

JOGIBHAI MANGALBHAI TANDEL ETC.
v.
THE MAMLATDAR AND AGRICULTURAL
LAND TRIBUNAL, PARDI AND ANR.

SEPTEMBER 20, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Bombay Tenancy and Agricultural Lands Act, 1948 :

S.63—Restriction on purchase of agricultural land by persons other than who reside within certain parameters prescribed—Held not violative of the Fundamental Right guaranteed under Art. 19(1)(e) of the Constitution of India

Constitution of India, 1950 :

Art. 19(1)(e)—Bombay Tenancy and Agricultural Lands Act, 1948—Section 63—Whether violative of—Held : No.

The appellants purchased some lands without obtaining permission from the Mamlatdar as required under Section 63 of Bombay Tenancy and Agricultural Lands Act, 1948. Therefore proceedings were initiated for ejecting them from lands. The appellants filed Special Civil Applications which were dismissed by the High Court. Hence these appeals.

On behalf of the appellant it was contended that Section 63 of the Act did not contemplate prior permission; that even after the purchase one can seek permission and validation of the proceedings and therefore the order of the High Court was in contravention of the fundamental right guaranteed under Art. 19(1)(d) of the Constitution of India.

Dismissing the appeals, this Court

HELD : 1. On a conjoint and harmonious reading of s.63 of the Bombay Tenancy and Agricultural Lands Act, 1948 and the definitions, it is seen that the purpose of the Act is an agrarian reform restricting holding of the land by the agriculturist who cultivates the land in the manner defined under the Act. He is also entitled to own the land or cultivate on lease in accordance with the provisions of the Act. But as a

A condition to purchase the land, s.63 prescribed a restriction that he should be an agriculturist and should hold the land within the village as per the village accounts under the Bombay Land Revenue Code and also in a compact block either at a single or at different places, but within 5 miles from the village in which the principal lands are situated. Even a permanent resident of Gujarat State has been prohibited from purchasing the lands outside the village within a radius of five miles from the village. The reason appears to be to discourage concentration of large holdings in the hands of few individuals and distribution of the material resources of the community to subserve the common good as envisaged under Art. 39(d) of the Constitution. [737-B to D]

C 2. Being an agrarian reform to confer the right to cultivation of the lands to the agriculturist with a view to improving the economic and social conditions of the peasants and to ensure the full and efficient use of the land for agriculture, the Act came to be made and as a part of its scheme, restriction on the holding and purchase also has been imposed. It is a reasonable restriction within the meaning of clauses 2, 5 and 6 of Art. 19 conformable to the right of the agriculturist to hold the land for personal cultivation within the limits prescribed under the Statute. Thus, there is no contravention of the fundamental rights of any citizens much less the citizens in the State of Gujarat other than those who reside within the parameters prescribed under the Act. [737-D, E, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1886-1888 of 1988.

F From the Judgment and Order dated 9.2.88 of the Gujarat High Court in S.C.A. No. 666 & 655 of 1979.

V.A. Bobde and P.D. Sharma for the Appellants.

C. Badri Nath Babu and Anip Sachthey for the Respondents.

G The following order of the Court was delivered :

These three appeals raise common question of law of some importance as regards the agrarian reforms in the State of Gujarat. The facts in C.A. No. 1886/88 are sufficient for disposal of these appeals.

H The appellant had purchased 7 acres, 9 gunthas of land in Moria

Village of Pardi Taluk, District Valsad of State of Gujarat on November 27, 1967 without obtaining permission from the Mamlatdar as required under s.63 of the Bombay Tenancy and Agricultural Lands Act, 1948, for short 'the Act'. Proceedings were initiated for his ejection from the land for purchase made contrary to s.63 which went against him. Consequently he filed Special Civil Appln. No. 653/79. The High Court by common judgment dated February 9, 1988 dismissed the same alongwith other matters. Thus this appeal by Special leave

Shri Bobde, learned Senior counsel for the appellants contended that under Art. 19(1)(e) of the Constitution he has a right to reside and settle down at any place throughout the territory of India. The appellants, therefore, had right to acquire and hold any property within the State of Gujarat, though he did not have any land there nor did he personally reside at the date of the sale in the village Moria. He is an agriculturist in Nani Daman and being an agriculturist he is entitled to purchase the lands in Moria. Section 63 of the Act does not contemplate prior permission. Even after the purchase he can seek the permission and seek validation of the purchase. Therefore, the view taken by the High Court is in contravention of his fundamental right under Art. 19(1) of the Constitution, as a citizen. We find no force in the contention.

