A GANPATRAO GULABRAO PAWAR AND ORS.

v.

STATE OF MAHARASHTRA

APRIL 6, 1992

B [MADAN MOHAN PUNCHHI AND B.P. JEEVAN REEDY, JJ.]

Maharashtra Agricultural Lands (Ceiling and Holdings) Act, 1961—Sections 3,5,9—Legislative intention—Acquisition of land above ceiling limit—Liable to surrender.

C *Maharashtra Agricultural Lands (Ceiling and Holdings) Act, 1961—Sections 14 to 20, 21, 45—Declaration—When to be made—Determination of land less than ceiling limit—Not declaration and not appealable—Revisionary power—Exercise of—Whether any bar operates.*

D *Maharashtra Agricultural Lands (Ceiling and Holdings) Act, 1961—Sections 3, 14 to 20, 21, 45, read with Section 11, Code of Civil Procedure, 1908—Determination of surplus land in a subsequent proceedings—Determining holding in earlier proceedings—Whether operates as res judicata.*

E *Maharashtra Agricultural Lands (Ceiling and Holdings), Act, 1961—Section 45—Suo motu revision Determination of holding—Inclusion of the extent of land received by exchange—Theory of exchange disbelieved—Whether the extent of land to be excluded.*

F **Appellant No. 1-land holder filed a return of his holding under the provisions of the Maharashtra Agricultural Lands (Ceiling and Holdings), Act, 1961. The Collector after making inquiry held that as his total holding of agricultural lands was 124 acres 23 guntas (converted into dry lands) and having regard to the number of his family members the appellant No. 1 was not a surplus holder.**

G **Though the order of the Collector was in favour of the appellant No. 1, he filed an appeal before the Revenue Tribunal, contending that he was not holding 124 acres 23 guntas of land and that his holding was lesser than that. The appeal was dismissed summarily.**

H **Sometime after the disposal of the appeal, the Additional Commis-**

sioner issued a notice u/s. 45 of the Act to the appellant No. 1 calling upon him to show cause as to why the Collector's order be not revised; his holding be determined at 231 acres and why the surplus should not be directed to be surrendered. A

Appellant No.1 submitted his objection u/s.45(2), proviso contending that when an appeal was filed against the order of the Collector, the power of *suo motu* revision was not available to the Commissioner u/s.45 of the Act. B

The Additional Commissioner rejected the preliminary objection and passed an order on merits, holding that the holding of lands of the first appellant was 202 acres and 31 guntas (when converted into dry crop land), that he was entitled to retain only an extent of 160 acres and that he was a surplus holder to an extent of 42 acres 31 guntas. The matter was remitted to the S.D.O. for delimiting the surplus area. C

The appellants questioned the validity of the Commissioners' order by way of a writ petition in the High Court, contending that inasmuch as the order of the Collector was appealed against, it could no longer be revised by the Commissioner in view of the express bar contained in the proviso to Section 45(2) and further and that the lands he obtained by way of exchange as well his lands which were given away under the said exchange, were both included in his holding. D E

The High Court dismissed the writ petition, against which the appellants filed this appeal with the leave of this Court.

The appellants contended that the appeal preferred by the appellant No. 1 before the Revenue Tribunal was a proper and competent appeal. Though that appeal was dismissed, it operated as a bar to the exercise of the revisory power under Section 45(2), proviso. F

The respondent submitted that an appeal was maintainable against the declaration or a part thereof. The part which was not appealed against was open to revision under Section 45(a); that the provision in Section 33 providing for a right of appeal and the provision of Section 45(2) conferring a supervisory power in the Government/Commissioner must be harmonised so as to give both the provisions their due play; that mere rejection of theory of exchange did not necessarily mean that the extent in gut No. 521 should be excluded from the appellants' holding when they G H

A themselves claim that it was theirs.

