

BHUPENDRA SINGH
v.
STATE OF MAHARASHTRA AND ORS.

NOVEMBER 21, 1995

[M.M. PUNCHHI AND SUJATA V. MANOHAR, JJ.]

Land Laws :

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 : Sections 3 and 8—Ceiling area—Determination of—Land purchased from tribal subsequently restored on the coming into force of the Maharashtra Restoration of land to Scheduled Tribe Act, 1974—Diminution of area taking place by thrust of another statute—Held : restoration of land not a "transfer" within the meaning of Explan. to Section 8—Such land not liable to be included in the ceiling holdings—The Maharashtra Restoration of land to Scheduled Tribe Act, 1974.

The appellant had purchased land from a tribal under a registered sale-deed. The Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 which came into force on 1st November, 1975, provided for restoration of land to a tribal transferor. The Authority under the Restoration Act passed an order and directed that the land which had been purchased by the appellant from the Tribal be restored to his heirs.

Subsequently, an enquiry under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 was held for determining the ceiling area of the appellant's family unit. The surplus Land Determination Tribunal held that the Lands which were restored to the Tribal formed a part of the Holdings of the appellant's family unit at the commencement date i.e.; 2nd October, 1975 under the Ceiling Act and had to be included in the holding of the appellant's family unit.

This view had been upheld by the Revenue Tribunal. The writ petition filed by the appellant challenging the decision of the Tribunal was dismissed by the High Court. Aggrieved by the High Court's judgment the appellant preferred the present appeal.

On behalf of the appellant it was contended that since the lands had

A been restored to the tribal under the provision to the Restoration Act before the enquiry under the Ceiling Act, the lands could not be considered as part of his holding.

Partly allowing the appeal, this Court

B HELD : 1.1. Under the Maharashtra Restoration of Lands to
 Scheduled Tribes Act, 1974 the lands which were purchased by a non-
 Tribal transferee are restored to the Tribal transferor. There is no
 provision in the Act which makes the sale transaction *void ab initio*. Section
 C 3 of the Restoration Act provides for the Authority's taking possession of
 the land from the non-Tribal transferee and restoring it to the Tribal
 transferor, for which the Tribal Transferor has to return the consideration
 and pay for improvements as provided in the Act. There is no provision
 under the Act providing for any retrospective cancellation or annulment
 of sales. The contention, therefore, that by virtue of the Restoration Act,
 D the said land cannot be considered a part of the appellant's holding even
 prior to the coming into effect of the Restoration Act, cannot be accepted.
 The lands have, therefore, been rightly held to be a part of the appellant's
 holding. [496-D-E]

E *Lingappa Pochanna Appelwar v. State of Maharashtra & Anr.*, [1985]
 1 SCC 479, referred to.

1.2. The restoration of lands under the Restoration Act does not fall within the definition of "transfer" under the Explanation to Section 8 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961.

F [497-A-B]

G 2.1. The restoration is obviously not a transfer *inter vivos*. It cannot also be considered as a transfer pure and simple by an order of a Court, tribunal or authority. The order of the authority here is for the purpose of carrying out the scheme under the Restoration Act. The scheme under the Restoration Act is for cancellation of transfer and restoration of land to the Tribal. The scheme is more akin to the transactions which are excluded from the definition of "transfer", such as acquisition of land for a public purpose. This is restoration of land to the Tribal for a public purpose of effecting "distributive justice". The land which is so restored by reason of the said Act is, therefore, not covered by the definition of "transfer" in
 H section 8. Hence section 10(1) also will not apply to such land. [497-E-F]

2.2. Under section 16(2) of the Ceiling Act, a person or family unit is entitled to select the lands he or it wishes to retain upto the ceiling area. This right is subject to section 16(1). Section 16(1), *inter alia*, provides that where a person or family unit holds lands in excess of the ceiling area and the whole or part of such land is subject to an encumbrance, then the person or family unit shall retain such land upto the extent of the ceiling land. The High Court has treated the land restored to the Tribal as encumbered land of the appellant. Prior to the Restoration Act, the land belonged to the appellant who had a clear title. After the Restoration Act came into force the appellant lost the land which was restored to the Tribal's heirs much prior to the order of the Surplus Land Determination Act. The provisions of section 16(1) do not apply to such a situation. The appellant's family unit was, therefore, entitled to select the lands. [497-G-H; 498-A-B]

3.1. If some diminution in the area held by the person or family unit has occurred between the relevant date and the date of the enquiry, the Ceiling Act requires that these be taken note of in accordance with law before any declaration is made under section 21. These are important matters to be kept in mind especially when in the instant case the diminution has taken place by thrust of another statute, i.e., the Restoration Act. Since the said land is neither encumbered land nor land transferred in contravention of section 8, it is not liable to be included in the ceiling holding of the appellant. [498-F-G]

3.2. As the said land is now restored to the Tribal's heirs by operation of the provisions of the Restoration Act, there can be no question of the State acquiring the said land as surplus land of the appellant under the Ceiling Act, as the land does not now form a part of the appellant's surplus holding by reason of the Restoration Act. [498-H; 499-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10606-07 of 1995.

