REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6006 OF 2009

VITHALDAS JAGANNATH KHATRI (DEAD)
THROUGH SMT. SHAKUNTALA
ALIAS SUSHMA & ORS. …Appellants

Versus

THE STATE OF MAHARASHTRA REVENUE
AND FOREST DEPARTMENT & ORS. …Respondents

J U D G M E N T

R.F. Nariman, J.

1. This appeal has come to us owing to a difference of opinion between Sanjay Kishan Kaul, J. and K.M. Joseph, J. in a judgment dated 29.08.2019.

2. The brief facts necessary to appreciate the controversy in this appeal are as follows: a partition deed dated 31.01.1970 (duly registered on 1.07.1970) was executed between late Shri Vithaldas Jagannath Khatri and his minor son and three minor daughters. In terms of this

document, the agricultural land of the Hindu Undivided Family (HUF) is sought to be divided by mentioning that parties two to five - who are the four children of Vithaldas - have to be provided expenses for their education and marriage, which will be borne out of the separate property allotted to each. An earlier partition deed was executed between Vithaldas and his father Jagannath on 20.01.1955. Separate provision was made in favour of the wife of Vithaldas by means of a gift deed of land in her favour.

3. At this stage, it is necessary to set out certain provisions of 'The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961' (hereinafter referred to as the "1961 Act"). Section 2(4) of the 1961 Act defines 'appointed day' as meaning the day on which the 1961 Act comes into force, which is 26.01.1962. Section 2(6A) defines 'commencement date' as meaning the 2nd day of October, 1975. Section 2(11) defines 'family' as follows:

> "(11) "family" includes, a Hindu undivided family, and in the case of other persons, a group or unit, the members of which by custom or usage, are joint in estate or possession or residence;"

Section 2(11-A) defines 'family unit' as follows:

> “(11-A) "family unit" means a family unit as explained in section 4;”

4. By Section 3, no person or family unit shall, after the ‘commencement date’, hold land in excess of the ceiling area, as is determined in the manner provided. By Section 4(1), all land held by each member of a family unit, whether jointly or separately, shall, for the purposes of determining the ceiling area of the family unit, be deemed to be held by the family unit. The explanation defines ‘family unit’ as follows:

> *“Explanation.-* A "family unit" means,-
> (a) a person and his spouse (or more than one spouse) and their minor sons and minor unmarried daughters, if any; or
> (b) where any spouse is dead, the surviving spouse or spouses, and the minor sons and minor unmarried daughters; or
> (c) where the spouses are dead, the minor sons and minor unmarried daughters of such deceased spouses.”

5. Section 5 then fixes the ceiling area. Section 8 deals with land held in excess of the ceiling area on or after the commencement date. Section 9 is a restriction on acquisition of land in excess of the ceiling area on or after the commencement date. Section 10 is important and is set out hereunder:

> “10. Consequences of certain transfers and

acquisitions of land.- (1) If -
(a) any person or a member of a family unit, after the 26th day of September, 1970 but before the commencement date, transfers any land in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972, or

(b) any land is transferred in contravention of section 8, then, in calculating the ceiling area which that person, or as the case may be, the family unit, is entitled to hold, the land so transferred shall be taken into consideration, and the land exceeding the ceiling area so calculated shall be deemed to be in excess of the ceiling area for that holding, notwithstanding that the land remaining with him or with the family unit may not in fact be in excess of the ceiling area.

If by reason of such transfer, the holding of a person, or as the case may be, of the family unit is less than the area so calculated to be in excess of the ceiling area, then all the land of the person, or as the case may be, the family unit shall be deemed to be surplus land; and out of the land so transferred and in possession of the transferee unless such land is liable to forfeiture under the provisions of sub-section (3), land to the extent of such deficiency shall, subject to rules made in that behalf, also be deemed to be surplus land, notwithstanding that the holding of the transferee may not in fact be in excess of the ceiling area.

Explanation.- For the purposes of clause (a) 'transfer' has the same meaning as in section 8.

All transfers made after the 26th day of September, 1970 but before the commencement date, shall be deemed (unless the contrary is proved) to have

been made in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972.