Partly allowing the appeal, this Court,

HELD : 1.01. The Maharashtra Agricultural Lands (Ceiling and Holdings) Act, 1961 was enacted by the Maharashtra Legislature with a B view to impose a maximum limit (ceiling) on the holding of agricultural land in the State of Maharashtra and to provide for the acquisition and distribution of the land held in excess of such ceiling. [472B]

1.02. The Act is not intended to determine or declare titles. The finding as to the extend of a holding of a person under the Act is only a C step towards its object an intermediate stage. [476G]

1.03. A person holding agricultural lands below the ceiling limit can acquire land only upto the ceiling limit but not above such limit. Evidently, acquisition of any land in excess of such limit is liable to be surrendered D under the Act. [472D-E]

2.01. Section 21 makes it clear that the "declaration" contemplated by it is to be made only in the case of a surplus holder. The declaration has to contain the various particulars mentioned in clauses(a) to (e) of sub-section (1). This should be followed by a statement containing particulars of E the land delimited as surplus. This statement has to be published in the village and other specified places. Sub-section (3) provides that the Collector shall take possession of the surplus land soon after "the announcement of the declaration", whereupon it shall vest in the State. All this shows that no "declaration" is to be made under Section 21 in the case of a person/family unit whose holding does not exceed the ceiling limit. [474B-C] F

2.02. An appeal is provided only against a "declaration" made under Section 21 and not against any of the orders made under Sections 14 to 20. A mere determination or a finding or order that a person/family unit holds land less than the ceiling limit is not a "declaration" and, therefore, G not appealable. [476F]

2.03 Section 45 vests in the State Government the power of control and supervision over the officers under the Act, which power can be delegated by the Government to the Commissioner. [475E]

H 2.04. The High Court was right in holding that the order of the

Collector in the case of the first appellant was not appealable. The appeal filed by him was one not provided by law and, hence, no appeal in the eye of law. Such an incompetent appeal could not operate as a bar to the exercise of revisory power under Section 45(2). [476F-G]

3. In the subsequent proceedings for determining the surplus land, the order in the earlier proceedings determining one's holding at a particular figure, may not operate as *res judicata*. [477A]

4. It is no one's case that the appellant acquired the extent of 12 acres 24 guntas in gut No. 521 in some manner other than the exchange put forward by him. That area ought to be excluded from his holding once the theory of exchange is disbelieved and when the extent in gut Nos. 462 and 463 is also included in his holding. [478B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 660 of 1981.

From the Judgment and Order dated 26.7.1979 of the Bombay High Court in Special Civil Application No. 439 of 1975.

P.H. Parekh for the Appellants.

V.B.Joshi and A.S.Bhasme for the Respondent.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. First appellant-land holder filed a return of his holding under as required by the Maharashtra Agricultural Lands (Ceiling and Holdings) Act, 1961 (Act). After making the necessary inquiry, the Collector, Puna by his order dated 2nd January, 1969 held that the first appellant's total holding of agricultural lands as on the relevant date was 124 acres 23 guntas (converted into dry lands) whereas according to the Act and having regard to the number of members in his family he was entitled to hold 128 acres. Accordingly, he held that the first appellant was not a surplus holder. Notwithstanding the fact that the said order was in his favour, the first appellant filed an appeal before the Maharashtra Revenue Tribunal. His contention was that the finding of the Collector that he was holding 124 acres 23 guntas of land is not correct and that he must be held to be holding a far lesser extent. This appeal was dismissed summarily on 16.12.1971. The Tribunal did not think it fit to issue a notice

A even to the respondent in the said appeal. Sometime after the dismissal of the appeal, the Additional Commissioner, Puna Division issued a notice to the first appellant under Section 45 calling upon him to show cause as to why the order of the Collector, Poona dated 2nd January, 1969 be not revised and his holding be determined at 231 acres and why the surplus B should not be directed to be surrendered. The first appellant submitted his objections wherein he *inter alia* raised an objection with respect to the validity of the said notice. The said objection was based upon the proviso to Sub-section (2) of Section 45 viz., inasmuch as an appeal has been filed against the order of the Collector, the power of *suo motu* revision is no longer available to the Commissioner. This preliminary objection was C overruled by the Additional Commissioner by his order dated 6.12.1971. He then went into the merits of the case and passed an order on 23.9.1974 holding that the total holding of the first appellant as on the relevant date is 202 acres and 31 guntas (when converted into dry crop land) and since he is entitled to retain only an extent of 160 acres, he is a surplus holder D to an extent of 42 acres 31 guntas. He remitted the matter to the S.D.O. for delimiting the surplus area. It my be mentioned that before passing the said final order, the Commissioner had issued notices to and heard appellants 2 to 4, inasmuch as their rights were sought to be affected by him.

