TATOBA BHAU SAVAGAVE (D) BY LRS. AND ANR.

v.

VASANTRAO DHINIRAJ DESHPANDE AND ORS.

OCTOBER 5, 2001

[SYED SHAH MOHAMMED QUADRI AND S.N. PHUKAN, JJ.]

Land Laws:

Bombay Tenancy and Agricultural Lands Act, 1948—Section 43-1B—Calculation of ceiling area of land of landlord and resumption of land from tenants on termination of tenancy—Contention by petitioners that there was no partition of joint family lands of respondent—Inclusion of land belonging to respondent lying in another State for calculating ceiling area—Held, on facts and findings by Revenue authorities as confirmed by High Court, partition of joint family by metes and bounds already effected—Same point cannot be agitated by applying 'principle of issue estoppel'—Land lying in another State cannot be included—Constitution of India, 1950—Article 136.

Interpretation of Statutes:

Reading the provisions of a statute—Application of Directive principles of State Policy—Held, cannot be applied in reading the provisions of the Act which the legislature has not provided either expressly or by necessary implication—Constitution of India, 1950—Articles 38, 39(b) and (c).

Respondent-landlord, a member of the Armed Forces, filed a tenancy case before Collector under Section 43-1B of the Bombay Tenancy and Agricultural Lands Act, 1948 for resumption on land from petitioners-tenants to the extent of 1/2 share in Survey No. 98 and 2/3rd share in Survey No. 99. The Collector dismissed the tenancy case as not maintainable. In appeal, Additional Commissioner held that the tenancy case was maintainable before the Collector on the ground that the partition of the joint family took place in 1944 but confined resumption of land to 1/3rd share in Survey No. 99. The order of the Additional Commissioner was affirmed by High Court and the matter was remanded back to the Collector for calculating the total land held by the respondent and the extent of land available for resumption from the petitioners. The Collector, for calculation purposes, did not include the land held by the respondent in the State of

A Karnataka and considered only the land held in the area of Bombay and decided that the respondent was entitled to resume possession of 1/3rd share in Survey No. 99 from the petitioners. The order of the Collector was confirmed by the Commissioner and the High Court.

In appeal to this Court, the petitioners contended that no partition B took place of the joint family lands of the respondent by metes and bounds; that the findings of the High Court in the order of remand can be challenged; and that having regard to the Directive Principles of State Policy contained in the Constitution of India, the land held by the respondent in the State of Karnataka must also be included in calculating the total holding of the C land under the Act.

The respondent contended that the issue relating to the partition of the joint family property was already confirmed by the High Court in its order of remand and the same cannot be permitted to be re-opened; and that the land held by the first respondent outside the Bombay area cannot D be taken into account for determining total land held by him under the Act.

Dismissing the appeal, the Court

HELD: 1.1. The question of partition of lands of the joint family was E found against the petitioners in the first round of litigation by the Revenue Authorities. High Court held that, by virtue of partition in 1944, the respondent did not get any share in Survey No. 98 while his brothers got 1/3rd share each in Survey No. 99. The status of the joint family had come to an end and the shares of the members of the erstwhile joint family had F been defined. Further, the High Court upheld the order of the Additional Commissioner that the respondent was entitled to apply under Section 43-1B of the Bombay Tenancy and Agricultural Lands Act, 1948 for possession of the 1/3rd share in Survey No. 99. Thus, having confirmed the findings recorded by the Revenue Authorities, the case was remanded back to the G Collector for determination of the total land held by the first respondent and the extent of the land available for resumption. The petitioners are now barred from agitating the same point by principle of 'issue estoppel'. Secondly, when the Revenue Authorities concurrently found that there was partition of joint family lands by metes and bounds which was accepted by the High Court in the earlier round of litigation, this Court in its H jurisdiction under Article 136 of the Constitution will not permit the

petitioners to agitate the concurrent findings of fact in the proceedings after remand. [615-C-G] A

Hope Plantations Ltd. v. *Taluk Land Board, Peermade & Anr.*, [1999] 5 SCC 590, relied on.