Explanation.- For the purposes of this sub-section, a transfer shall not be regarded as made on or before 26th September, 1970 if the document evidencing the transfer is not registered on or before that date or where it is registered after that date, it is not presented for registration on or before the said date.

(2) If any land is possessed on or after the commencement date by a person, or as the case may be, a family unit in excess of the ceiling area or if as a result of acquisition (by testamentary disposition, or devolution on death, or by operation of law) of any land on or after that date, the total area of land held by any person, or as the case may be, a family unit, exceeds the ceiling area, the land so in excess shall be surplus land.

(3) Where land is acquired in wilful contravention of section 9, then as a penalty therefore, the right, title and interest of the person, or as the case may be, the family unit or any member thereof in the land so acquired or obtained shall, subject to the provisions of Chapter IV, be forfeited, and shall vest without any further assurance in the State Government:

Provided that, where such land is burdened with an encumbrance, the Collector may, after holding such inquiry as he thinks fit and after hearing the holder and the person in whose favour the encumbrance is made by him, direct that the right, title and interest of the holder in some other land of the holder equal in extent to the land acquired in wilful contravention of section 9, shall be forfeited to Government."

Section 11 states as follows:

> "11. Restriction on partition.- Where any land held by a family is partitioned after the 26th day of September, 1970, the partition so made shall be deemed (unless the contrary is proved) to have been made in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972, and shall accordingly be ignored, and any land covered by such partition shall, for the purposes of this Act, be deemed to be the land held by the family; and the extent of share of each person in the land held by the family shall be taken into consideration for calculating the ceiling area in accordance with the provisions of section 3.
>
> *Explanation.*- For the purposes of this section, 'partition' means any division of land by act of parties made inter vivos, and includes also partition made by a decree or order of a court, tribunal or authority."

6. Section 12 deals with the submission of returns by a person or a family unit. Section 13 is important and states as follows:

> "13. Failure to submit return.- (1) Where a person or member of a family unit required by section 12 to furnish a return,-
> (a) fails without reasonable cause so to do, within the time specified in that section, or
> (b) furnishes a return which he knows, or has reason to believe, to be false, he shall be liable to pay a penalty which may extend in the former case to one hundred rupees, and in the latter case to five hundred rupees.

(2) Where the Collector has reason to believe that a person or a member of a family unit required by section 12 to furnish a return has, without reasonable cause, failed so to do, or has submitted a return which he knows or has reason to believe to be false, the Collector shall issue a notice calling upon such person or member to show cause within fifteen days of the service thereof, why the penalty provided by sub-section (1) should not be imposed upon him. If the Collector, on considering the reply or other cause shown, is satisfied that the person or member has without reasonable cause failed to submit the return within time, or has submitted a return which he knew or had reason to believe to be false, he may impose the penalty provided in the last preceding sub-section and require him to submit a true and correct return complete in all particulars, within a period of fifteen days from the date of the order.

(3) If the person or member fails to comply with the order within the time so granted by the Collector, then as a penalty for failure to furnish a return, or a true and correct return complete in all particulars, the right, title and interest in the land held by him or as the case may be, by the family unit in excess of the ceiling area shall, subject to the provision of this Chapter, be forfeited to the State Government and shall thereupon vest without further assurance in that Government."

Section 14(1) states as follows:

"14. Power of Collector to hold enquiry.- (1) As soon as may be after the expiry of the period referred to in section 12, or the further period referred to in sub-section (2) of section 13, the

Collector shall, either *suo motu* whether or not a return had been filed or on the basis of the returns submitted to him under either of those sections, and such record as he may consider it necessary to refer to, hold an enquiry in respect of every person or family unit holding land in excess of the ceiling area, and shall, subject to the provisions of this Chapter, determine the surplus land held by such person or family unit."