Chapter V of the Act deals with restrictiveness on transfer of agricultural lands, management of uncultivable lands and acquisition of estates and lands. Section 63(1) provides that:

"63(1) Save as provided in this Act -

(a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property delivered to the mortgagee, shall be valid in favour of a person who is not an agriculturist or who being an agriculturist will, after such sale, gift, exchange, lease or mortgage, hold land exceeding the ceiling area determined under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, as amended by the Maharashtra Agricultural Lands

- A (Lowering of Ceiling on Holding.) and (Amendment) Act, 1972 or who is not an agricultural labourer."

(The proviso and explanation and other sub-sections are not necessary for the purpose of this case, hence omitted).

- B 'Agriculturist' has been defined in S. 2(2) of the Act to mean "unless there is anything repugnant in the subject or context, a person who cultivates land personally". Section 2(5) defines "to cultivate with its grammatical variations and cognate expressions means to till or husband the land for the purpose of raising or improving agricultural produce, whether by manual labour or by means of cattle or machinery, or to carry on any agricultural operation thereon; and the expression "uncultivated" shall be construed correspondingly." (Explanation is not necessary, hence omitted).

Section 2(6) defines "to cultivate personally" means to cultivate land on one's own account -

- D (i) by one's own labour, or
- (ii) by the labour or any member of one's family, or
- (iii) under the personal supervision of oneself or any member of one's family by hired labour or by servants on wages payable in cash or kind but not in crop share,
- E being land, the entire area of which -
- (a) is situated within the limits of a single village, or
- F (b) is so situated that no piece of land is separated from another by a distance of more than five miles, or
- (c) forms one compact block : "

- G (Proviso and explanations are not necessary for the purpose of this case, hence omitted).

- H Section 2(20) defines "village" to mean a village recognised as such in the revenue accounts. Section 2(21) postulates that "Words and explanation used in this Act but not defined shall have the meaning assigned to them in the Bombay Land Revenue Code, 1879 and the Transfer of

Property act, 1882, as the case may be".

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Thus, on a conjoint and harmonious reading of s.63 and the definitions, it would appear that the purpose of the Act is an agrarian reform restricting holding of the land by the agriculturist who cultivates the land in the manner defined under the Act. He is also entitled to own the land or cultivate on lease in accordance with the provisions of the Act. But as a condition to purchase the land s.63 prescribed restriction. The restriction is that he should be an agriculturist and should hold the land within the village as per the village accounts under the Bombay Land Revenue Code and also in a compact block either at a single or at different places, but within 5 miles from the village in which the principal lands are situated. The object thereby appears to be that even a permanent resident of the Gujarat State has been prohibited to purchase the lands outside the village within a radius of five miles from the village. The reason appears to be to discourage concentration of large holdings in the hands of few individuals and distribution of the material resources of the community to subserve the common good as envisaged under Art. 39(d) of the Constitution. Being an agrarian reform to confer the right to cultivation of the lands to the agriculturist with a view to improving the economic and social conditions of the peasants and to ensure the full and efficient use of the land for agriculture, the Act came to be made and as a part of its scheme restriction on the holding and purchase also has been imposed. Thereby we hold that it is a reasonable restriction within the meaning of clauses 2, 5 and 6 of Art. 19 confirmable to the right of the agriculturist to hold the land for personal cultivation within the limits prescribed under the Statute.

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Therefore, we do not find any contravention of the fundamental rights of any citizens much less than the citizens in the State of Gujarat other than those who reside within the parameters prescribed under the Act.

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The appeals are accordingly dismissed, but in the circumstances, without costs.

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G.N.

Appeals dismissed.