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Court : Rajasthan

Decided On : Nov-17-1982

Reported in : 1982WLN(UC)300

Judge : M.C. Jain, J.

Appeal No. : S.B. Civil Writ Petition No. 1376/79

Appellant : Hari Ram

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Purohit

Disposition : Petition dismissed

Judgement :

M.C. Jain, J.

1. This writ petition is directed against the order dated March 23, 1979 passed by the Deputy Secretary Revenue (Ceiling) under Section 15(2) of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1979 (for short 'the Act').

2. The petitioner's ceiling case was dropped by the Sub-Divisional Officer (Ceiling), Sri karanpur on April 3, 1972 against which, the State Government went in appeal and the case was remanded. After the remand of the case, on December 9, 1977

the Sub Divisional Officer again found that the land held by the petitioner is below the ceiling limit, so the proceedings were dropped. The petitioners ceiling case was again decided by the Authorised Officer under the Act. He again dropped the proceedings by his order dated May 16, 1975.

3. On April 1, 1966, the petitioner Hariram had four adult sons namely Manirum, Dayaram, Dhanraj and Anand Swroop. A decree for partition was passed on October 6, 1969 by the Sub-Divisional Officer, Karan pur in suit No. 71 of 1969. The land was also mutated in accordance with their respective shares under the partition-decree. The petitioner's ceiling case was re-opened by the Deputy Secretary under Section 15(2) of the Act One of the reason assigned by the Deputy Secretary for re-opening of the case, is that an enquiry should have been conducted with regard to the number of the members in the petitioner's family in accordance with the definition of the family given under Section 30-B(a).

4. Mr. B L. Purohit, learned Counsel for the petitioner urged that even on January 1, 1966, the petitioner's sons were major, so their shares in the land could be clubbed as they can not be said to be dependent on their father. According to Mr. Purohit, only minor children can be said to be dependent on their father. He pointed out that before the Authorised Officer, the State did not put forward any such case that the major sons of the petitioner are also dependent on him and reliance was placed on the observations made Shri Shrimal, J., in D.B. Civil Writ Petition No 1616 of 1981--Mst. Bhanwari Bai v. Board of Revenue and Ors. decided on April 14, 1982 (Jaipur Bench). His observation is that:

Dependent means a person, who derives support from another. When a statutory obligation is created on a person to maintain his or her minor children, it will be too much to say that such a child is not dependent on the person, who is obliged to maintain him, simply because he is a member of a coparcenary.

5. How far the above contention of Mr. Purohit holds water can be judged in the light of the definition of the word 'family'. The word 'family' has been defined to mean 'a family consisting of a husband and wife, their children and grand-children being dependent on them and the widowed mother of the husband so dependent'. Grand-children and children who are not dependent on their father and mother,

are outside the purview of the word 'family' as defined in Clause (a) of Section 30B. The minority or majority of the children or grand-children as such has no relevance. A minor child may or may not be dependent. Similarly, a major child also may or may not be dependent. The inclusion of grand-children along with children clearly indicates that major children also, are covered in the expression 'family' provided they are dependent and not otherwise. The dependency is a question of fact and such a question of fact can be determined on the basis of evidence or material on record. The observations referred to above, in Mst. Bhanwari Bai's case *supra*, can be of no assistance to the petitioner. The observations were made in the context of the facts of that case. In that case, the petitioners No. 2 and 3 were minors on the appointed date and a contention was advanced that both the petitioners have interest in the ancestral land by birth, so being coparceners in the Hindu Un-divided Family, they can not be considered to be dependent on their father. This contention was negatived. It may be stated that while considering the question as to what constitutes the family under Section 30-B, Shri Shrimat, J., also observed in subsequent paragraph that the legislature by using the word 'dependent' also meant to include a major child, who is unable to look after himself or support himself because of his imbecility or deformity or other handicap or any other reason. Before this observation, it was clearly mentioned that the word 'child' not only includes a minor child but also major children. Admittedly, in the present case, no finding was ever recorded as to whether the four major sons of the petitioner were all dependent on the petitioner or not. It is true that there was no contest from this angle before the Authorised Officer. But, in order to arrive at the ceiling area of the petitioner, a finding of dependency of major children is a must, without which, it is not possible to determine the ceiling area. When the requisite finding has not been recorded by the Authorised Officer for determination of the ceiling area, then it can not be said that the Deputy Secretary was not justified in recording his satisfaction that there has been a contravention of the provisions of the Act. I need not discuss the other reasons, which have been given by the Deputy Secretary for re-opening the petitioner's case, in view of the above contention advanced by Mr. Purohit. The family is a unit under the Ceiling Law and for determination of ceiling limit, one has to consider the land held by the family as a unit and for that, who constitute the family, would be a serious and an important

question and that question should be determined only in accordance with the definition given under the statute of the word family. As already stated, the major constituent element of the word 'family' is dependency of children or grandchildren. When no finding has been recorded on that question, in my opinion, there is a clear contravention of the provisions of the Act. I had an occasion to consider the question that when questions of fact or mixed questions of fact and law are involved in the case on which, the finding has to be given, then this Court will not go into these questions and matters and they can only be considered, when findings are recorded by the Competent Authority. Reference in this connection may be made to the decision of this Court in *Milkiyat Laur and Ors. v. The Additional District Magistrate and Ors.* (S.B. Civil Writ Petition Vo. 901 of 1979, decided on November 2, 1981).

6. Mr. Purohit, learned Counsel for the petitioner raised other contentions as well, which are covered by the decision of this Court in *Sanwal Ram v. The Additional District Magistrate and Ors.* (S.B. Civil Writ Petition No. 481 of 1980, decided on October 15, 1981).

7. No other point has been pressed before me.

8. Accordingly, the writ petition is dismissed with no order as to costs.