Section 18 is important and is set out hereunder:

"18. Collector to consider certain matters.- On the day fixed for hearing under section 14, or on any other day or days to which the inquiry is adjourned, the Collector shall, after hearing the holder and other persons interested and who are present and any evidence adduced, consider the following matters, that is to say,-

(a) what is the total area of land which was held by the holder on the 26th day of September, 1970;

(b) whether any land transferred between the period from the 26th day of September, 1970 and the commencement date, or any land partitioned after the 26th day of September, 1970, should be considered or ignored in calculating the ceiling area as provided by sub-section (1) of section 10 or section 11;

(bb) whether the holder has any share in the land held by a family or held or operated by any co-operative society or held jointly with others or held as a partner in a firm; and the extent of such share;

(c) what is the total area of land held by the holder on the commencement date?

(d) whether any transfer or partition of land is made by the holder in contravention of section 8 or 11 and if so, whether, the land so transferred or partitioned should be considered or ignored in calculating the ceiling area under the provisions of sub-section (1) of section 10 or section 11?

(e) whether any land has been acquired or possessed on or after the commencement date by transfer or by partition?

(f) whether any land has been acquired on or after the commencement date by testamentary disposition, devolution on death or by operation of law?

(g) 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?

(h) whether any land is held by the holder as tenant, and if so, whether his landlord has a subsisting right of resumption of the land for personal cultivation, under the relevant tenancy law applicable thereto?

(i) whether any land held by the holder is to be forfeited to Government under sub-section (3) of section 10, or of section 13, or should be deemed to be surplus land under any of the provisions of this Act?

(j) whether the proposed retention of land by the holder is in conformity with the provisions of section 16?

(k) which particular lands out of the total land held

by the holder should be delimited as surplus land?

(l) any other matter which, in the opinion of the Collector, is necessary to be considered for the purpose of calculating the ceiling area, and delimiting any surplus land."

Section 21(1) and 21(3) then state:

"21. Collector to make declaration regarding surplus land etc., and consequences thereof.- (1) As soon as may be after the Collector has considered the matters referred to in section 18 and the questions, if any, under sub-section (3) of section 20, he shall make a declaration stating therein his decision on-
(a) the total area of land which the person or family unit is entitled to hold as the ceiling area;
(b) the total area of land which is in excess of the ceiling area;
(c) the name of the landlord to whom possession of land is to be restored under section 19, and area and particulars of such land;
(d) the area, description and full particulars of the land which is delimited as surplus land;
(e) the area and particulars of land out of surplus land, in respect of which the right, title and interest of the person or family unit holding it is to be forfeited to the State Government.

The Collector shall announce his declaration in the presence of the holder and other persons interested who are present at the time of such declaration.

xxx xxx xxx

(3) The declaration made under this section,

subject to the decision of the Maharashtra Revenue Tribunal in appeal under section 33, or of the State Government in revision under subsection (2) of section 45, shall be final and conclusive, and shall not be questioned in any suit or proceedings in any court."

7. Appeals are provided against the Collector's orders and awards under Section 33 of the 1961 Act. This again is an important provision and is set out hereunder:

> "33. Appeals.- (1) An appeal against an order or award of the Collector shall lie to the Maharashtra Revenue Tribunal in the following cases:-
> (1) an order under sub-sections (2) and (3) of section 13 not being an order under which a true and correct return complete in all particulars is required to be furnished;
> (2) a declaration or any part thereof under section 21;
> (2a) an order under section 21-A ;
> (3) an award under section 25;
> (4) an order refusing sanction to transfer or divide land under section 29;
> (5) an order of forfeiture under sub-section (3) of section 29;
> (6) an amendment of declaration or award under section 37; and
> (7) an order of summary eviction under section 40.
>
> (1A) Any respondent, though he may not have appealed from any part of the decision, order, declaration or award, may not only support the decision, order, declaration or award, as the case may be, on any of the grounds decided against him, but take cross-objection to the decision, order,

declaration or award which he could have taken by way of an appeal:

Provided that, he has filed the objection in the Maharashtra Revenue Tribunal within thirty days from the date of service on him of notice of the day fixed for hearing the appeal, or such further time as the Tribunal may see fit to allow; and thereupon, the provisions of Order 41, rule 22 of the First Schedule to the Code of Civil Procedure, 1908, (V of 1908) shall apply in relation to the cross-objection as they apply under that rule.

