

Mrs. Sumitra Kaur Vs. Authorised Officer (Sub-divisional Officer) and ors.

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Court : Rajasthan

Decided On : Aug-25-1977

Reported in : 1977WLN505

Judge : D.P. Gupta and; R.L. Gupta, JJ.

Appeal No. : D.B. Civil Writ Petition No. 321 of 1977

Appellant : Mrs. Sumitra Kaur

Respondent : Authorised Officer (Sub-divisional Officer) and ors.

Disposition : Petition dismissed

Judgement :

D.P. Gupta, J.

1. The petitioner seeks to challenge the order of the Board of Revenue for Rajasthan dated January 5, 1977, which was passed on an appeal under Section 23 of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (hereinafter referred to as 'the Act').

2. The undisputed facts are that the petitioner received a large chunk of agricultural land from her father and out of the aforesaid land she transferred parcels of land to various persons including her husband, her three sons and her daughter by means of registered sale deeds executed on different dates.

Proceedings under Section 11 of the Act were started against the petitioner and here husband by the Authorised Officer (Ceiling), Sri Ganganagar and both of them on receiving notices under sub-Section (1) of Section 11 filed their returns. After an enquiry the Authorised Officer came to the conclusion that the youngest son of the petitioner, Gurusharan Singh, was a minor and the transfer of land in favour of the aforesaid minor son by the petitioner on December 19, 1972 could not be recognised for the purposes of determination of the ceiling area applicable to the petitioner and her husband and by his order dated August 28, 1975 the said Officer held that the petitioner, her husband Sadul Singh and their minor son Gurusharan Singh constituted a primary unit of family, for the purposes of computation of ceiling area under the provisions of the Act. The Authorised Officer prepared a draft statement under Section 12(1) of the Act after ignoring the transfer of land made by the petitioner on December 19, 1972 in favour of her minor son from consideration. Since the petitioner or her husband did not submit any objections to the draft statement, the same was finalised by the Authorised Officer by his order dated October 8, 1975. An appeal to the Collector, Ganganagar was dismissed on March 12, 1976 and a further appeal to the Board of Revenue by the petitioner came to be dismissed by the order dated January 5, 1977.

3. The submission of the learned Counsel for the petitioner is that the concerned authorities were in error in including the land individually held by the petitioner while computing the ceiling area applicable to the family & relied upon the decisions of the Bombay High Court in Madanlal Shanker v. State 0043/1970 : AIR1970 Bom249 & Narayanrao v. State : AIR1971 Bom158 in support of his contention. It was held in the aforesaid 2 cases that separate holdings held by the members of the family cannot be clubbed with the holding belonging to the family. Both the aforesaid decisions are based upon the provisions of the Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961, which are materially different from the provisions of the Act with which we are concerned and as such the aforesaid two decisions cannot be made applicable to the facts of the present case. In the first place, the definition of 'family' as given in the Maharashtra Act is very wide as compared to the definition given in sub Section (f) of Section 2 of the Act, wherein a family has been restricted to husband, wife and their minor children,

excluding married minor daughters. In the Act an artificial definition of the expression 'family' has been introduced which is different from the concept of a joint Hindu family. In the second place there appears to be no provision in the Maharashtra Act corresponding to sub-Section (c) of Section 5 of the Act, which provides that all lands held individually by the members of a family shall be deemed to be held by the family and shall be clubbed together. According to the scheme of the Act a person, which includes any trust, company, firm or association or body of individuals whether incorporated or not, or a family as defined in sub-Section (f) of Section 2 of the Act constitutes a primary unit for the computation of the ceiling area applicable to such person or family, subject to the condition that such family should consist of five or less than five members. Under Section 4 of the Act, the ceiling area has to be computed in respect of a person who does not constitute a family and if a person is a member of a family, then sub-Section (c) of Section 5 would be applicable and all lands held individually by any member of such family or even jointly by some or all the members of such family shall be deemed to be held by the family & shall be clubbed together. Sub-section (c) of Section 5 introduces a legal fiction and authorises that some thing should be deemed to exist which in fact and truth did not exist. In *State of Bombay v. Pandurang* 3 their Lordships of the Supreme Court approved the following observation of Lord Asquith in (1952) Appeal cases 109 (4), while dealing with a deeming provision:

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

Thus the contention of the learned Counsel that the land held individually by the petitioner should not have been clubbed together with the land held by her husband or family cannot be accepted in face of the clear and unambiguous provisions contained in sub-Section (c) of Section 5 of the Act.

4. Then it was urged by the framed counsel that under the Old Ceiling Law, contained in Chapter IIIB of the Rajasthan. Tenancy Act. the Sub-divisional Officer (Ceiling) Sri Ganganagar computed the ceiling area applicable to the petitioner and by his order dated February 18, 1972 held that she did not possess land in excess of the ceiling area and that in face of the aforesaid finding fresh proceedings for computation of ceiling area were barred, so far as the petitioner was concerned. It is not possible to accept this contention of the learned Counsel as well, because after the coming into force of the new Ceiling Law as contained in the Act, the Authorised Officer could not be precluded from taking proceedings against the petitioner under Section 11 of the Act, if in his opinion the petitioner or the family of which she was a member held land in excess of the ceiling area, in accordance with the provisions of the Act. There might not be any provision in the Old Act for clubbing together the land held individually by the members of a family with the land held by the family, but after the coming into force of the Art, the ceiling area applicable to the family has to be computed in accordance with the provisions of Section 5 of the Act & sub-Section (c) therefore directly attracted to the case of the petitioner. The only condition which has been imposed by the second proviso to sub-Section (1) of Section 4 in this respect is that if the ceiling area computed in respect of any person or family under the Act is in excess of the ceiling area applicable to such person or family, as computed under the provisions of the old ceiling law then the former determination shall hold good, but in case the ceiling area computed in accordance with Sections 4 and 5 of the Act is less than the ceiling area determined, as applicable to such person or family according to the provisions of the old Ceiling Law, then the computation made under the Act shall be applicable to such person or family from the date of coming into force of the Act.