E The appellants questioned the validity of the Commissioner's order by way of a writ petition being Special Civil Application No. 439 of 1975 in the Bombay High Court. The main contention urged in the said writ petition was based upon the proviso to Section 45(2). It was that inasmuch as the order of the Collector was appealed against, it could not longer be revised by the Commissioner in view of the express bar contained in the F said proviso. On merits, the only contention urged pertained to the inclusion of the lands transferred by him by way of exchange. Besides the lands he obtained by way of exchange, his lands given away under exchange were also included in his holding. This, according to the appellants, was unjust and illegal. Both the contentions were negatived by a Division Bench of the Bombay High Court whereupon the appellants have filed this appeal G with the leave of this court. The main contention urged before us by Sri P.H. Parekh, learned counsel for the appellants is again based upon the proviso to Section 45(2). His contention, properly elaborated, runs thus: for the purpose of determining whether a person/family unit holds land in excess of the ceiling area, it is necessary for the Collector to determine H the holding of such person/family unit. Even where the Collector holds that

the holding of a person/family unit is below the ceiling limit, he has to and does determine the extent of holding of such person/family unit. If one looks to Section 9, the relevance of such a finding (even where the finding is that the land held by such person/family is below the ceiling) would become evident. A person/family unit holding land less than the ceiling area is entitled to acquire, after the 'commencement date', land upto the ceiling limit but not beyond. If so, a land holder whose holding has been determined at a particular figure (though below the ceiling limit) may yet be aggrieved if his case is that his holding is actually lesser than what has been determined by the Collector. For, his right to acquire further land after the commencement date depends upon such a finding. It, therefore, follows - says the counsel - that the appeal preferred by the first appellant before the Maharashtra Revenue Tribunal was a proper and competent appeal. May be that appeal has been dismissed, yet it operates as a bar to the exercise of the revisory power under Section 45(2), says the counsel.

The Division Bench of the Bombay High Court, it may be noticed rejected the contention in the following words :

> "Now it is no doubt that the petitioner in this case had filed an appeal, even through the petitioner could not be said to have been aggrieved by another order made by the Collector. The appeal provided by Section 33 of the Act is an appeal against the declaration or any part thereof made under section 21 of the Act. If we refer to the provisions of Section 21 of the Act, it refers to the declaration in respect of the surplus land in respect of which right, title and interest of the person of family unit holding it is to be forfeited to the State Government. It is no doubt true that even if an appeal against part of the declaration under section 21(1) is contemplated, the order made by the Collector in the instant proceeding, when he held that the petitioner did not have any surplus land, was not a declaration under section 21 and the appeal was, therefore, be taken into account for holding that it created a bar against the exercise of revisional jurisdiction. The Commissioner was, therefore, in our view, quite justified in ignoring the appeal which was filed by the Petitioner which was clearly not maintainable and he was entitled to exercise his revisional jurisdiction in the matter."

A The learned counsel for the appellant disputes the correctness of the above reasoning. For a proper appreciation of the contention urged by Sri Parekh, it is necessary to refer to the relevant provisions of the Act.

The Act was enacted by the Maharashtra Legislature with a view to B impose a maximum limit (ceiling) on the holding of agricultural land in the State of Maharashtra and to provide for the acquisition and distribution of the land held in excess of such ceiling. Section 3 declares that after the 'commencement date', no person or family unit shall hold land in excess of ceiling area as determined in the manner provided in the Act. Section 12 obliges every person holding land in excess of the ceiling area to submit C a return of his holding within the time and in the manner prescribed. Section 5 prescribes the ceiling area. Section 9 declares further that "no person or a member of the family unit shall at any time, on or after the commencement date, acquire by transfer of the land if he, or as the case may be, that family unit already holds land in excess of the ceiling area or D land which together with any other land holding by such person, or as the case may be, the family unit, will exceed in the total the ceiling area." In other words, a person holding agricultural lands below the ceiling limit can acquire land only upto the ceiling limit but not above such limit. Evidently, acquisition of any land in excess of such limit is liable to the surrendered under the Act. Section 14 provides for an enquiry by the Collector on the E basis of the return filed or *suo motu* to "determine the surplus land held by such person or family." Section 16 provides for giving a choice to the surplus land holder to select the land which he wishes to retain upto the ceiling area. Section 18 specifies several matters which the Collector shall consider. These matters include "whether any land held by the F holder.....should be deemed to be surplus land under any of the provisions of this Act" and "which particular lands out of the total land held by the holder should be delimited as surplus land ?" Sections 19 and 20 provide for restoration of surplus land held by a tenant to the landholder, in accordance with the relevant tenancy law, to facilitate it being surrendered. Section 21 then provides for making a 'declaration' on G the basis of the determination already made under Sections 14 and 19. Sub-section (1) of Section 21 and Sub-section (2) thereof read as follows:

> "21.(1) As soon as may be after the Collector has considered the matters referred to in section 18 and the questions, if any, H under sub-section (3) of Section 20, he shall make a declaration

stating therein his decision on--- A

(a) the total area of land which the person (or family unit) is entitled to hold as the ceiling area;

(b) the total area of land which is in excess of the ceiling area; B

(c) the name of the (landlord) 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 C which is delimited as surplus land;

(e) the area and (particulars of land out of surplus land, in respect of which the right, title and interest of the person (or family unit) holding it) is to be forfeited to the State Government. D

(The Collector shall announce his declaration in the presence of his holder and other persons interested who are presented at the time of such declaration.)

(2) After a declaration under sub-section (1) is made (the E Collector shall prepare a statement in the prescribed form giving details of the area), description and full particulars of the land which is delimited as surplus land, (and also of the land therefrom, the right, title and interest in which is) to be forfeited to the State Government. (The Collector shall affix a F copy of the statement at the village Chawdi or any other prominent place at the village and shall also despatch a copy of the statement to the person or to the member of the family unit interested in the land delimited as surplus. On the date of the announcement of the declaration mentioned in the preceding sub-section), (the right, title and interest in the land which) G is liable to forfeiture shall stand forfeited to and vest in the State Government. (on and after the date of announcement of the declaration) no sale, gift, mortgage, exchange, lease of any other disposition (including any transfer in execution of a decree or order of a court, tribunal or authority) shall be made H

A of the land which is delimited as surplus land. If any such disposition or transfer is made, it shall be invalid, and of no effect."

A reading of Section 21 makes it clear that the "declaration" contemplated by it is to be made only in the case of a surplus holder. The B declaration has to contain the various particulars mentioned in clauses (a) to (e) of Sub-section (1). This should be followed by a statement containing particulars of the land delimited as surplus. This statement has to be published in the village and other specified places. Sub-section (3) provides that the Collector shall take possession of the surplus land soon after "the C announcement of the declaration", whereupon it shall vest in the State. All this shows that no "declaration" is to be made under Section 21 in the case of a person/family unit whose holding does not exceed the ceiling limit.

Section 33 makes certain specified orders and declaration made under Section 21 appealable. Sub-sections (1) and (1A) of Section 33 read D as follows:

"33.(1) An appeal against an order or award of the Collector shall lie to the Maharashtra Revenue Tribunal in the following cases :

E (1) and order under sub-sections (2) and (3) of section 13 (not being an order under which a true and correct return complete in all particulars is required to be furnished);

F (2) a declaration or any part thereof under section 21;

(2A) an order under section 21-A;

(3) an award under section 25;

G (4) an order refusing sanction to transfer or divide land under section 29;

(5) an order of forfeiture under sub-section (3) of section 29;

H (6) an amendment of declaration or award under section

37; and A

(7) an order of summary eviction under section 40.

(1A) Any respondent, though he may not have appealed from any part of the decision, order, declaration or award, may not only support the decision, order, declaration or award, as the B case may be, on any of the grounds decided against him, but take cross-objection to the decision, order, declaration or award which he could have taken by way of an appeal:

Provided that, he has filed the objection in the Maharashtra Revenue Tribunal within thirty days from the date of service C on him of notice of the day fixed for hearing the appeal, or such further time as the Tribunal may see fit to allow; and thereupon, the provisions or order 41, rule 22 of the First Schedule to the Code of Civil Procedure, 1908, shall apply in relation to the cross-objection as they apply in relation to the D cross-objection under that rule."

Section 45 vests in the State Government the power of control and supervision over the officers under the Act, which power can be delegated by the Government to the Commissioner. It would be appropriate to read section 45 in its entirety at this stage: E

"45.(1) In all matters connected with this Act, the State Government shall have the same authority and control over the officers authorised under section 27, the Collectors and the Commissioners acting under this Act, as they do in the general and revenue administration. F

(2) The State Government may, *suo motu* or on an application made to it by the aggrieved person, at any time, call for the record of any inquiry or proceedings under sections 17 to 21 (both inclusive) for the purpose of satisfying itself as to the G legality or propriety of any inquiry or proceedings (or any part thereof) under those sections and may pass such order thereon as it deems fit, after giving the party a reasonable opportunity of being heard.

