

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
GULAB RAO

DATE OF JUDGMENT 30/01/1995

BENCH:
MAJMUDAR S.B. (J)
BENCH:
MAJMUDAR S.B. (J)
KULDIP SINGH (J)
HANSARIA B.L. (J)

CITATION:
1995 SCC Supl. (2) 21 JT 1995 (3) 470
1995 SCALE (1) 670

ACT:

HEADNOTE:

JUDGMENT:

MAJMUDAR, J. :

1. This civil appeal is filed by the State of Maharashtra after obtaining special leave to appeal from this Court under Article 136 of the Constitution of India. It seeks to challenge the decision rendered by learned single Judge of the Bombay High Court in Special Civil Application No. 3525 of 1976 decided on 30th September 1976/1st October, 1976. In order to appreciate the grievance of the appellant State, it will be necessary to have a glance at a few introductory facts. The respondent-landlord was possessed of various

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pieces of agricultural lands situated in Malkhed, Taluk Darwha in Yavatmal District of Maharashtra State. He had filed a return of agricultural land holding under Section 12 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, (hereinafter referred to 'the Act'). It was found that he was holding surplus agricultural land to the extent of 124 acres and 13 guntas. The enquiry conducted by the Competent Authority under the Act that there were 6.20 acres of potkharb lands in all the holdings of the appellant. The family of the surplus holder consists of three members. The enquiry further revealed that the respondent surplus holder had agreed to sell survey Nos. 12, 13 and 14 measuring in all 51.08 acres on the basis of Sauda Chittis executed on 1.4.1968. The respondent contended that these lands covered by Sauda Chittis, that is, agreements of sale, cannot be included in his holding. The competent authority did not allow these transactions by treating them to be invalid. He held that they were hit by Section 10 of the Ceiling Act. After taking all these facts into consideration, the respondent was found to be in possession of 64.13 acres land over and above the ceiling area. Aggrieved by this order, the respondent presented an appeal before the Maharashtra Revenue Tribunal. The said appeal

came to be dismissed by the Tribunal on 23rd April, 1976. The respondent thereafter filed a writ petition under Article 227 of the Constitution of India in the Nagpur Bench of the Bombay High Court. The learned single Judge of the High Court by his aforesaid order allowed the writ petition by taking the view that though these agreements dated 1.4.1968 were hit by Section 10 of the Ceiling Act, the concerned transfers were protected by Section 53A of the Transfer of Property Act, and as the respondent surplus holder- was not in actual cultivation of these lands on the commencement date, the Tribunal was in error in confirming the order of the original authority adding these lands to the holding of the respondent. The learned Judge further took the view that merely because of unregistered agreements entered into by the land holder it was not possible to give an extended meaning to Explanation 11 to Section 10(1) of the Ceiling Act and, therefore, the matter was required to be re-examined in the context of the provisions of Section 2(14) of the Ceiling Act which requires a lawful and actual possession of the land either as an owner or a tenant. It was also required to be found out whether the land holder had parted with the possession of lands covered by the agreements of sale and whether they were genuine contracts of sale or not. Accordingly the order of the Tribunal was set aside and the matter was remanded for a fresh decision of the Tribunal.

2. It is vehemently contended by learned counsel for the appellant-State that the entire approach of the learned single Judge of the High Court was erroneous and the order of remand as passed by the learned single Judge is contrary to the very scheme of the Act especially Section 10 read with Section 8 of the Act and no further enquiry was required as wrongly assumed by the learned single Judge. In this connection, the learned counsel submitted that the facts are not in dispute. Three survey Nos., namely, survey Nos. 12, 13 and 14 measuring 51.08 acres were admittedly conveyed to the prospective purchasers transferees by Sauda Chittis dated 1.4.1968. These Sauda Chittis or agreements of sale were unregistered. That

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once that happened on a combined operation of the first Explanation to Section 10 and Section 8, these agreements would be covered by the sweep of the second Explanation to Section 10. Consequently, it has to be held that these transactions regarding survey Nos. 12, 13 and 14 would be treated to have seen the light of the day between 26th September, 1970 and the commencement date. Therefore, Section 10(1)(a) would get attracted and would treat these transactions to have been entered in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972 and consequently as laid down by Section 10 sub-section (1), lands covered by these transactions have to be taken into consideration in calculating the ceiling area of the transferor of such lands. Once these facts are undisputedly established on record, the legal effect of these established facts would flow from the statutory scheme and no further enquiry is contemplated as wrongly assumed by the learned single Judge of the High Court. That the Tribunal's order was required to be confirmed instead of being interfered with. The question of applicability of Section 53A of the Transfer of Property Act was totally irrelevant for deciding the present controversy, that Section 3 subsection (1) had no effect on the automatic operation of the scheme of Section 10. It was, therefore, contended that the order under appeal suffers from a patent error of law-