(2) Every petition of appeal under sub-section (1), shall be accompanied by a copy of the decision, order, declaration or award, as the case maybe, against which the appeal is made.

(3) In deciding such appeal, the Maharashtra Revenue Tribunal shall exercise all the powers which a Court has, and follow the same procedure which a Court follows, in deciding appeals from the decree or order of an original Court, under the Code of Civil Procedure, 1908, (V of 1908).

Section 41 bars the jurisdiction of the Civil Court as follows:

“41. Bar of jurisdiction.- No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Commissioner, Collector, Tribunal, the officer authorised under section 27, the Maharashtra Revenue Tribunal or the State Government.

Explanation.- For the purpose of this section a Civil Court shall include a Mamlatdar's Court constituted under the Mamlatdars' Courts Act, 1906, (Bom. II

of 1906)."

Section 44B excludes pleaders from appearance as follows:

> "44B. Pleaders etc., excluded from appearance.- Notwithstanding anything contained in this Act or any law for the time being in force, no pleader shall be entitled to appear on behalf of any party in any proceedings under this Act before the Authorized Officer, the Tribunal, the Collector, the Commissioner, the State Government or the Maharashtra Revenue Tribunal:
>
> Provided that, where a party is a minor or lunatic, his guardian may appear, and in the case of any other person under disability, his authorised agent may appear.
>
> *Explanation.*- For the purposes of this section, the expression "pleader" includes an advocate, attorney, vakil or any other legal practitioner."

Section 45 provides for revision by the State Government and states:

> "45. Control.- (1) In all matters connected with this Act, the State Government shall have the same authority and control over the officers authorised under Section 27, the Collectors and the Commissioners acting under this Act, as they do in the general and revenue administration.
> (2) The State Government may, *suo motu* or on an application made to it by the aggrieved person, at any time, call for the record of any inquiry or proceedings under sections 17 to 21 (both inclusive) for the purpose of satisfying itself as to the legality or propriety of any inquiry or proceedings (or any part thereof) under these sections and may pass such order thereon as it

deems fit, after giving the party a reasonable opportunity of being heard:

Provided that, nothing in this sub-section shall entitle the State Government to call for the record of any inquiry of proceedings of a declaration or part thereof under section 21 in relation to any land, unless an appeal against any such declaration or part thereof has not been filed within the period provided for it, and a period of three years from the date of such declaration or part thereof has not elapsed.

Provided further that, no order shall be passed under this section so as to affect any land which is already declared surplus and distributed according to the provisions of this Act:

Provided also that the revisional jurisdiction under this section shall be exercised only where it is alleged that the land declared surplus is less than the actual land which could be declared surplus.

(3) The State Government may, subject to such restrictions and conditions as it may impose by notification in the Official Gazette, delegate to the Commission the power conferred on it by sub-section (2) of this section or under any other provisions of this Act except the power to make rules under section 46 or to make an order under section 49."

8. It will thus be seen that under Section 11 of the 1961 Act, where any land held by a family is partitioned *after* the cut-off date of 26.09.1970, the partition so made shall be deemed, unless the

contrary is proved, to have been made in anticipation of, or in order to avoid or defeat, the Amending Act of 1972 and shall accordingly be ignored. There is no doubt that on the facts of this case that the partition deed, as well as its registration, is prior to the cut-off date.

9. On 19.11.1976, 60 acres and 27 gunthas of land of Vithaldas was declared surplus. An appeal preferred against this order was dismissed by the Maharashtra Revenue Tribunal on 16.02.1977. On 02.03.1982, a learned Single Judge of the Nagpur Bench of the Bombay High Court remitted the matter to the Surplus Land Determination Tribunal for fresh enquiry. On remand, a fresh order was passed by the Sub-Divisional Officer on 07.05.1984, where land admeasuring 59 acres 35 gunthas was deemed to be surplus. An appeal was filed against the aforesaid order by Vithaldas, his wife, his son and the third daughter Bela Devi under Section 33 of the 1961 Act. The two other minor daughters did not file any appeal, as they were satisfied with the view adopted by the Sub-Divisional Officer, by which no part of the property that devolved on them by means of the partition deed was declared surplus. The State filed cross-objections in the appeal filed by Vithaldas, challenging the

