-101- 141 -163-

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No. ICH 1364/31425-M-(Spl.)

Revenue and Forests Department,
Sachivalaya, Bombay-32.
7th November, 1964. 113

Subject:-Maharashtra Agricultural Lands
(Ceiling on Holdings) Act, 1961.
Designating of officer under sub-section 4(A)
of Section 14 of - -

MEMORANDUM:

The undersigned presents compliments to the Special Deputy Collector (Land Ceilings) Shriramour, and with reference to his letter, No. Ceiling/WS/282/64, dated the 16th October, 1964, on the above subject is directed to state that his presumption that a special authorisation is necessary under section 14(4A) to enable him to hold enquiry under the Act in respect of the holding of M/s. Khatod and sons which has been notified by Government under Section 19, is not correct. He derives his jurisdiction to hold this enquiry by virtue of the jurisdiction conferred on him under Government Notification No. ICH 1662/157608-M-(Spl.), dated the 1st February, 1964.

By order and in the name of Governor of Maharashtra,

W. G. Kamadem

Under Secretary to the Government of Maharashtra,
Revenue and Forests Department.

Copies with a copy of the letter under reference forwarded for information and guidance to:-

All Commissioners of Divisions,

All Collectors (except the Collector of Bombay),

All other Special Deputy Collectors (Land Ceilings).

rtp/31.10.

COLLECTOR'S OFFICE
Date 12-11-64
Branch TIVe
RATNAGIRI

K. W. C. F.

For Collr. Rtn
24-11-64

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(Below copy of Maharashtra Revenue Tribunal judgment on the appeal No. ALC.A.1 of 1964, filed by Shri Dajiba Govindrao Walunjkar of Jwale, Mahal Jamkhed district Ahmednagar).
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NO. ICH2564/181588-M-(Spl.)

Revenue and Forests Department,
Sachivalaya, Bombay-32.

12th November, 1964.

Forwarded for information and guidance to:-

All Collectors (except the Collector of Bombay),
All Prant Officers/Sub-Divisional Officers,
All Special Deputy Collectors (Land Ceiling),
Land Reform Implementation Officer,
Additional Land Reform Implementation Officer.

W. L. Ramadive

Under Secretary to the Government of
Maharashtra, Revenue & Forests Department.

rtp/10.11.

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Before Shri J.P. Dhurandhar, President, Maharashtra Revenue Tribunal, at Bombay.

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No. A.L.C.A.1/1964.
Bombay, 5th October, 1964.

Appeal petition dated 18/19th March, 1964, against the declaration dated the 13th February, 1964, of the Collector of Ahmednagar in case No. CING-Jamkhed 15/64.

Dajiba Govindrao Walunjkar, of Jawale, Mahal Jamkhed, district Ahmednagar.) APPELLANT.

Vs.

The State of Maharashtra.) RESPONDENT.

....

Shri D.M. Parulekar, Advocate, appeared for the appellant.

Shri R.G. Samant, Special Government Pleader, M.R.T. Bombay appeared for the State.

....

O R D E R

This is an appeal under Sec. 33 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, against the declaration made by the Collector of Ahmednagar, under Sec. 21 of the said Act, declaring that an area of 161 acres 23 gunthas is surplus land held by the appellant and is, therefore, delimited.

The facts of the case are fully stated in the order passed by the Coll-ector. So far as the points which are urged in this case are concern-ed they are briefly as follows:-

One Govindrao Daulatrao Patil who was the father of the appellant held an area which was in all 413 acres 28 gs. in the village of Jawale in Jamkhed Mahal and malso in the other villages. On 1st August, 1949, Govindrao made a partit-ion by mutation entry No. 2370 dated the 8th August, 1959 dividing an area of 271 acres 34 gs. amongst himself and his three sons and wife Radhabai. It appears that at that partition he reserved to himself an area of 224 acres 11 gunthas and divided the rest of the lands amongst his three sons and wife. The lands so distributed are 189 acres and 17 gs. After the said partition Govindrao died on 11th December, 1959. After his death the area of 224 acres 11 gs. which was allotted to his share was entered in the name of the appellant as the 'karta' of the joint Hindu family. The Collector accepts the partition made by Govindrao on 1-8-1959, and comes to the conclusion that the area of 224 acres 11 gs. which was inheritted by his three sons was held by them as members of the family. The Ceiling area for the village is 108 acres dry crop land. He, therefore, comes to the conclusion that an area of 161 acres 23 gs. are held as surplus by the appellant and his brothers as members of a family. He, therefore, directed the delimitation of that area as surplus land.

Against this declaration the present appeal has been filed under Sec. 33 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as the Ceiling Area Act).

The contention urged by Shri Parulekar, who appears for the appellant is that after the partition of the 1st of August, 1959 all the members of the family became tenants in common and, therefore, the area which was inheritted by them after the death of Govindrao was as area which was held in separate shares. The contention, therefore, is that the separate shares of each of the three sons of Govondrao should be considered as the unit or holding of that particular member. If that is so, his contention is that the area held by each member does not exceed the Ceiling area of 108 acres. It is true that according to the principles of Hindu Law a partition between coparceners may be partial either in respect of the property or inrespect of the persons making it. When the partition is partial as to property, it is open to the members of a joint family to make a division and severance of interest in respect of a part of the joint estate, while retaining their status as a joint family and holding the rest as theproperties of joint and undivided family. But where there is evidence to show that the parties intended to sever, then the joint family status is put an end to, and, with regard to any portion of theproperty which remained undivided the

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presumption would be that the members of the family would hold it as tenants-in-common unless and until a special agreement to hold as joint tenants is proved. (See:principles of Hindu Law by Mulla: 12th Edn p.503-504). Insupport of the proposition that the members of the joint family become tenants-in-common two judgments are cited:

(1)Dagadu Vs.Sakhubai :I.L.R. 47 Bom. P.773;
and
(2)Martand Vz.Radhabai:I.L.R. 54 Bom. P.616.

