

AIR 1982 SUPREME COURT 865 (FROM BOMBAY)

E.S. VENKATARAMAN AND A. VARADARAJAN, J.

Civil Appeal No.1667 of 1983, dt. 11-2-1982
(Spl. Civil Application No.1931/75, dt.30-7-80 (Bombay))

Bhikoba Shankar Dhumal (dead) by Lrs. and others,
Appellants V. Mohan Lal Punchand Thathed and others, Respondents

(A) Constitution of India, Art.227-Maharashtra Agricultural Lands (Ceiling on Holdings) Act (27 of 1961), S 12 and 33-proceedings under Act. Dropping of proceedings on death of tenure holder--Appeal and Writ Petition against order--Locus standi.

(B) Maharashtra Agricultural Lands (Ceiling on Holdings) Act (27 of 1961, Ss.12 and 21 - Determination of proprietary rights under Decisions under Taxation Laws cannot be basis (1) precedents (2) Interpretation of statutes).

(C) Maharashtra Agricultural Land (Ceiling on Holdings) Act (27 of 1961) Ss.12(1) (a)(b) and 21-commencement of proceedings on filing of return--Death of tenure holder prior to notification of declaration as to surplus land under S.21 proceedings do not become infructuous and cannot be dropped. AIR-1970 Bom.144 Overruled.

Cases Referred: Chronological Paras.

AIR 1971 SC 2137: (1972) 1 SCR 48
14,17

AIR 1970 BOM 144: 72 BOM LR 246
10, 12, 17, 18

AIR 1963 SC 1448: (1963) Supp(1) SCR 699
12

AIR 1931 BOM 333 12

VENKARAMIAH, J.: This appeal by Special leave is directed against the judgement and order dated July 30, 1980 of the High Court of Judicature at Bombay in Special Civil Application No. 1931 of 1975.

2. The question for consideration in this appeal is whether the proceedings commenced with the filing of a return by a person holding on the appointed dry land in excess of the ceiling area prescribed by the Maharashtra Agricultural Lands (Ceiling on holdings) Act, 1961 (herein after referred to as the 'Act') - would become

infructuous and would have to be dropped if such person dies before a notification containing the declaration regarding surplus held by him is published in the official Gazette under S.21 of the Act and possession of such surplus land is taken over by the authorities concerned.

3. An extent of land measuring 21 A. 28G. bearing Survey No.34 situated in village Manori, Taluka Rahuri of Ahmednagar district in the State of Maharashtra belonged to respondents 1 to 4 but was in the possession of their tenant by name Bhikoba on the date of the commencement of the Act, i.e. January 26, 1962, which was the appointed day as defined by S.2(4) of the Act.

4. The Act was passed for the purpose of imposing a maximum (or ceiling) on the holding of Agricultural land in the State of Maharashtra; to provide for the acquisition and distribution of land held in excess of such ceiling; and for matters connected with the purposes aforesaid. Section 2(16) of the Act defined the expression "land" as land which was used or capable of being used for purposes of agriculture and included the sites of farm buildings on, or appurtenant to such land and land on which grass grows naturally. Chap. II of the Act contained the provisions (Ss. 3 to 7) prescribed the ceiling on holding of land, Chap. III contained the provisions (Ss. 8 to 11) imposing restriction on alienation and acquisitions of land and laying down the consequences of the contraventions of these provisions, Chap. IV contained provisions (Ss. 12 to 21) for determining the extent of surplus land, Chap. V contained provisions (Ss. 22 to 26) for determination of compensation payable to expropriated persons and Chap. VI which included (Ss. 27 to 29) dealt with the mode of distribution of surplus land amongst those who were landless and who otherwise deserved to be granted land. These and the other provisions in the Act were enacted with the object of providing for the more equitable distribution of agricultural land amongst the peasantry in the State of Maharashtra.

5. It may be mentioned here that Chapters II and III of the Act came to be substituted by new Chaps. II and III by S.4 of the Maharashtra Act of 1975, S.5 of the said Act, however, reads as follows:-

"5. Notwithstanding the substitution of the Chapters II and III by S. 4 of this Act all proceedings pending immediately before

the commencement date in any Court or tribunal or before any authority for the purpose of determining the ceiling area in respect of any holdings and the surplus land in such holdings in pursuance of the provisions in the original Chaps. II and III and shall be continued and disposed of by or under the principal Act, as if that Act had not been amended by the Amending Act, 1972 and the amount of compensation for such surplus land acquired by the State Government under sub-section (4), or as the case may be sub-section (5) of Section 21, shall be at the rate provided in the Principal Act as unamended by this Act." ^{na}

After the ceiling area is determined and the area delimited as surplus land is declared finally under Section 21 of the Principal Act, then subject as aforesaid, the provisions of the Principal Act as amended by this Act shall apply to such holding and land declared as surplus land".