3.Mr. Lalit, learned senior counsel for the respondent submitted that Explanation 11 to Section 10 creates a rule of evidence and even assuming that an unregistered transfer prior to 26th September, 1970, is to be ignored, still the question would remain whether these lands were part of the holding of the person concerned as required by Section 3(1) which denotes the holding of any excess land. In this connection enquiry into the question whether the person concerned was holding the land lawfully and was in actual possession of the land as owner or tenant as laid down by Section 2(14) read with Section 3(1) would be required to be undertaken on evidence and precisely for that reason the matter was remanded by the learned single Judge to the Tribunal. It was alternatively contended that the transferees of such lands could be said to be deemed tenants under Section 4 of the Bombay Tenancy and Agricultural lands Act, and even on that ground the lands held by such transferees as deemed tenants could not be clubbed with the holding of the transferor.

4. Having given our anxious consideration to the rival contentions, we have reached the conclusion that the order of learned single Judge cannot be sustained. The reasons are obvious. The Ceiling Act lays down a ceiling on the holding of land by the person concerned. As laid down by Section 3(1), subject to the provisions of Chapter 2 and Chapter 3, no person or family unit shall after the commencement date hold land in excess of the ceiling area as determined in the manner provided in the Sections hereinafter. The words "to hold the land" are defined by Section 2(14) to be lawfully in actual possession of land as owner or as tenant and holding shall be construed accordingly. "Owner" is defined by Section 2(21) to the effect that landowner would include the person holding the land as occupant or superior holder as defined in the Code or as lessee of Government, mortgagee in-possession and a person holding land for his maintenance. "Tenant" as defined under Section 2(30) is a person who holds land on lease and

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includes a person who is deemed to be a tenant under the relevant tenancy law and landlord means a person from whom land is held on lease by a tenant and includes a person who is deemed to be a landlord under the relevant tenancy law. A conjoint reading of aforesaid parts of Sections 2 and 3 makes it clear that in order to compute the holding of any land by the owner it should be shown that the concerned lands are in actual possession of the occupant as owner. It is not the case of any one that respondent is a tenant. He is no doubt the owner of the land and even under Sauda Chittis survey Nos, 12, 13 and 14 have not gone out of the ownership of the respondent, as it is well settled that an agreement of sale creates no interest in the transferee in order to divest the transferor of his ownership of the land. It is no doubt true that on the commencement date, the respondent was not in actual possession and cultivation of survey Nos. 12, 13 and 14 and, therefore, if Section 3(1) had stood alone then in the light of Section 2(14), these lands covered by the agreements of sale dated 1.4.1968 would have got excluded from calculation but the situation changes when we turn to Chapter 3. As we have noted earlier Section 3(1) itself is subject to the provisions not only of Chapter 2 but also of Chapter 3. When we turn to Chapter 3 we find that it deals with restriction on transfer and acquisition of land and consequences of contravention. This Chapter has, -, nothing to do with the actual cultivation of the land

by the owners but despite the fact that they may not be in actual cultivation of these lands which are transferred, if these transferred lands are hit by any of the provisions of Chapter 3, such transaction get ignored and the transferred land will have to be added back to the holding of the owner for purpose of computing the ceiling and excess lands owned by him. We may in this connection profitably refer to Section 10(1) with its Explanation as well as subsection (2) thereof which read as under:-

"S. 10. Consequences of certain transfers and acquisitions of land.

(1) if -

(a) any person or a member of a family unit, after the 26th day of September, 1970 but before the commencement date, transfers any land in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972, or

(b) any land is transferred in contravention of section 8 then, in calculating the ceiling area which that person, or as the case may be the family unit, is entitled to hold, the land so transferred shall be taken into consideration, and the land exceeding the ceiling area so calculated shall be deemed to be in excess of the ceiling area for that holding, notwithstanding that the land remaining with him or with the family unit may not in fact be in excess of the ceiling area. If by reason of such transfer, the holding of a person, or as the case may be, of the family unit is less than the area so calculated to be in excess of the ceiling area, then all the land of the person, or as the case may be, the family unit shall be deemed to be surplus land, and out of the land so transferred and in possession of the transferee (unless such land is liable to forfeiture under the provisions of subsection (3), land to the extent of such deficiency shall, subject to rules made in that behalf, also be deemed to be surplus land, notwithstanding that the holding of the transferee may not in fact be in excess of the ceiling area.