exclusion of the land, *inter alia*, of the two elder daughters. However, the State did not take care to implead them. The appeal filed by Vithaldas et. al. was dismissed by the Appellate Authority, who allowed the cross objections of the State by its order dated 03.12.1984. The appellate authority found that the partition deed dated 31.01.1970, though before the cut-off date, was against the principles of Hindu Law, to the extent that it gave a share to minor daughters in ancestral land. On this basis, the partition deed was declared to be of no effect in law.

10. The aforesaid appellate order was challenged by Vithaldas and his wife in writ proceedings before the Bombay High Court. The learned Single Judge dismissed the writ petition in September, 1987. An intra-court appeal was preferred which was then dismissed by the impugned order dated 27.11.2007. A Special Leave Petition was filed by Vithaldas through his legal representatives who are the two elder daughters, as his legal heirs, as by now Vithaldas had expired. During the course of the initial hearing, this Court, by its order dated 23.11.2016, passed an order stating that it wished to see revenue entries in terms of Section 148 and 149 of the Maharashtra Land

Revenue Code, 1966, post-execution of the partition deed. An additional affidavit was filed by the son of the late Vithaldas, stating that records from 1970-75 are in a mutilated condition, but that from the records made available, the two elder daughters were shown as occupants from 1972 to 1976 for survey nos. 12 and 14, through their guardian, i.e. their grandfather.

11. When the matter was argued before a Division Bench of this Court, Justice Sanjay Kishan Kaul, after stating these facts, held that a limited fiction has been created by Section 11 of the 1961 Act, as a result of which, if a partition deed is prior to the cut-off date, it cannot be ignored under Section 11. The learned Judge also held that the State's cross-objections being allowed in the absence of the two elder daughters was fatal, as they were both necessary parties to the proceedings. The learned Judge then went into the unmarried daughters' claims in HUF property and held:

> "**38.** The legal view, thus, is very clear:
> a. A provision for marriage of unmarried daughters can be made out of ancestral property.
> b. Such provision can be made before, at the time, or even after the marriage.
> c. The provision is being made out of pious obligation, though the right of women got diluted over a period of time. However, with the

> amendment to the Hindu Succession Act, in 2005, a specific right is now conferred on women to get a share on partition of ancestral property, including the right to claim partition. As mentioned above this change was brought about in Maharashtra in 1994, itself."

12. The learned Judge went on to further observe that a provision for an unmarried daughter in a partition deed may partake the nature of a gift, and then concluded:

> "**45.** In the end, it may be noted that the only aspect on which the debate occurred was the share of the two elder daughters, and the right to retain the land as their separate land, without it being adjusted with the lands of late Vithaldas. The findings above, thus, lead to the conclusion that the view taken by the SDO vide order dated 7.5.1984, regarding the land of the two elder daughters, is the correct view, and the subsequent view by the appellate authority faulted on more than one reason, as mentioned aforesaid. The further imprimatur of that view by the learned Single Judge and the Division Bench of the High Court, thus, also cannot be sustained.
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> **46.** The impugned orders of the appellate authority, the learned single Judge and the Division Bench are, thus, liable to be set aside and the view taken by the SDO, restored, qua the lands located in Survey Nos. 12 & 14 of Babhulgaon, giving rights to the two elder daughters, who are the appellants in the present proceedings."

13. K.M. Joseph, J. differed with Justice Kaul. According to the learned Judge, the questions that would arise for consideration by the Court are as follows:

> "**114.** The following questions would arise for consideration by the Court:-
> 1. Whether the authorities under the Act have the power to find that the partition entered into before 26.9.1970, was sham or collusive and thereby ignore the same?
> 2. Notwithstanding the registered partition dated 31.01.1970, whether the property allotted to the elder daughters of Shri Vithaldas is liable to be included in the account of the family unit?
> 3. What is the effect of the cross-objections of the State being allowed in the absence of elder daughters, in the appeal before the Tribunal?"