6. There was a further modification made in the new Chaps. II and III and by the Maharashtra Act 47 of 1975. In view of the saving clause contained in Section 5 of the Maharashtra Act 21 of 1975 reproduced above this case has to be decided in accordance with the provisions contained in Chaps. II and III as they stood before their substitution since the proceedings with which we are concerned had already commenced and were pending immediately before the commencement of the said Amending Act. Hence reference will be made hereafter to the provisions contained in Chaps. II and III as they stood before their substitution.

7. Section 3 of the Act as it was originally enacted reads as follows:—

"3. In order to provide for the more equitable distribution of agricultural land amongst the peasantry of the State of Maharashtra (and in particular to provide that landless persons and given land for personal cultivations) on the commencement of this Act. There shall be imposed to the extent, and in the manner herein after provided, a maximum limit (or ceiling) on the holding of agricultural land throughout the State".

8. Section 4 of the Act prohibited holding of land by any persons in excess of the ceiling area and declared that subject to the provisions of Act, all land held by a person in excess of the ceiling area should be deemed to be surplus land and dealt with in the

manner provided by the Act. Sections 5 to 7 of the Act laid down the principles for the computation of the ceiling area in various cases.

9. As required by Section 12 of the Act as it stated at the commencement of the Act, Bhikoba, the tenant concerned in this case, filed before the special Deputy Collector (especially empowered by the state Government to exercise the powers and perform the functions of the Collector under the Act) a return in the prescribed form furnishing particulars of land including the extent of 21.A.23 G bearing survey No.34 referred to above in his possession on the appointed day. After recording the statement of Bhikoba and considering all the other relevant material before him the Special Deputy Collector found that Bhikoba was in possession of surplus land to the extent of 132.A. 1 G and he made an order accordingly on March 27, 1965. Against that order Bhikoba filed an appeal and the appellate authority by its order dated April 13, 1966, partly allowed the appeal and remanded the matter with some directions. Thereafter Bhikoba died on January 31, 1969. On June 27, 1969, the Special Deputy Collector after hearing the legal representatives of Bhikoba held that Bhikoba was a surplus holder of land to the extent of 16A and 26G. Against that order Deaultram, Trimbak, Dattatraya and Madhukar, the four sons of Bhikoba who are shown as the legal representatives (a to d) in this case filed an appeal before the Maharashtra Revenue Tribunal. That appeal was dismissed on November 4, 1970 on the ground that it was a premature one as the holders had not yet exercised their choice under Section 16(2) of the Act and declaration under Section 21 and had not yet been made. Thereafter a notice was issued to the heirs of Bhikoba under Section 16 of the Act to exercise their choice in respect of land to be retained by them out of Bhikobas holdings to the extent of the ceiling area. The heirs of Bhikoba filed objections to the said notice on November 23, 1971 pleading inter alia that a holder of land in excess of the ceiling prescribed by the Act would be divested of his title to the surplus land only when its possession was taken from him after the publication of the notification under Section 21 of the Act and since such notification had not yet been published and possession of surplus land had not been taken, Bhikoba continued to be the owner of the entire land (including the extent determined as surplus land) till his death and that as inheritance could not remain in abeyance, his heirs at Law become

entitled to the entire land. They contended that if a fresh determination was then made, there would be no surplus lands at all, in their lands which had to be surrendered. They, therefore, prayed that the proceedings which were commenced with the return filed by Bhikoba should be dropped as they had become infructuous. The Special Deputy Collector accepted the plea of the heirs of Bhikoba and dropped further proceedings as prayed for by them by his order dated March 13, 1973.

10. The respondents 1 to 4 who would have become entitled to a claim relief under Act at the time when the distribution of surplus land held by Bhikoba was taken up for consideration preferred an appeal against the order of Special Deputy Collector dropping the proceedings as mentioned above before the Maharashtra Revenue Tribunal. The Tribunal by its judgement dated January 31, 1975 dismissed the appeal following the decision of the High Court of Bombay (Nagpur Bench) in Dadarao Kashiram Vs. State of Maharashtra

LR. 246: (AIR 1970 Bom 144) Aggrieved by the decision of the Tribunal, respondent 1 to 4 filed petition under Art. 227 of the Constitution in Special Civil Application No. 1931 of 1975 before the High Court of Bombay. That petition was allowed by the High Court, by its judgement dated July 30, 1980 by which the order of the Tribunal was set aside and the matter was remanded to the Special Deputy Collector to continue the proceedings commenced on the basis of the return filed by Bhikoba in the presence of his legal representatives to determine the surplus land held by Bhikoba as on the appointed day and to dispose of the same in accordance with Law. This appeal by special leave is filed against the aforesaid judgement of the High Court.