In the first place it does not appear in this case that when Govindrao made a partition on 1-8-1959, it was decided by Gocindrao with or without the consent of the other members that other property which was held by them as the member of the joint family should be divided and held by them in severanc-e as tenants-in-common. It was admitted on behalf of the appellant that in addition to the lands in dispute the family holds other properties moveab-le and immovable. Apart from that the decisions in Dagdu Vs. Sakhubai and Martand Vs. Radhabai referred to above, also make it clear that in regard to the other property there is merely an admission that the members have decided to hold it as tenants-in-common such presumption can be rebutted by a special agreement. A special agreement may either be inwriting or it can be inferred by implication from the acts and conduct of the parties. In this case the question does not arise with regard to any property left joint at the time of the partition of 1-8-1959. But the question which arises is whether the property which was inherited by the members of the family after the death of Govindrao as his heirs was held by the parties as members of the joint family or tenants-in-common. The question has been considered by the Collector and he points out that the lands left by Govindrao were entered in the ~~xx~~ record of rights in the name of the Appellant-major son Dajiba and his two other minor brothers. The appellant was described as Karta of the joint family. A notice of this mutation ~~xx~~ was served on the persons concerned, but none of them raised any objection. The Collector also points out that the appellant has usbmitted a return under Sec. 12 of the Ceiling Area Act in which he had shown the lands as held by him during the period from 4.8.1959 to 26.1.1962. In the return he has shown the lands measuring 242 acres 14 gs. In fact as a tenant-in-common ~~the area allotted to him~~ was merely 47 acres 23 gunthas. The other circumstance which has been referred to by the Collector that on 7-5-1962 the appellant has sold one land to one Rama Govind. Obviously that sale has been made by the appellant himself as a Manager of the joint Hindu family. The last circumstance which has been relied upon by the Collector is that the appellant and his brothers have entered into a partition on 19-2-1963, in which they have tried to divide the land which they have inheritted from Govindrao. All these circumstances clearly show that although there was a partial partition on 1-8-1959 in regard to the other property which was left by the family and particularly in regard to the land of an area of 224 acres 11 gunthas. which was left by Govindrao, the appellant and his brothers held them as members of the joint family. There is nothing to show that there was any severance between them and they held the lands left by Govindrao as tenants in common. I therefore, come to the conclusion that the view taken by the Collector that after the partition of 1-8-1959, it is not proved that the lands which were inheritted by the members of the family from Govindrao were held by them as separate holders or as tenants-in-common. Assuming for the sake of argument that those lands were held by them as tenants in common, it appears that in view of the other provisions of the Ceiling Area Act, it must be held that they were held by them as members of the family and they were the persons within the meaning of Sec. 4 of the Ceiling Area Act. Section 4 of the Act provides:

> 4(1) Subject to the provisions of this Act, no person shall hold land in excess of the ceiling area, as determined in the manner hereinafter provided;

Explanation to the Sec. provides that:

A person may hold exempted land to any extent. It is not the case of the appellant that any of the lands which are held to be surplus are exempted lands.

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The word 'person' has been defined in Sec. 2 clause (22) as a 'person' which ~~xxxx~~ includes a family. This clause does not say that the person includes merely a joint Hindu family. It provides that a person may include a family of any character. The word 'family' is defined in clause 'II' of Sec. 2. It provides that 'family' includes, a Hindu undivided family, and in the case of other persons, a group or unitt the members of which by custom or usage, are joint in estate, or possession or residence. This definition makes it clear that the word 'family' as used in clause (22) is not restricted to joint Hindu family It includes a group or unit, the members of which by custom or usage or joint in estate, in possession or residence. That definition also is an inclusive definition and it is not restricted to a group of unit the members of which by custom or usage are joint in estate, possession or residence. If certain persons particularly those who are a.members of a family as defined in Sec. 2(20) of the Act by agreement or by consent are joint in estate or possession or residence, then they would come within the definition of the joint family. Again their jointness is not restricted only to estate, but even if they are joint in possession or residence it would follow that the members or family within the meaning of clause(11) of Sec. 2. Then clause(14) of Sec. (2) defines the expression to hold land. It provides that with its grammatical variations and cognate expressions, means to be lawfully in actual possession of land as owner or as tenant and 'holding' shall be construed accordingly. In this case it is not denied that the appellant and his two brothers are holding an area of 224 acres and 11 gunthas inheritted by them from Govindrao as a unit or group which are joint in possession or residence. The Collector finds that the evidence shows that they are joint in possession and also in residence. The view taken by the Collector, therefore, that the area of 224 acres and 11 gunthas. inheritted by the appellant and his brothers, must be held to be an area held by them as members of the family within the meaning of clause(11) of Sec.(2) of the Ceiling Area Act. The conclusion, therefore, arrived at by the Collector that after deducting 108 acres the rest of the land 161 acres 23 gunthas is surplus land within the meaning of the Ceiling Area Act. The declaration made by the Collector was not challenged on any other grounds. The declaration made by the Collector is, therefore, correct and there are no reasons to interefere therewith. I, therefore, dismiss the appeal.

S/-
(J.R. DHURANDHAAR) President.
Maharashtra Revenue Tribunal, Bombay.

Certified that this is a true copy of the above order.

Sd/-
Registrar,
Maharashtra Revenue Tribunal, Bombay.

Office of the Maharashtra Revenue Tribunal,
Old Secretariat Annexe, Bombay-32 BR,

rtp/10.11.