1.2. The Act aims at achieving improved production and agricultural efficiency while safeguarding the interest of ***Rayat*** and creating and encouraging 'peasant proprietorship' in respect of holding of suitable size in the erstwhile State of Bombay - now Bombay area of the State of Maharashtra. A perusal of various clauses of Section 2 containing the definition of "land", "landholder", "tenant". "to hold land" and the provisions of Sections 5 and 6 leaves no room for doubt that the various categories of land enumerated in Sections 5 and 6 are classified having regard to the nature of the land in the Bombay area and ceiling area is fixed having regard to the condition and requirements of landlord and tenant in the Bombay area. Section 7 of the Act empowers the Government to vary ceiling area and economic holding in public interest regard being had to: (a) the situation of the land, (b) its productive capacity, (c) the fact that the land is located in a backward area, and (d) any other factors which may be prescribed. There is nothing in the Act to suggest that land outside Bombay area, anywhere in India or the world should be taken into account for purposes of calculating the holding or ceiling area of the landlord or the tenant. All these factors need to be determined with reference to the Bombay area. The Act postulates that the land within the Bombay area is required to be taken into computation for purposes of determining the ceiling area. It will therefore, be impermissible to take into account any land held by the respondent in the State of Karnataka. [616-D-H; 617-A] B C D E

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Chhanubhai Karnsang v. *Sardul Mansang*, (1956) 58 Bombay Law Reporter 463, approved.

Shrikant Bhalchandra Karulkar & Ors. etc. v. *State of Gujarat & Anr.* etc., [1994] 5 SCC 459, distinguished.

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2. There can be no gainsaying the fact that while interpreting a beneficial legislation like the Act, the Directive Principles of State Policy contained in Article 38 and Clauses (b) and (c) of Article 39 of the Constitution should be uppermost in the mind of a Judge. But that principle cannot be extended to reading in the provisions of the Act that which the legislature has not provided either expressly or by necessary implication. A H

A **perusal of section 43-1B of the Act indicates that it has taken care of the right of a tenant and safeguarded the possession of the land held by a tenant when the holding of the landlord is equal to the ceiling area; even when the holding of the landlord is less than the ceiling area; only so much of the land held by the tenant as will be sufficient to make up the total land**
B **in the actual possession of the landlord equal to the ceiling area, is permitted to be resumed. [615-H; 616-A-B]**

Steel Authority of India Ltd. & Ors. etc. etc. **v.** *National Union Water Front Workers & Ors. etc. etc.*, **JT (2001) SC 268, relied on.**

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1809 of 1992.

From the Judgment and Order dated 9/10.1.92 of the Bombay High Court in W.P. No. 3205 of 1981.

U.U. Lalit and Gaurav Agarwal for the Appellants.

D A.S. Bhasme, Sanjay K. Visen and Manoj K. Mishra, Adv. for the Respondents.

The Judgment of the Court was delivered by

E **SYED SHAH MOHAMMED QUADRI, J.** This appeal by special leave is filed by the tenant against the order of the High Court of Judicature at Bombay in Writ Petition No.3205 of 1982 dated January 9/10, 1992.

The question that arises in this appeal is: whether in calculating the ceiling area of the landlord for purposes of Clause (a) of sub-section (1) of
F Section 43-1B of the Bombay Tenancy and Agricultural Lands Act, 1948, should any land held by him outside the State of Maharashtra be computed?