11. There is no merit in the first contention urged in support of the above appeal viz., that respondents 1 to 4 had no locus-standi to file an appeal against the order of the Special Deputy Collector, dated March 13, 1973 dropping the proceedings which commenced with the return filed by Bhikoba. It is no doubt true that at the first instance the land at which is declared as surplus land in the hands of any person would vest in the State Government, But the said land had to be distributed in accordance with the provisions contained in Chap. VI of the Act. Any person who is entitled to grant of land under any of the provisions of the Act may question any order which would have the effect of deducting the

extent of total surplus land in any village. Respondents 1 to 4 were the former landlords of the land bearing Survey No. 34 which formed part of the holding of Bhikoda. They cannot, therefore, be characterised as just strangers to these proceedings. It cannot, therefore, be said that respondents 1 to 4 had no locus standi to file an appeal before the Maharashtra Revenue Tribunal and then a petition under Art. 227 of the Constitution before the High Court. This contention is, therefore, rejected.

12. The next contention of the appellants is based on the judgment of the High Court of Bombay in Dadarao Kasiram's case (AIR 1970 Bom 144) (Supra). It is no doubt true that the said decision supports the contention of the appellants that the proceedings initiated by a return filed by a holder of land would become infructuous on his death if it takes place before a notification is issued under "S. 21 of the Act". The said decision was rendered by the High Court relying upon the decision of the Bombay High Court in Commissioner of Income Tax V Ellis C. Reid, AIR 1931 Bom 333 and the decision of this Court in Commissioner of Income Tax, Bombay City Vs. Amarchand N. Shroff (1963) Supp. (1) SCR 699 (AIR 1963 SC 1448) both of which arose under the Income Tax Act, 1922. We do not have provisions corresponding to the Income-tax Act, 1922 in the Act. It is very hazardous to decide cases in which propriety rights arise for determination on the basis of decisions rendered under taxation laws which have their own peculiarities. The act is not one levying tax on the income during the previous year or of a period other than the previous year in the hands of an assessee but a law imposing a ceiling on the holding of a person or a family as on specified date. The Act has to be construed in accordance with its scheme and object which as stated earlier, is equitable distribution of land amongst the landless by taking over surplus land in the hands of those who held land in excess of the ceiling limit on the appointed day, or those who would acquire subsequently land in excess of the ceiling or those who own lands which exceed the ceiling limit by reason of their conversion into a different class. In order to achieve that object, the legislature enacted Ss. 3 and 4 of the Act declaring that no person could on or after the appointed day hold land in excess of the ceiling area and compelling every person acquiring or coming into possession of any land in excess of the ceiling area on or after the appointed day to file a return before the Collector furnishing particulars of all land held by him. Section 18 of the Act requires the Collector

to hold on enquiry into the several matters set out therein including the total area of land held by a person on the appointed day. Sections 19 and 20 of the Act provide for the restoration of land to a landlord in certain cases. Section 21 provides, that, as soon as may be, after the Collector has considered the matters referred to in Section 18 and the question, if any under sub-section (3) of Section 20, he shall make a declaration stating therein his decision on (a) the total area of land which the person (who has filed return) is entitled to hold as the ceiling area (b) the total area and particulars of land which is in excess of the ceiling area, (c) the name of the person to whom possession of land is to be restored under Section 19 and area and particulars of such land (d) the area description and full particulars of the land which is delimited as surplus land and (e) the area and particulars of land which is forfeited to State Government under sub-section (3) of Section 10 or under the provisions of sub-section (3) of Section 13 of the Act, after a declaration under sub-section (1) of Section 21 is made as stated above the Collector has to notify in the prescribed Form in the Official Gazette, the area, the description and full particulars of the land which is delimited as surplus land and also the land which is to be forfeited to the State Government. Any declaration made under Section 21 of the Act is subject to the decision of the Maharashtra Revenue Tribunal in appeal and subject to an decision that may be made in such appeal, the Collector is empowered to take possession of the surplus land and with effect from the date of taking over possession, such surplus land vests in the State Government.