From the Judgment and Order dated 20.4.90 & 6.1.88 passed by the Division Bench of the Bombay High Court in W.P. No. 2390/79 and L.P.A. No. 100 of 1988.

V.C. Mahajan, Adv. Shirish Kr. Mishra and Uday Umesh Lalit for the Appellant.

A G.B. Sathe, for D.M. Nargolkar, Adv. for the Respondents.

The Judgment of the Court was delivered by

MRS. SUJATA V. MANOHAR, J. Delay condoned in view of the statements made in the application for condonation of delay.

B Leave granted.

C These appeals relate to proceedings under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as 'the Ceiling Act'). The Surplus Land Determination Tribunal held that out of the total land belonging to the family of the appellant the surplus lands held were 91.02 acres. The dispute in these appeals is confined to certain lands held by the appellant which he had purchased from one Kisana, a tribal under a registered sale-deed dated 31.1.1958.

D The Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter referred to as 'the Restoration Act') came into force w.e.f. 1st of November, 1975. Section 3 of the Restoration Act provides as follows :

E "Section 3(1) where due to transfer -

(a) the land of a Tribal-transferor is held by a non-Tribal transferee or

(b)

F and the land so transferred is in possession of the non-tribal transferee, and has not been put to any non- agricultural use on or before the 6th day of July, 1974, then notwithstanding anything contained in any other law for the time being in force, or any judgment, decree or order of any tribunal or authority the Collector either *suo motu* at any time, or on the application of a Tribal

G transferor made within three years from the commencement of this Act shall, after making such enquiry as he thinks fit, direct that -

(i).....

H (ii) the land transferred be taken from the posses-

sion of the non-Tribal transferee, and restored to the Tribal transferor, free from all encumbrances and the Tribal transferor shall pay such transferee and other persons claiming encumbrances the amount determined under Clause (b) of sub-section (4) :

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....."

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Sub-section (4) provides for return of consideration and payment for improvements made on the land to be determined as set out therein. In the present case on 26-11-1976 the Authority under the restoration Act passed an order and directed that the land which had been purchased by the appellant from the Tribal Kisana which is in Survey No. 15, village Padha, Tehsil Kelapur, District Yavatmal be restored to the heirs of the Tribal Kisana who was the original transferor. Pursuant to this order, on 8th of August, 1977 possession of the said land was handed over to the heirs of Kisana.

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The enquiry under the Ceiling Act for determining the ceiling area of appellant's family unit was held therefore. The Surplus Land Determination Tribunal held, *inter alia*, by its order dated 30.5.1978, that the said lands which were restored to the tribal formed a part of the holding of the appellant's family unit at the commencement date i.e. 2nd of October, 1975 under the Ceiling Act and had to be included in the holding of the appellant's family unit. This view has been upheld by the Maharashtra Revenue Tribunal. It, however, remanded the matters to the Surplus Land Determination Tribunal on other grounds. The writ petition which was filed by the appellant challenging the decision of the Maharashtra Revenue Tribunal was dismissed and a Letters Patent appeal before the Division Bench of the High Court was also dismissed. Hence the present appeal is filed before us.

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The relevant date under the Ceiling Act is the commencement date. For the lowered ceiling the commencement date is 2nd of October, 1975. Under section 3 of the Ceiling Act, subject to the provisions of Chapter II and III, 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 said Act. The appellant, on and after the commencement date, did hold lands in excess of the ceiling area. For the purpose of determining the

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A total holding of the appellant the lands which he had purchased from the Tribal Kisana were includible in his holding on the commencement dated because at the point of time, the Restoration Act had not come into effect. These lands were held by the appellant on the commencement date under a registered sale-deed. The Restoration Act came into effect on 1st November, 1975. The order of restoration is dated 26th November, 1976, and the possession was restored to the Tribal's heirs on 8th August, 1977. The authorities below, therefore, have rightly come to the conclusion that the land which was subsequently restored to the tribal constituted a part of the appellant's holding on the commencement date of the Ceiling Act.