Provided that, nothing in this sub-section shall entitle the State H

A Government to call for the record of any inquiry or proceedings of a declaration or part thereof under section 21 in relation to any land, unless an appeal against such declaration or part thereof has not been filed within the period provided for it and a period of three years from the date of such declaration or part thereof has not elapsed.

B

(3) The State Government may, subject to such restrictions and conditions as it may impose by notification in the Official Gazette, delegate to the Commissioner the power conferred on it by sub-section (2) of this section or under any other C provisions of this Act except the power to make rules under section 46 or to make an order under section 49."

Sub-section (2) confers a *suo motu* power of revision upon the State Government for the purpose of satisfying itself as to the legality or propriety of any inquiry or proceedings under sections 17 to 21 - which D means the inquiry by and proceedings of the Collector. The proviso, however, says that this power "to call for the record of any enquiry or proceedings of a declaration or part thereof under Section 21 in relation to any land" shall not be available if an appeal has been filed against such declaration or part thereof. (We are not concerned with the other restric- E tion prescribed by the proviso).

A review of the above provisions clearly discloses the scheme of the Act. In particular, it shows that an appeal is provided only against a "declaration" made under section 21 and not against any of the orders made under Sections 14 to 20. A mere determination or a finding or order F that a person/family unit holds land less than the ceiling limit is not a "declaration" and, therefore, not appealable. The Bombay High Court was, therefore, right in holding that the order of the Collector dated 2nd January, 1969 in the case of the first appellant was not appealable. The appeal filed by him was one not provided by law and, hence, no appeal in G the eye of law. Such an incompetent appeal could not operate as a bar to the exercise of revisory power under section 45(2). After all, it should not be forgotten, the Act is not intended to determine or declare titles. The finding as to the extent of a holding of a person under the Act is only a step towards its object - an intermediate stage.

H So far as the argument of Sri Parekh with reference to Section 9 is

concerned it is really not necessary to deal with it in view of our view aforesaid. Perhaps, in the subsequent proceedings (taken for determining the surplus land held by him in view of acquisition of fresh land after the 'commencement date'), the order in earlier proceedings determining his holding at a particular figure may not operate as *res judicata*, though it would be certainly relevant.

The learned counsel for the respondents has put forward another submission to support the Commissioner's order. His submission runs thus: an appeal lies against the declaration or a part thereof. The part which is not appealed against is open to revision under section 45(a). In the case of a given person it may be held that he holds only an extent of 2 acres in excess of the permissible ceiling area. He may be aggrieved with that finding and may have appealed against it. He says that a particular extend of land should not be included in his holding. But the Commissioner thinks that the person really holds 20 acres in excess of the permissible ceiling area and not merely 2 acres. In other words, he wants to include some extent of land in the holding of such person which has not been so included by the Collector in his holding. Since the said aspect is not the subject matter of appeal preferred by the person, it is open to revision under Section 45(2) by the Government/Commissioner. He submits that the provision in Section 33 providing for a right of appeal and the provision of Section 45(2) conferring a supervisory power in the Government/Commissioner must be harmonised so as to give both the provisions their due play. He submits that his interpretation is consistent with the scheme and object of the Act and goes to effectuate and advance the purposes of the Act. We do not, however, think it necessary to express any opinion on this submission for the purposes of this appeal.

There remains the other submission of Sri Parekh with respect to the exchange of 10 acres 20 guntas out of gut Nos. 462 and 463 (belonging to him) with 12 acres 24 guntas out of gut No.521 (belonging to his step-brother, Sadashiv). His grievance is that both the extents are included in the appellants holding while disbelieving the theory of exchange put forward by him. Sri Parekh submits that if the theory of exchange is rejected then the extent of 12 acres 24 guntas in gut No.521 cannot be included in the appellant's holding. To this the counsel for respondents submits that mere rejection of theory of exchange does not necessarily mean that the

A extent in gut No.521 should be excluded from the appellants' holding when they themselves claim that it is theirs. He suggests that the appellants may have acquired the said extent in some other manner than the alleged exchange. We, however, do not see any justification in the facts and circumstances of this case, for including both the said extents in the B appellant's holding. It is no one's case that the appellant acquired extent in gut No.521 in some manner other than the exchange put forward by him. If so, we are of the opinion that the said extent in gut No.521 ought to be excluded from his holding once the theory of exchange is disbelieved and when the extent in gut Nos.462 and 463 is also included in his holding. The C Collector shall take action accordingly.

Subject to the above modificaiton, the appeal is diposed of. No costs.

V.P.R. Partly allowed.