After setting out the provisions of the Act, the learned Judge concluded as follows:

> "**130.** Thus, it can be concluded as follows:
> i. A transfer or a partition entered into before 26.09.1970, if it is not genuine and is collusive or is a sham transaction, can, in a given case, on materials being present, be found to be so by the Authority under the Act;
>
> ii. What is contemplated under Sections 10 and 11 of the Act read with Section 8, undoubtedly, is a transfer as defined in Section 8, being a genuine transaction. A fraudulent transaction or a sham transaction if entered into before 26.09.1970, would incur the wrath of Section (3), and a farce of a partition likewise, bringing about a mock division

> of property among the sharers, would also incur wrath of Section (3) of the Act. No doubt, even if the transaction is a sham transaction, be it a transfer or a partition, needless to say, it would incur the wrath of Sections 10 and 11 and it would not be necessary to justify the invalidity with any materials if entered into or effected after 26.09.1970.
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> iii. It does not mean that a transaction which is entered into, particularly after the Act came into force, be it a transfer or a partition, and if there are materials and circumstances brought out, which persuades Authorities to hold that it is collusive or a sham transaction and the property did not change the hands, the property would not be liable to be treated as held by the previous owner as on the commencement day and included in the account despite the purported transfer or partition."

14. Having concluded thus, the learned Judge then went on to declare that the partition deed, being unnatural, was sham; that coparcenary property alone is partible, and stated that the question as to whether or not a gift could have been validly made by Vithaldas to his elder daughters cannot be gone into, as no such case had been set up. Finally, the learned Judge held that it was of no moment that cross-objections of the state were allowed without making the two elder daughters parties to the appeal before the appellate tribunal, and then concluded that the appeal should stand dismissed.

15. Shri Krishnan Venugopal, learned Senior Advocate appearing on behalf of the Appellants largely relied upon the judgment delivered by Justice Sanjay Kishan Kaul and in particular, strongly relied upon **Gurdit Singh v. State of Punjab** 1974 (2) SCC 260 and **Uttar Chand v. State of Maharashtra** (1980) 2 SCC 292. On the other hand, Shri Rahul Chitnis, appearing for the State, largely read from Justice Joseph's judgment and supported it.

16. On a conspectus of the provisions of the 1961 Act that have been set out hereinabove, what becomes clear is that transfers or partitions of land made in anticipation of or in order to avoid or defeat the 1972 Amending Act were to be ignored in calculating ceiling limits. This was so laid down by the Amending Act, 1975, which made 26.09.1970 the cut-off date after which such transfers became suspect. What is important to note is that the 1961 Act does not in any manner declare such transfers to be void. However, if the contrary is proved on the facts of a given case, i.e. that a *bonafide* transfer or partition was in fact effected after the cut-off date, the person affected would be out of the clutches of Section 10 and/or Section 11 of the 1961 Act. In fact,

what is important is the expression “shall accordingly be ignored”, which occurs in Section 11.

17. The scheme of the 1961 Act is that a person or a family unit has to submit returns by certain dates and extended dates that are mentioned in Sections 12 and 12-A of the 1961 Act. Section 13 is important in that where a person or member of a family unit either fails without reasonable cause to furnish a return, or furnishes a false return, he becomes liable to a penalty, which may extend to INR 100 or 500, as the case may be. A false return may be ignored by the Collector, requiring the person or family unit to submit a true and correct return complete in all particulars under Section 13(2), together with the penalty of INR 500. If thereafter, any such person or family unit fails to comply with the order within the time so granted, then, as a penalty for failure to furnish such return or a true and correct return complete in all particulars, the right, title and interest in the land held by him or the family unit as the case may be, in excess of the ceiling area, shall, subject to the provisions of Chapter 4, be forfeited to the State Government and vest in that Government. This Section gives a limited jurisdiction to the Collector to determine whether a true and

correct return complete in all particulars has been given. Thus, a Collector would be well within his jurisdiction to state that a registered partition deed entered into after 26.09.1970 has been suppressed in the return furnished, as a result of which a penalty of INR 500 may be imposed, or excess land forfeited under Section 13(3). This jurisdiction is limited only to the factum of a partition deed having been suppressed from the return, and does not extend to conduct an enquiry as to whether a partition deed prior to 26.09.1970 is or is not a sham document. Also, the discretion vested in the Collector under Section 30 is at a stage anterior to the holding of an enquiry under Section 14, and the resultant declaration under Section 21.