C It is submitted before us by the appellant that since the lands have been restored to the tribal under the provision to the Restoration Act before the enquiry under the Ceiling Act, the lands cannot be considered as a part of his holding. The question, therefore, is whether at the commencement date and thereafter these lands formed a part of the appellant's holding. Under the Restoration Act, however, the lands which were purchased by a non-Tribal transferee are restored to the Tribal transferor. There is no provisions in the Act which makes the sale transaction void ab initio. Section 3 of the Restoration Act which is set out above provides for the Authority's taking possession of the land from the non-Tribal transferee and restoring it to the Tribal transferor, for which the Tribal transferor has to return the consideration and pay for improvements as provided in the Act. There is no provision under the Act providing for any retrospective cancellation or annulment of sales. The contention, therefore, that by virtue of the Restoration Act, the said land cannot be considered a part of the appellant's holding even prior to the coming into effect of the Restoration Act, cannot be accepted. In the case of *Lingappa Pochanna Appelwar v. State of Maharashtra & Anr.*, [1985] 1 SCC 479 this Court interpreted Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 and said that the Act is based on the principle of distributive justice. "It seeks to re-open transactions between parties having unequal bargaining power resulting in transfer of title from one to another due to force of circumstances and also seeks to reconstitute the parties to their original position". The sale transaction, therefore, has been reversed subsequently as a result of the operation of the Restoration Act. The lands have, therefore, been rightly held to be a part of the appellant's holding.

H We have, however, to consider whether these lands must be included

in the ceiling holding of the appellant. A

The restoration of lands under the Restoration Act does not fall within the definition of "transfer" under the Explanation to section 8 of the Ceiling Act. The definition of transfer under the Explanation to section 8 of the Ceiling Act is as follows : B

"Explanation : In this section, "transfer" means whether by way of sale, gift, mortgage with possession, exchange lease, assignment of land 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." C D

The restoration is obviously not a transfer inter vivos. It cannot also be considered as a transfer pure and simple by an order of a Court, tribunal or authority. The order of the authority here is for the purpose of carrying out the scheme under the Restoration Act. The scheme under the Restoration Act is for cancellation of transfer and restoration of land to the Tribal. The scheme is more akin to the transactions which are excluded from the definition of "transfer", such as acquisition of land for a public purpose. This is restoration of land to the Tribal for a public purpose of effecting "distributive justice" as this Court has put it. The land which is so restored by reason of the said Act is, therefore, not covered by the definition of "transfer" in section 8. Hence section 10(1) also will not apply to such land. E F

Under section 16(2) of the Ceiling Act, a person or family unit is entitled to select the lands he or it wishes to retain upto the ceiling area. This right is subject to section 16(1). Section 16(1), *inter alia*, provides that where a person of family unit holds lands in excess of the ceiling area and the whole or part of such land is subject to an encumbrance, then the person or family unit shall retain such land upto the extent of the ceiling G H

A land. The High Court has treated the land restored to the Tribal as encumbered land of the appellant. We fail to see how the land can be so treated. Prior to the Restoration Act, the land belonged to the appellant who had a clear title. After the Restoration Act came into force, the appellant lost land, land which was restored to the Tribal's heirs much prior to the order of the Surplus Land Determination Act. The provisions of section 16(1) do not apply to such a situation. The appellant's family unit was, therefore, entitled to select the lands.

C Section 18 of the Ceiling Act requires the ceiling authority to consider certain matters enumerated therein before issuing a declaration under section 21 declaring the land which the person or the family unit is entitled to hold that the surplus lands. Clause (d) of section 18 requires the Collector to consider, inter alia, whether any transfer is made by the holder in contravention of section 8, and if so, whether the land so transferred should be considered or ignored in calculating the ceiling area under section 10(1). Clause (g) requires the authority to consider what is the total area of land held at the time of the enquiry and what is the area of land which the holder is entitled to hold. Clause (j) requires the authority to consider whether the proposed retention of land by the holder is in conformity with the provisions of section 16. Clause (k) requires the authority to consider which particular land out of the total lands held by the holder should be delimited as surplus land. Clause (l) requires the authority to consider any other matter necessary to be considered for the purpose of calculating the ceiling area and delimiting any surplus land. If some diminution in the area held by the person or family unit has occurred between the relevant date and the date of the enquiry, the above clauses require that these be taken note of in accordance with law before any declaration is made under section 21. These are important matters to be kept in mind especially when in the instant case the diminution has taken place by thrust of another statute, i.e. the Restoration Act. Since the said land is neither encumbered land nor land transferred in contravention of section 8, it is not liable to be included in the ceiling holding of the appellant.

H As the said land is now restored to the Tribal's heirs by operation of the provisions of the Restoration Act, there can be no question of the State now acquiring the said land as surplus land of the appellant under the

Ceiling Act, as the land does not now form a part of the appellant's surplus holding by reason of the Restoration Act. A

In the premises, the appeals are allowed to the above extent. The matter is remanded to the Surplus Land Determination Tribunal for a fresh determination of the appellant's ceiling holding in the light of what we have stated above. There will, however, be no order as to costs. B

V.S.S.

Appeal partly allowed.