By Maharashtra Act XXXIX of 1964 Chapter III-AA was inserted in the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, 'the Act') and the words "or serving member of the armed forces" were deleted from Section
G 32-F of the Act. Chapter III-AA contains special provisions for termination of tenancy by landlords who are or have been serving members of the Armed Forces and for purchase of their lands by tenants. Section 43-1B which is one of the main provisions in that chapter confers a right on the landlord to terminate the tenancy of any land and obtain possession from the tenant
H thereof. We shall set out here sub-section (1) of Section 43-1B :

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"43-1B.(1) Notwithstanding anything contained in the foregoing provisions of this Act, but subject to the provisions of this section, it shall be lawful to a landlord at any time after the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1964, to terminate the tenancy of any land and obtain possession thereof, but—

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(a) of so much of such land as will be sufficient to make up the total land in his actual possession equal to the ceiling area; and

(b) where the landlord is a member of a joint family, only to the extent of his share in the land (not exceeding the ceiling area) held by the joint family, provided that, the Mamlatdar on inquiry is satisfied that such share has (regard being had to the area, assessment, classification and value of land), been separated by metes and bounds in the same proportion as his share in the entire joint family property and not in a larger proportion.

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(2) to (4) ****** ***"

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From a perusal of sub-section (1) of Section 43-1B it is noticeable that it overrides the provisions of Chapters I to III but is subject to the provisions of that section. It enables a landlord, at any time after the commencement of the said Act XXXIX of 1964, to terminate the tenancy of any land and obtain possession from the tenant thereof. This right is subject to the following conditions :

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(1) the landlord is entitled to take possession of so much of such land only as will be sufficient to make up the total land in his actual possession equal to the ceiling area and where the landlord is a member of a joint family, only to the extent of his share in the land (not exceeding the ceiling area) held by the joint family;

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(2) on enquiry the Mamlatdar has to be satisfied that such share of the landlord has been separated by metes and bounds in the same proportion as his share in the entire joint family property and is not in a larger proportion. In recording his satisfaction the Mamlatdar has to take into account the area, assessment, classification and value of the land.

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Section 43-1A defines "landlord" for purposes of that Chapter to mean a landlord (including a certificated landlord within the meaning of Section 33A) who is or has ceased to be, a serving member of the armed forces; and

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A in relation to the land of a landlord who is dead includes his widow, son, son's son, unmarried daughter, father or mother.

A brief account of the facts may be helpful in hitting upon a solution.

The first respondent (landlord) was a member of the Armed Forces from B 1941 to 1970. On February 27, 1965, he filed Tenancy Case No.1 of 1968 before the Collector, Kolhapur, under Section 43-1B for resumption of the land to the extent of share in Survey No. 98 and 2/3rd share in Survey No. 99 held by the appellants as tenants. On September 22, 1970, the case was dismissed as not maintainable. The first respondent carried the matter in revision before C the Additional Commissioner, Poona Division, Poona, who, by his order dated November 30, 1974, opined that the partition of the joint family took place in 1944, therefore, the case before the Collector was maintainable and confined resumption of land to 1/3rd share in Survey No. 99. That order was affirmed in Special Civil Application No.744 of 1975 by the High Court of Bombay on July 3, 1979 and the case was remanded to the Collector for recording findings D in regard to the holdings of the first respondent and the extent of the land he could resume from the appellants. On April 6, 1981, after remand, in computing his holding, the Collector declined to take into consideration the land owned by the first respondent in the State of Karnataka, the extent of that land is not beyond controversy, and concluded that he was having in his actual possession E 13 acres 12 gunthas in the State of Maharashtra and he was entitled to resume possession of 1/3rd share in Survey No. 99 from the appellants which would come 5 acres 27 gunthas; thus, his total holding on resumption of the land from them under Section 43-1B would become 18 acres 14 gunthas (though 13 acres 12 gunthas + 5 acres 27 gunthas add up to 18 acres 39 gunthas) which was far less than the ceiling area of 48 acres. That order was confirmed by the F Commissioner in revision on August 29, 1981. The appellants challenged the correctness of the order of the Commissioner in Writ Petition No. 3205 of 1981. On January 9/10/1992, the High Court dismissed the writ petition, it is from that order that the present appeal arises.

G Mr. U.U. Lalit, the learned counsel for the appellants, argued that no partition by metes and bounds of the land held by the first respondent's joint family took place as such subsequent events including order of remand would be inconsequential and that they could challenge the finding affirmed by the High Court in the order of remand. He contended that having regard to the directive principles contained in the Constitution, the land held by the first H respondent in Karnataka State must be added to the land held by him in

Maharashtra State for arriving at the correct extent of the land he would be entitled to resume from the appellants under Clause (a) aforementioned.