18. By Section 14 of the 1961 Act, the Collector is then to hold an enquiry either *suo motu* or otherwise, whether or not a return has been filed, in respect of every person or a family unit holding land in excess of the ceiling area. In so doing, Section 18 states that the Collector must consider several matters including, under sub-clause (b), whether any land transferred between 26.09.1970 and the commencement date (which we have seen is 02.10.1975), or any land partitioned after the cut-off date should either be considered or ignored in calculating the

ceiling area as provided in Sections 10 and 11 of the 1961 Act. If Section 18(a) to (k) are seen, the evidence adduced at the hearing to be given to the holder and other persons interested in the land, only goes to calculating the total area of the land, including land held by the holder between 26.09.1970 and 02.10.1975 and lands that have been acquired after 02.10.1975. All the details mentioned in Section 18 only speak of ignoring certain transfers or partitions between the cut-off date and the commencement date, and otherwise would only go to the calculation of lands held by persons, and then applying the drill of the ceiling provisions of the 1961 Act. To state that Section 18(l) is a catch-all provision by which the Collector can determine whether a particular transfer or partition is a sham transaction, even if entered into before the cut-off date, is to go beyond the jurisdiction conferred on the Collector by the 1961 Act. In point of fact, even the language of Section 18(l) makes it clear that “any other matter” is circumscribed by the following words: “for the purpose of calculating the ceiling area, and delimiting any surplus land.”

19. This becomes even clearer when the other provisions of the 1961 Act are looked at. Under Section 21, the Collector has to make a

declaration as to entitlement of a person or family unit to hold within the ceiling area and area of land which is in excess of the ceiling area. Further, what is of importance is that Section 44B excludes pleaders from appearing on behalf of any party in any of the proceedings under the 1961 Act. This is for the reason that the Collector has to determine on the facts of each case, based on returns filed if any, as to what areas are to be excluded, and what areas of land are to be included so far as determination of ceiling of a person or family unit is concerned. If it were to be held that the Collector could go into a trial as to whether a particular partition deed is or is not sham, even though it is before the cut-off date, would have two effects that are not warranted in law - first, it would extend the legal fiction that is limited to transfers and partitions made after the cut-off date; and second, if a period even before the cut-off date can be considered, it would render the cut-off date otiose, as then in all cases the Collector could go into whether a particular transfer or partition has been entered into to avoid the effect of the 1972 Amendment Act, which is an enquiry restricted only to transfers and partitions which take place on or after 26.09.1970 upto the commencement date. Also, if the Collector were to substitute

himself as a Civil Court deciding a Civil Suit, it would be absolutely essential for a person or family unit to engage a pleader of his choice to argue all the ramifications that his case may have, both in fact and in law. In fact, a Civil Court alone would have the jurisdiction to decide a question as to whether a partition deed entered into before the cut-off date is or is not sham, which would involve a declaration that the partition be declared void. The 1961 Act therefore bars the jurisdiction of the Civil Court only insofar as transfers and partitions are entered into on or after 26.09.1970 and before the commencement date, and not to transfers and partitions that take place before the cut-off date.

20. As a matter of fact, if the appeal provision, i.e. Section 33 of 1961 Act is to be seen, it is clear that appeals are provided to the Maharashtra Revenue Tribunal against a declaration or part thereof made under Section 21 of the 1961 Act. The persons who would be aggrieved by such declarations can only be the person or family unit whose ceiling area is determined or the landlord to whom possession of land is to be restored or the right, title and interest of the person or family unit whose land is to be forfeited to the State Government. If at all a cross-objection can be taken by a respondent under Section 33(1A), it can

only be a person or family unit or landlord spoken of in Section 21(1) of the 1961 Act. The State Government may perhaps file a cross-objection where it contends that land has wrongly not been forfeited to it. But such is not the case on the facts of this appeal. Thus, the State taking a cross objection on the facts of this case would itself be outside Section 33(1A). If at all the State can be said to be aggrieved by a declaration made under Section 21, a *suo moto* power of revision is given to the State Government under Section 45, which on the facts of a particular case may well be exercised.

