enacted to fix a ceiling on the agricultural holding and to provide for the acquisition and disposal of surplus agricultural lands. The Act provides a restriction upon holding agricultural land in excess of the celling with the purpose of securing the distribution of agricultural lands as best to subserve the common good and to provide for acquisition of surplus agricultural land for distribution amongst the landless farmers. Section 6(3-A) of the Act has been enacted as stated in the declaration contained in Section 2 of the Amendment Act for giving effect to the policy of the State towards securing principles specified in clauses (b) and (c) of Article 39 of the Constitution of India and in particular for providing that the ownership and control of the agricultural resources of the community are so distributed as best to subserve the common good, and also that the operation of the agricultural economic system does not result in the concentration of wealth and means of agricultural production to the detriment of the common people. The Act and the Amendment Act have been included in the Ninth Schedule to the Constitution of India and as such are immune from challenge on the ground that the provisions thereunder infarct any of the rights conferred by Part III of the Constitution of India. The constitutional validity of the Act was upheld by this Court in Hasmukhlal Dahayabhai v. State of Gujarati. The question of legislative competence, however, was not pointedly raised before this Court in the said case.

6. Entry 18 List II Entry 42 List III, Seventh Schedule, Constitution of India are as under:

> "LIST II
>
> 18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.
>
> LIST III
>
> 42. Acquisition and requisitioning of property."

It is not disputed that the State Legislature derives the legislative competence to enact the Act from the aforesaid entries. The grievance of the appellants is that while enacting the impugned provisions the State Legislature has transgressed its legislative powers by making provisions of the Act to operate in respect of persons and property beyond the territorial jurisdiction of the State of Gujarat.

7. It is no doubt correct that under Articles 245 and 246 of the Constitution of India the Legislature of a State can make laws for the State or any part thereof. It would be overstepping the limits of its legislative field when it purports to affect men and property outside the State. In other words the State Legislature has no legislative competence to make laws which have extraterritorial operation. Meaning of the words "extraterritorial operation" have been authoritatively laid down by this Court in various judgments. A State Legislature has plenary jurisdiction to enact laws in respect of subjects in Lists II and III, Seventh Schedule, Constitution of India. Such laws may be in respect of persons within the territory, of property immovable or movable situated within the State, or of acts and events which occur within its borders. So long as the law made by the State Legislature is applicable to the persons residing within its territory and to all things and acts within its territory, it cannot be

considered extraterritorial. This Court over a period of three decades has evolved a principle called "doctrine of territorial nexus" to find out whether the provisions of a particular State law have extraterritorial operation. The doctrine is well-established and there is no dispute as to its principles. If there is a territorial nexus between the persons/property subject-matter of the Act and the State seeking to comply 1 (1976) 4 SCC 100: AIR 1976 SC 2316 with the provisions of the Act then the Statute cannot be considered as having extraterritorial operation. Sufficiency of the territorial connection involves consideration of two elements, the connection must be real and not illusory and the liability sought to be imposed under the Act must be relevant to that connection. The Act has to satisfy the principles of territorial nexus which are essentially discernible from the factual application of the provisions of the Act.

8. The State Legislature has the legislative competence to enact the Act under Entry 18, List II, read with Entry 42, List 111, Seventh Schedule, Constitution of India. The lands governed by the provisions of the Act are situated within the territory of the State of Gujarat. The provisions of the Act provide for fixation of ceiling in respect of the agricultural lands which are within the territory of the State of Gujarat. The declaration of the surplus land under the Act is also in respect of the lands held by various persons in the State of Gujarat. The territorial nexus is obvious. It is the land and the persons holding such land within the territory of Gujarat to which the provisions of the Act are applicable. If a person has no land within the State of Gujarat the provisions of the Act are not applicable to him or to the land which he owns outside the territory of the State of Gujarat. The sine qua non for the application of the provisions of the Act is the holding of the land within the State of Gujarat. The territorial connection is thus, real and sufficient and the liability sought to be imposed under Section 6 (3-A) of the Act is directly in relation to that connection. The factum of a person holding land outside the State of Gujarat is undoubtedly an aspect pertinent to the question of his entitlement under the Act to hold land in the State of Gujarat. There is no dispute that within the State a ceiling can be fixed by law beyond which no person can hold agricultural land, and if for determining the extent of said ceiling, the land held by a person outside the State is taken into consideration, the law pertaining to fixation of ceiling would not become extraterritorial. In pith and substance the law remains to be a legislation imposing the ceiling on holding of land within the State under Entry 18, List II, read with Entry 42, List III, Seventh Schedule, Constitution of India. Mere consideration of some factors which exist outside the State, for the purpose of legislating in respect of the subject for which the legislature is competent to make law, would not amount to extraterritorial legislation. Such considerations are part of the plenary legislative function of the State Legislature. The legislative entries not only indicate the subjects for the exercise of legislative power but their scope is much wider in the sense that they specify a field for legislation on the subject concerned. Therefore, when a statute fixes a ceiling on agricultural land holding within the State, it would not become extraterritorial simply because it provides that while determining the permissible area of a person under the said statute the land owned by him outside the State is to be taken into consideration. We are, therefore, of the view that the impugned provisions are within the legislative competence of the State Legislature and have been validly enacted.

9. The learned counsel for the appellants have placed reliance on the Full Bench judgment of the Bombay High Court in Shankarrao v. State of' Maharashtra2 and other connected matters decided on 2-10-1980. We have been taken through the judgment of the Full Bench. Section 3(2) of the

Maharashtra Agricultural Lands Act, 1961 "Bombay Act) which was struck down by the Bombay High Court was as ,.rider:

> "All land held by a person, or as the case may be, a family unit whether in this State or any other part of India in excess of the ceiling area, shall, notwithstanding anything contained in any law for the time being in force or usage, be deemed to be surplus land, and shall be dealt with in the manner hereinafter provided for surplus land.....

It is obvious that the provisions of Section 6(3-A) of the Act and Section 3(2) of the Bombay Act are entirely different. On the plain reading of Section 3(2) of the Bombay Act it is patent that the Maharashtra Legislature was making law in respect of the land held by a person anywhere in India. The expression "all land field by a person or as the case may be by a family unit whether in this State or any other part of India ..." clearly indicates the intention on the part of the Maharashtra Legislature to make extraterritorial law. No assistance can, thus, be taken by the learned counsel from the Full Bench judgment of the Bombay High Court. Even otherwise we are of the view that various observations made by the learned Judges of the Bombay High Court are, rather, broadly stated and require to be straightened, if necessary, in some appropriate proceedings.

10. The appeals are dismissed with costs. We quantify the costs as Rs 10,000 in each appeal to be paid by each of the appellants.