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Explanation - For the purposes of clause (a) 'transfer' has the same meaning as in section 8.

All transfers made after the 26th day of September 1970 but before the commencement date, shall be deemed (unless the contrary is

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proved) to have been made in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972.

Explanation For the purposes of this subsection, a transfer shall not be regarded as made on or before 26th September, 1970 if the document evidencing the transfer is not registered on or before that date or where it is registered after that date, it is not presented for registration on or before the said date.

(2) If any land is possessed on or after the commencement date by a person, or as the case

may be, a family unit in excess of the ceiling area or if as a result of acquisition (by testamentary disposition or devolution on death or by operation of law) of any land on or after that date, the total area of land held by any person or as the case may be, a family unit, exceeds the ceiling area, the land so in excess shall be surplus land."

5. A mere look at sub-section (1)(a) of Section 10 shows that if any person or a member of a family unit after the 26th day of September 1970, but before the commencement date which is defined by Section 2(6a) as 2.10.75, transfers any land in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972, then in calculating the ceiling area which that person or as the case may be the family unit is entitled to hold, the land so transferred, shall be added back into the transferors holding and accordingly the holding shall be computed for arriving at the excess holding beyond the ceiling area. As per Explanation 1 to Section 10 all transfers made after the 26th day of September 1970 but before the commencement date shall be deemed (unless the contrary is proved) to have been made in anticipation of or in order to avoid or defeat the object of the Amending Act. This fiction will arise in connection with all such transfers effected between the aforesaid two termini which represent between them a grey area. It is no doubt true that ex facie the transfers had taken place much prior to 26th September, 1970 and, therefore, they would not be covered by the sweep of the first Explanation of Section 10, but then follows the second Explanation which states that for the purpose of sub-section (1) of Section 10, a transfer shall not be regarded as made on or before 26th September, 1970, if the document evidencing the transfer is not registered on or before that date. We are not concerned with the second part of the Explanation as it is not the case of the respondent that these agreements were registered at any time after 26th September, 1970. It is not in dispute that these agreements of sale were unregistered documents. Therefore, by the sweep of Explanation 11 they will have to be treated to be transfers made after 26th September, 1970 and would fall within the grey area as indicated by Section 10(1)(a) read with the first Explanation and would be deemed unless the contrary is proved, to have been made in anticipation of or in order to avoid or defeat the object of the Amending Act 1972, as it is not the case of the respondent that they were entered into at any time after the commencement date. However, Shri Lalit vehemently contended that Explanation 11 to Section 10 cannot apply for the simple reason that an agreement of sale is not a transfer as understood by the

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Transfer of Property Act. That may be so. However, as laid down in the Act, for the purpose of clause (a) of Section 10 Transfer has the same meaning as in Section 8, as stated in the first Explanation. Then we turn to Section 8 and find Explanation giving meaning of transfer. It lays down that "Transfer means transfer, whether by way of sale, gift, mortgage with possession, exchange, lease, assignment of law for maintenance, surrender of a tenancy or resumption of land by a landlord or any other disposition, whether by act of parties made inter vivos or by decree or order of a court, Tribunal or authority (except where such decree or order is passed in a proceeding which is instituted in such court, tribunal or before such authority before the 26th day of September 1970) but does not include transfer by way of

sale or otherwise of land for the recovery of land revenue or for sums recoverable as arrears of land revenue, or acquisition of land for a public purpose under any law for the time being in force."

(Emphasis supplied)