13. A close reading of the aforesaid provisions of the Act shows that the determination of the extent of surplus land of a holder has to be made as on the appointed day. If any person has at any time after the fourth day of August 1959, but before the appointed day held land (including any exempted land) in excess of the ceiling area, such persons should file a return within the prescribed period from the appointed day furnishing to each of the Collectors within whose jurisdiction any and in his holding is situated, in the Form prescribed containing the particulars of all land held by him. If any person acquires, holds or comes into possession of any land (including any exempted land) in excess of the ceiling area on or after the appointed day, such person has to furnish a return as stated above, within the prescribed period from the date of taking possession of any

land in excess of the ceiling area. If any person whose land is converted into another class of land in the circumstances described in Section 11-A (formerly number as section 11) thereby causing his holding to exceed the ceiling area, then, such person has to file a return as mentioned above within the prescribed period from the date of such conversion (such date being a date to be notified in the Official Gazette by the State Government in respect of any area). It is obvious from the foregoing requirements prescribed under Section 12 of the Act that the crucial date with, reference to which the extent of the surplus land held by a person is to be determined is the appointed day in the case of persons holding land in excess of the ceiling area at any time after the forth day of August 1959, but before the appointed day and in the case of those acquiring, holding or coming into possession of such excess land on or after the appointed day, the day on which they acquire possession of any land in excess of the ceiling area. In the case of those who are affected by section 11-A of the Act, the crucial date is the date of conversion. If person is found to be in possession of land in excess of the ceiling area at any time after the fourth day of August 1959, but before the appointed day he incurs the liability to surrender any surplus land as on the appointed day itself even though the actual extent of such surplus land is determined on a subsequent date. Similarly those who acquire land in excess of the ceiling area in or after the appointed day, would become liable to surrender surplus land on the date of taking possession of any land in excess of the ceiling area. A person whose case falls under Section 11-A of the Act becomes liable to surrender any surplus land in his possession as on the date of conversion of land into irrigable land. This liability to surrender surplus land would not in any way come to an end by reason of death of such holder before the actual extent of surplus land is determined and notified under Section 21 of the Act. It is no doubt true that section 21 of the Act states that the title of the holder in the surplus land would become vested in the State Government only on such land being taken possession of after a declaration regarding the surplus land is published in the Official Gazette. But the liability to surrender the surplus land, however relates back to appointed day in the case of those who fall under section 12(1)(a) of the Act, to the date of taking possession of any land in excess of the ceiling area in the case of those who come under Section 12(1)(b) of the Act and to the date of conversion

of land into a different class in the case of those who come under Section 12 of the Act. Any other construction would make the Act unworkable and the determination of the extent of surplus land of a holder ambulatory and indefinite. It is significant that Section 8 of the Act prohibits transfer or partition of any land held by a person holding land in excess of the ceiling area on or after the appointed day until the land in excess of the ceiling is determined under the Act. Section 10 provides that if any person after the 4th day of August 1959, but before the appointed day transferred or partitioned any land in anticipation of or in order to avoid or defeat the objects of the Act or any land is transferred or partitioned in contravention of provisions of Section 8 then, in calculating the ceiling area which that person is entitled to hold the area so transferred or partitioned should be taken into consideration and land exceeding the ceiling area so calculated should be deemed to be in excess of the ceiling area for that holding - notwithstanding the land remaining with him, may not in fact be in excess of the ceiling area. The expression 'holding' used. Sections 3, 5, 6 and 10 shows that the statute treats a holding as a unit for purposes of determination of surplus land which can be acquired from such holding. Section 2(14) which defines the expression 'to hold land as to be lawfully in actual possession of land as owner or tenant' requires that the expression 'holding' should be construed accordingly. Section 3 of the Act expressly imposes a limit on the holding of agricultural land on the commencement of the Act. The extent of surplus land which the Government can acquire under the Act from the holder can not therefore be made to depend upon the date on which a declaration indicating the extent of surplus land is notified in the official Gazette under Section 21 and the date of which such surplus land is taken possession of. It cannot also be made to depend upon the holder who has incurred the liability on the relevant date being alive on the date on which the declaration is made under Section 21 and possession of surplus land is taken. The acceptance of the contention urged on behalf of the appellants that the proceedings initiated by a return filed by a holder have to be dropped if such holder have to be dropped if such holder dies before a declaration is made under section 21 and surplus land is taken possession of would frustrate the very object and purposes of the Act.

