

SH. KISHANDAS KANHAIYALAL GANDHI

v.

STATE OF MAHARASTRA AND ANR.

MARCH 1, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961—Exclusion of lands which were under the possession of Tenant under Tenancy Act—Held cannot be excluded from owners' holding.*

The appellant was found to be in surplus of agricultural land to an extent of 45 acres 30 guntas under Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. The contention of the appellant was that he was not having any surplus land as the tenant has crystallised his rights to be a tenant in respect of 47 acres and 17 guntas of land. It was alternatively contended that in the event that he is found to be owner of this land, an option may be given to him to surrender the land claimed by tenant so that he retains the land within the ceiling limit. It was further contended that the tenant was in possession of the land and the appellant had no right over those lands under the Tenancy Act, as he lost his right as owner and therefore such land cannot be included as his holding. High Court rejected the contention of the appellant. Aggrieved by the order, the appellants preferred the present appeal.

Dismissing the appeal, this Court

**HELD:** All the proceedings were initiated by the tenant of the appellant only after the appellant submitted his statement claiming those properties. The tenant allowed the orders made under the Act rejecting his claim as tenant to become final. The same land would not be excluded on the premise that the tenant became deemed owner/tenant by operation of orders made under the Tenancy Act. therefore, without going into the legality of the finding recorded by the Tribunals under Tenancy Act, the appellant remains to be the owner so far as the Ceiling Act is concerned and, therefore, the land cannot be excluded from his ownership or holding; nor liberty be given to surrender the lands aid to be in possession of the tenant. [424-H, 425-A-B]

**A** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3068 of 1988.

From the Judgment and Order dated 6.1.1988 of the Bombay High Court in L.P.A. No. 148 of 1986.

**B** U.R. Lalit and U.R. Lalit for the Appellant.

A.S. Bhasme and Ashok K. Gupta (NP) for the Respondents.

The following Order of the Court was delivered:

**C** This appeal by special leave arises from the order of the Bombay High Court dated January 10, 1988 in L.P.A. No. 148 of 1986. The facts in this appeal are not disputed. The appellant was found to be in surplus of agricultural land to an extent of 45 acres 30 guntas under Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. He contends that one Om Prakash has crystallised his rights to be a tenant in respect of 47 acres and 17 guntas of land and that, therefore, he is not having any surplus land. **D** It is also alternatively contended that in the event that he is found to be owner of this land, an option may be given to him to surrender the land claimed by Om Prakash, so that he retains the land within the ceiling limit.

**E** We do not find any force in either of the contentions. It is admitted in his claim statement that he claimed ownership over all the properties. It is also to be seen that when proceedings were initiated to determine surplus land, Om Prakash sent a representation claiming the lands as tenant and when it was rejected, he allowed the proceedings to become final. By side wind Om Prakash initiated proceedings before the Mamlatdar under the **F** Tenancy Act claiming to be a tenant. In those proceedings State was not a party. He was found to be a tenant under the appellant and he was said to be in possession of lands. It is also claimed that the appellant filed an application before the competent authority that Om Prakash was in unauthorised occupation and the authority found against the appellant.

**G** On the abovesaid facts, it is contended that as Om Prakash was in possession of the land and the appellant had no right over those lands under the Tenancy Act, he lost his right as an owner. Therefore, self same land cannot be included as high holding. We do not find any force in this contention. As seen, all the proceedings were initiated by Om Prakash only **H** after the appellant submitted his statement claiming those properties. He

allowed the orders made under the Act rejecting his claim as tenant to become final. The self same land would not be excluded on the premise that Om Prakash became deemed owner/tenant by operation of orders made under Tenancy Act. Therefore, without going into the legality of the finding recorded by the tribunals under Tenancy Act, the appellant remains to be the owner so far as the Ceiling Act is concerned and, therefore, the land cannot be excluded from his ownership or holding nor liberty be given to surrender the land said to be in the possession of Om Prakash.

In the circumstances, we find no force warranting interference. The appeal is accordingly dismissed. No costs.

K.S.D.

Appeal dismissed