

CASE NO.:
Appeal (civil) 1809 of 1992

PETITIONER:
TATOBA BHAI SAVAGAVE (D) BY LRS. & ANR.

Vs.

RESPONDENT:
VASANTRAO DHINDIRAJ DESHPANDE & ORS.

DATE OF JUDGMENT: 05/10/2001

BENCH:
Syed Shah Mohammed Quadri & S.N. Phukan

JUDGMENT:

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 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 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 thereof. We shall set out here sub-section (1) of Section 43-1B :

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 --

(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.

(2) to (4) ***

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 :

(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;

(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.

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 in relation to the land of a landlord who is dead includes his widow, son, sons 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 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 $\frac{1}{2}$ share in Survey No.98 and $\frac{2}{3}$ rd 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 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 $\frac{1}{3}$ rd 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 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 13 acres 12 gunthas in the State of Maharashtra and he was entitled to resume possession of $\frac{1}{3}$ rd 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

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