Mr. A.S. Bhasme, the learned counsel appearing for the first respondent, has argued that the first contention of the appellant is concluded by the earlier order of the High Court remanding the case to the Collector for determining his holding and that the same cannot be permitted to be re-opened. Relying on the judgment of a Division Bench of the Bombay High Court in *Chhanubhai Karansang* v. *Sardul Mansang*, (1956) 58 Bombay Law Reporter 463, Mr. Bhasme has submitted that the land held by the first respondent outside the Bombay area cannot be taken into account for determining total land held by him under the Act.

The first contention of Mr. Lalit need not detain us. Firstly the question of partition of lands of the joint family was found against the appellant in the first round of litigation by the Revenue Authorities. On July 3, 1979, in Special Civil Application No. 744 of 1975, the High Court held that by virtue of partition in 1944, the first respondent did not get any share in Survey No. 98 while his brothers got 1/3rd share each in Survey No. 99. The status of the joint family had come to an end and the shares of the members of the erstwhile joint family had been defined. Further, the High Court upheld the order of the Additional Commissioner that the first respondent was entitled to apply under Section 43-IB of the Act for possession of the 1/3rd share in Survey No. 99 and it was made clear that the order would be subject to the findings of the Collector on issue Nos. 5 & 6. Thus, having confirmed the findings recorded by the Revenue Authorities the case was remanded to the Collector to decide issue Nos. 5 and 6 which related to determination of the total land held by the first respondent and the extent of the land he would be entitled to resume. The appellants are now barred from agitating the same point by principle of 'issue estoppel'. [See : *Hope Plantations Ltd.* v. *Taluk Land Board, Peermade & Anr.*, [1999] 5 SCC 590. Secondly, when the Revenue Authorities concurrently found that there was partition of joint family lands by metes and bounds which was accepted by the High Court in the earlier round of litigation this Court in its jurisdiction under Article 136 will not permit the appellants to agitate the concurrent findings of fact in proceedings after remand.

In regard to the second contention of Mr. Lalit, there can be no gainsaying the fact that while interpreting a beneficial legislation like the Act under consideration, the Directive Principles of state policy contained in Article 38 and Clauses (b) and (c) of Article 39 of the Constitution should be uppermost

A in the mind of a Judge. But that principle cannot be extended to reading in the provisions of the Act that which the legislature has not provided either expressly or by necessary implication [See : *Steel Authority of India Ltd. & Ors. etc. etc.* v. *National Union Water Front Workers & Ors. etc. etc.*, JT (2001) 7 SC 268. A perusal of Section 43-IB indicates that it has taken care of the right of a tenant B and safeguarded the possession of the land held by a tenant when the holding of the landlord is equal to the ceiling area; even when the holding of the landlord is less than the ceiling area, only so much of the land held by the tenant as will be sufficient to make up the total land in the actual possession of the landlord equal to the ceiling area, is permitted to be resumed. The controversy here, as noted above, relates to computation of the holding of the first respondent. C Should the land held by the first respondent-landlord in Karnataka State be taken into account in computing his holding? The High Court answered the question in the negative and we are not persuaded to take a different view. The reasons are not far to seek. The Act aims at achieving improved production and agricultural efficiency while safeguarding the interest of *Rayat* and creating D and encouraging 'peasent proprietorship' in respect of holding of suitable size in the erstwhile State of Bombay - now Bombay area of the State of Maharashtra (referred to in this judgment as, 'Bombay area'). Clause (2-D) of Section 2 of the Act defines "ceiling area" to mean in relation to land held by a person whether as a owner or a tenant or partly as owner or partly as tenant the area of the land fixed as ceiling area under Sections 5 or 7 of the Act. A perusal E of various clauses of Section 2 containing the definition of "land", "landholder", "tenant", "to hold land" and the provisions of Sections 5 and 6 leaves no room for doubt that the various categories of land enumerated in Sections 5 and 6 are classified having regard to the nature of the land in the Bombay area and ceiling area is fixed having regard to the conditions and requirements of F landlord and tenant in the Bombay area, Section 7 of the Act empowers the Government to vary ceiling area and economic holding in public interest regard being had to: (a) the situation of the land, (b) its productive capacity, (c) the fact that the land is located in a backward area, and (d) any other factors which may be prescribed. There is nothing in the said provisions or for that matter in any provisions of the Act to suggest that land outside Bombay area, anywhere G in India or the world should be taken into account for purposes of calculating the holding or ceiling area of the landlord or the tenant. All these factors need to be determined with reference to the Bombay area. The above discussion leads to irresistible conclusion that the Act postulates that the land within the Bombay area is required to be taken into computation for purpose of determining H the ceiling area. It will, therefore, be impermissible to take into account any