6. This Explanation to Section 8 gets engrafted in Section 10(1)(a) by virtue of first explanation to Section 10(1). The Explanation to Section 8 clearly covers all types of transfers by way of sale, gift, mortgage, exchange, lease, assignment of land for maintenance, surrender of tenancy or resumption of land, which are different forms of transfers but the said term also includes any other disposition made inter vivos or by decree or order of the court. The words 'any other disposition' would clearly include transfer of possession of lands under an agreement of sale by the owner to the transferee who is the prospective purchaser as such transfer of possession is made by act of parties. In fact the learned single Judge has also held that in view of Section 8 read with the first Explanation even the second Explanation to Section 10 would get attracted. However, in his view, before the lands covered by such unregistered agreements are added back to the holding of the owner it has to be established whether the owner has proved to the contrary, namely, the transaction was not made in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972. Now it must be kept in view that nowhere before the Tribunal nor before the original authority any such clear cut defence was put forward by the respondent nor had he made any effort to prove to the contrary for getting out of the sweep of the first Explanation to Section 10(1)(a) read with Explanation 11 thereof. It was not his case that these transactions were genuine ones which were absolutely needed to be entered into by the owner in favour of the transferees and they had nothing to do with the Amending Act. As such was not his defence there arose no occasion to prove such a defence. His contention was on the contrary solely to the effect that this is not a transfer at all as contemplated by the Explanation and that the transferee was protected by Section 53 A of the Transfer of Property Act and that the owner was not in actual possession of these lands on the commencement date. These contentions are totally irrelevant for deciding the applicability to twin Explanations to Section 10(1)(a). Whether the transfer is protected by Section 53 A of the Transfer of Property Act or not is, not relevant for deciding the applicability of Section 10(1)(a). Whether the respondent was in cultivation of these lands or not was equally irrelevant when the question of adding back of the transferred lands in

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the holding comes up for consideration in the light of Section 10(1)(a). Consequently, it must be held that all these survey Nos. 12, 13 and 14 measuring 51.0 acres were transferred within the meaning of Section 10(1)(a) Explanation 1 and 1 before 26th September, 1970 otherwise than by registered documents and hence they were to be ignored and as per the sweep of the first and second Explanation to Section 10(1)(a), they were deemed to have been made after 26th September 1970 in anticipation of or in order to avoid or defeat the object of the Amending Act. The respondent, as seen earlier, has failed to plead and prove to the contrary though ample opportunity was available to the respondent for doing so before both the authorities, namely, the first authority as well as Maharashtra Revenue Tribunal. The respondent could not have been given a second

innings in this connection for proving a case never pleaded by him. Once that conclusion is reached the result becomes obvious. These transfers of land will be treated to have been made in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972, during the grey period after 26th September, 1970 and before the commencement date. Consequently, as laid down by Section 10(1)(a) in calculating the area which the transferor is entitled to hold these transferred lands shall be taken into consideration meaning thereby they will be added back to the holding even though he may not be in actual cultivation thereof on the commencement date and after adding these lands the excess ceiling land would have to be determined. That is precisely what is done by the original authority and it is this decision which was confirmed by the Maharashtra Tribunal. The said decision of the Maharashtra Tribunal was perfectly justified both in law and on facts. Hence the learned single Judge was in error in interfering with the said decision of the Tribunal.

7. Before parting with the discussion on the main question considered by the Tribunal, we may refer to the alternative contention of Shri Lalit. He submitted that the transferee would become a deemed tenant under the Bombay Tenancy Act. In this connection, reliance was placed on a decision of this Court in the case of Dhaya Lal and Others v. Rasul Mohammad Abdul Rahim, (1963 (3) SCR 1) which has taken the view that for becoming a deemed tenant a person would be in lawful cultivation of somebody's land and should not be in any of the excepted categories as indicated in Section 4 of the Tenancy Act. We fail to appreciate how this contention can be of any assistance to the respondent. The transferees have never claimed that they were deemed tenants under the agreements of sale. No orders of tenancy authorities declaring the transferred to be deemed tenants under Section 4 of the Tenancy Act are brought on record. There was not even a whisper on the part of the respondent to that effect before all the authorities below including the High Court. Such a totally new case requiring investigation of facts cannot be permitted to be raised for the first time in these proceedings before us. Even otherwise, such a contention is totally foreign to the scope of the present proceedings. In this case we are not concerned with transferees' holdings of lands. We are concerned with the short question about the extent of the holding of the agricultural lands by the respondent on the commencement date, and for deciding that question, Section 3(1) read with Section 10 would be the only rel-

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event provisions. Alleged deemed tenancy of the transferees which is not in issue in this proceeding has to be treated to be totally irrelevant. This contention, therefore, stands rejected.

18. In the result this appeal succeeds. The impugned judgment of the High Court is quashed and set aside. The writ petition of the respondent will stand dismissed and the order of the Maharashtra Tribunal dated 23.4.76 in Ceiling Appeal No. 343 of 1976 as confirming the order passed by the Surplus Land Determination Tribunal No.3, Darwaha in Ceiling Case No. 221/60-A (5) will stand restored. In the facts and circumstances of the case, there will be no order as to costs throughout.

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