5. The next submission made by the learned Counsel was that Section 6 of the Act did not apply to the transfer made by the petitioner in favour of her minor son, as she did not hold the land which had already been transferred by her before the coming into force of sub-Section (c) of Section 5 of the Act and further on the ground that the transfer was not made in the instant case by the family, which is the assessee in the present case. A bare reading of the provisions of Sections 4, 5 and 6 of the Act together leads to the conclusion that computation of the ceiling

area applicable to a person or a family has to be made in accordance with the provisions of Section 4, keeping in view the rules enumerated in Section 5 and the provisions of Section 6 are in the nature of a proviso to Sections 4 and 5. For the purposes of computation of ceiling area applicable to a person or a family, Section 6 prohibits taking into consideration certain transfers of agricultural land made by way of sale, gift, exchange, assignment, surrender, bequest, or creation of a trust, or otherwise before September 26, 1970 except bonafide transfers made before January 1, 1973. In case a particular transfer is not to be recognised on account of the mandate of Section 6 then the same has to be excluded from the computation of the ceiling area under Sections 4 and 5, and also even for the purposes of application of sub-Section (c) of Section 5 of the Act as the deeming clause contained therein has to be taken to its logical conclusion. Moreover, Section 6 speaks of 'every transfer of land' made before the specified date and it is immaterial whether such transfer is made by a person, in respect of whom the ceiling area has to be determined under Sections 4 and 5 or such transferor is a member of a family in respect of which the ceiling area has to be determined. This submission of the learned Counsel is therefore also untenable and cannot be accepted.

6. Then the learned Counsel submitted that the petitioner was not given an opportunity to produce evidence regarding the age of her son, Gurusharan Singh, who according to her was major on the date when the Act came into force. The Board of Revenue has observed in the impugned order that a number of opportunities were given by the Authorised Officer for producing evidence in this respect, but no evidence was produced. The Authorised Officer and the appellate authorities have consistently held that Gurusharan Singh was a minor on the appointed date viz. January 1, 1973, and there is no reason for this Court to interfere with the finding of fact recorded by the concerned authorities, including the Board of Revenue. The contention of the learned Counsel, however, is that all such opportunities were given before the draft statement was prepared and that no opportunity was afforded thereafter. It is not the case of the petitioner that after the draft statement was prepared and a copy there of was served on her, she raised any objection as required under sub-Section (3) of Section 12 of the Act. It is also not the case of the petitioner that any opportunity to lead evidence on the question

of minority of her son Gurusharan Singh was sought for by her before the Authorised Officer. Under sub-Section (3) of Section 12 after any objections are received by the Authorised Officer in respect of the draft statement published by him, he is required to decide such objections after giving the 'objector' a reasonable opportunity of hearing. As the petitioner did not file any objections she could not be held to be 'objector' and was not entitled to an opportunity of hearing. Moreover, when no objections were raised before the Authorised Officer after the draft statement was published either by the petitioner or her husband or any other person, there was no objection which the said officer was required to decide. It is urged by the learned Counsel that a notice in respect of draft statement was not served on the husband of the petitioner. Even if it be so, to prejudice was caused in the present case as the husband of the petitioner was duly represented by a counsel before the Authorised Officer at the time when the final order was passed by him on October 8, 1975. The Authorised Officer has clearly stated in his final order that no objections were preferred and the counsel appearing for the husband of the petitioner before the said officer also does not appear to have raised any objection nor he appears to have sought any time for doing so.

7. Then it was urged by the learned Counsel that further opportunity was sought before the Board of Revenue under Section 23(2) of the Act for producing evidence in respect of the minority of youngest son of the petitioner. The petitioner did not assign any good reason for not preferring any objection under sub-Section (3) of Section 12 of the Act or for her failure to adduce evidence on this question before the Authorised Officer, and the order of the Board of Revenue cannot be interfered with only on the ground that it should have given further opportunity to her to adduce additional evidence.

8. Lastly, it was urged by the learned Counsel that the finding of the Board of Revenue that the petitioner was not an aggrieved person was erroneous. We have carefully gone through the order of the Board of Revenue and are unable to agree with the contention of the learned Counsel. The Board of Revenue has decided the appeal of the petitioner on merits and only a passing remark has been made by it in the last paragraph of its order. The observation appears to have been made in the context of the arguments advanced before the Board of Revenue,

which have been repeated before us as well, that the Authorised Officer did not grant adequate opportunity to the husband of the petitioner to adduce evidence about the minority of the youngest son of the petitioner. As a matter of fact, it is undisputed that the petitioner did not file any objections before the Authorised Officer after the draft statement was served upon her and, therefore, the Authorised Officer was not called upon to decide any objection of the petitioner under sub-Section (3) of Section 12 of the Act or to give her any opportunity of producing evidence. The petitioner's husband did appear before the Authorised Officer but he also did not raise any objection under Section 12(3) of the Act and the entire argument made on her behalf before the Board of Revenue regarding lack of opportunity to produce evidence was advanced on behalf of the husband of the petitioner. It was in this context that the Board of Revenue observed that a moot question arose as to whether the petitioner could be called an aggrieved person. However without giving any finding on that question, the Board decided the petitioner's appeal on merits and dismissed the same. In these circumstances, the order of the Board of Revenue cannot be said to be vitiated by any error of law much less an apparent error, which could call for interference by this Court by a writ of certiorari.

9. No other point was argued before us by the learned Counsel.

10. In the result the writ petition has no merits and is dismissed.