14. In *Ragunath Laxman Wani Vs. State of Maharashtra* (1972) 1 SCR 481 (AIR 1971 SC 2137), this court had to examine the scheme of the Act while considering the question whether in the case of a family, the ceiling area would be liable to fluctuations with the subsequent increase or decrease in number of the family members. Dealing with that question the court observed thus:

"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 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 Sections 3 and 4, no provision in the Act providing for the redetermination of the ceiling area of family on variation in the number of its members. The argument that every addition or reduction in the number of the members of the 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 member subsequently has augmented by fresh births".

15. The above view supports our conclusion that the surplus land in the case of a person who at any time after the fourth day of August 1959, but before the appointed day held any land (including any exempted land) in excess of the ceiling area has got to be determined as on the appointed day, even though such persons may die before the actual extent of surplus land is determined and notified under Section 21 of the Act. The persons on whom his holding devolves on his death would be liable to surrender the surplus land as on the appointed day because the liability attached to the holding of the deceased would not come to an end on his death. The heirs of

the deceased cannot be permitted to contend to the contrary and allowed to get more land by way of inheritance than what they would have got if the death of the person had taken place after the publication of the notification under Section 21.

16. At this stage it is necessary to refer to another contention of the appellants based on the second para of sub-section (2) of Section 3 of the new Chapter II of the Act which was substituted in the place of the original Chapter II by the Maharashtra Act 21 of 1973. The relevant part of the said para reads:—

"In determining surplus land from the holding of a person or as the case may be, of a family unit, the fact that the person or any number of the family unit has died (on or after the commencement date or any date subsequent to the date on which the holding exceeds the ceiling area, but before the declaration of surplus land is made in respect of that holding) shall be ignored and accordingly, the surplus land shall be determined as if that person, or as the case may be member of a family unit had not died".

17. It is contended that because for the first time the Legislature, by introducing the above said para, directed that if a person dies after the commencement of the Act, but before the declaration of surplus land is made in respect of his holding, the fact of his death should be ignored and the surplus land should be determined as if that person had not died, it should be held that before the introduction of that para the proceedings needed to be dropped on the death of the person taking place before the declaration was made. It appears to us that the said para was introduced by way of abundant caution to get over the possible objection raised on the basis of the decision in the case of Dadraokasiram (AIR 1970/Bom/144) (Suprs). The said para is merely declaratory of what the true legal position had always been even from the commencement of the Act. The introduction of an express provision to the above effect does not have the effect of altering the true legal position as explained by us above even without the aid of such express provision. This becomes further clear from the observations found in the decision of this court in Raghunath Laxman Wani's case (AIR 1971 SC 2137) (Supre). It may be noticed that the said para in the new Section 3(2) refers to two contingencies (1) the death of a person who was holding land in excess of the ceiling limit and in the death of any member of a family unit owning land in excess of the ceiling on the appointed day,

It provides that the death of the person or the death of a member of the family unit as the case may be should be ignored. One of the contentions urged before this court in that case was that the Tribunal was wrong in not taking into consideration the three children born in the family after the appointed day while determining the ceiling area to which the family of the appellants therein was entitled to. This court rejected that plea and upheld the decision of the Tribunal observing that the argument that every addition or reduction in the number of members of the 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". This conclusion was reached by this court without the aid of any provision in the Act at the relevant time corresponding to the second para the new Section 3(2) of the Act. This case was no doubt one relating to a claim based on the birth of three children in principal, it applies to the case where the number of members a family decreases on account of death of any of its members, as observed by the court. On the same analogy it has to be held that the death of the person after the appointed day also would make no difference so far as the liability of his holding to part with the surplus land is concerned. Hence, it has to be held that the introduction of the second para of the new Section 3(2) does not lead to any conclusion different from the one which have reached in this appeal.

18. In view of the foregoing the decision of the High Court of Bombay in Dadarao Kashiram's case (AIR 1970 Bom 144) (Suprs) cannot be considered as a correct one and we, therefore, over rule it.

19. The High Court was right in the present case in holding that the proceedings commencing with the return filed by Bhikoba could not be dropped merely because he died before a notification was issued under Section 21 of the Act. The proceedings have to be continued and the surplus land in the hands of Bhikoba as on the appointed day should be determined and taken possession of in accordance with law. The heirs of Bhikoba are entitled to participate in the said proceedings representing in the state of Bhikoba. They would be entitled as heirs at law only to such land that they may remain after surrendering the surplus land as may be determined under the Act.

20. In the result, the appeal fails and is hereby dismissed.
No costs.

Appeal dismissed.

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