land held by the first respondent in the State of Karnataka. A

The High Court relied on the judgment of a Division Bench of the Bombay High Court in *Chhanubhai Karansang* (supra). In that case a Division Bench of the Bombay High Court considered the import of the expression "other land" in Section 34(2)(a) of the Act. (since deleted by Maharashtra Act XXVII of 1961). Clause (a) of sub-section (2) of Section 34 prohibited the landlord to terminate the tenancy of a protected tenant if the landlord has been cultivating personally "other land" to an extent of 50 acres or more. However, the right of the landlord to terminate the tenancy of the protected tenant and take possession of the land leased to him was saved when the land under the personal cultivation of the landlord was less than 50 acres and in such a case resumption of land was limited to such area as would be sufficient to make up the area of the land under personal cultivation to the extent of 50 acres. The question was whether the land held by the landlord in Saurashtra State would fall within the meaning of "other land" in that section. It was contended that the land held by the landlord in Saurashtra State did not fall within the meaning of "other land" and that that expression would take in only the land in the Bombay area. Chief Justice Chagla speaking for the Court gave a good number of reason to hold as to why the land held by the landlord in the State of Saurashtra could not be brought within the meaning of "other land" in Section 34(2) and that expression must be restricted to land in the State of Bombay. We are in entire agreement with the conclusion recorded therein.

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Relying on the judgment of this Court in *Shrikant Bhalchandra Karulkar and Ors. etc.* v. *State of Gujarat and Anr. etc.*, [1994] 5 SCC 459, it was urged by Mr. Lalit that as there was territorial nexus in this case hence the land of the first respondent in Karnataka State had to be taken into computation. We are unable to agree with this submission. In that case the validity of Section 6(3-A) of the Gujarat Agricultural Lands Ceiling Act, 1960 was under challenge. The High court upheld the validity of the said provision. On appeal, this Court confirmed the judgment of the High Court. It was held,

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> "This Court — over a period of three decades — has evolved a principle called "doctrine of territorial nexus" to find out whether the provisions of a particular State law have extraterritorial operation. The doctrine is well-established and there is no dispute as to its principles. If there is a territorial nexus between the persons/property subject-matter of the Act and the State seeking to comply with the provisions of the Act then the Statute cannot be considered as having extraterritorial

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operation. Sufficiency of the territorial connection involves consideration of two elements, the connection must be real and not illusory and the liability sought to be imposed under the Act must be relevant to that connection. This Act has to satisfy the principles of territorial nexus which are essentially discernible from the factual application of the provisions of the Act."

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In the instant case there is no provision in the Act like Section 6(3-A) of the said Gujarat Act. That judgment is of no help to the appellant.

In this view of the matter, we find no illegality in the impugned order of the High Court holding that the land alleged to be in occupation of the first respondent in the State of Karnataka cannot be taken into account in calculating the total land in his actual possession to ascertain if he holds the land equal to the ceiling areas for purposes of Clause (a) of sub-section (1) of Section 43-IB of the Act.

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In the result, the appeal is dismissed but in the circumstances of the case, the parties are directed to bear their own costs.

B.S. Appeal dismissed.