21. This apart, once it is clear that the elder daughters are affected by virtue of the partition deed being held to be *non est* in law by the appellate tribunal, they ought to have been made parties to the appeal so that they could have made arguments in favour of the legal validity of the partition deed. This opportunity being denied to them, as has been rightly held by Justice Kaul, is also fatal to the appellate authority's order, which has therefore wrongly been upheld by the learned Single Judge and Division Bench of the Bombay High Court.

22. At this stage, it is important to consider some of the judgments of this Court under the 1961 Act. In **Raghunath Laxman Wani and Ors. v.**

State of Maharashtra (1971) 3 SCC 391, a Special Leave Petition was entertained directly against the judgment and order passed by the Maharashtra Revenue Tribunal dated 02.09.1966, in proceedings held by the Deputy Collector under Section 14 of the 1961 Act in respect of lands held by the appellants therein. The Deputy Collector and the Tribunal concurrently found on fact that the appellants' case of severance of status and partition of the family lands - partially in 1956, and then in 1960, was not acceptable. In the absence of any document regarding alleged severance of the family and partition, other factors when toted up rendered the appellants' case of partition, first in 1956 and then in 1960, 'doubtful'. Given these circumstances, this Court held that it "would be more than reluctant to interfere and upset such a finding" (*see* paragraph 14). The Court then examined the scheme of the 1961 Act in paragraphs 15 to 17, and held that the ceiling area is to be ascertained with reference to the state of affairs existing only on the 'appointed date'. In this view, the Revenue Tribunal was held to be correct in not taking into consideration three children born in the family after the appointed date while determining the ceiling area to which the appellants' family was entitled. This case

turned largely on its facts, and was in any case decided before the introduction of Section 44-B to the 1961 Act in 1976 - which forbade pleaders from arguing cases before the authorities under the 1961 Act.

23. In **Jugal Kishore v. State of Maharashtra** (1989) Supp. (1) SCC 589, the question before this Court was whether in view of Section 100(2) of the Bombay Tenancy and Agricultural Lands (Vidharbha Region) Act, 1958 (hereinafter referred to as the "Bombay Tenancy Act"), the Tenancy Tehsildar had exclusive jurisdiction to decide the issue of tenancy. In holding that the authorities under the 1961 Act would have to determine the land holdings of the petitioner therein, this Court held:

> "**8.** It is, therefore, submitted on behalf of the petitioner that determination of the question of tenancy by the Ceiling Authorities, was without jurisdiction. The High Court held that in the facts of this case it was not. The Ceiling Authority had to determine the land holdings of the petitioner. Incidentally, where a transfer is made by the landholder creating a tenancy, there whether the transfer was made bona fide or made in anticipation to defeat the provisions of the Ceiling Act, is a question which falls for determination squarely by the Ceiling Authorities, to give effect to or implement the Ceiling Act. In that adjudication it was an issue to decide whether tenancy right was acquired by the tenant of the petitioner. But here before the Ceiling Authorities the adjudication was

> whether the transfer to the tenant, assuming that such transfer was there, was bona fide or made in anticipation to defeat the provisions of the Ceiling Act. This latter question can only be gone into in appropriate proceedings by the Ceiling Authorities. Unless the Acts, with the intention of implementing various socio-economic plans, are read in such complementary manner, the operation of the different Acts in the same field would create contradiction and would become impossible. It is, therefore, necessary to take a constructive attitude in interpreting provisions of these types and determine the main aim of the particular Act in question for adjudication before the court.
>
> **9.** In our opinion, having regard to the Preamble to the Act of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, which was enacted for giving effect to the policy of the State towards securing the principles specified in clauses (*b*) and (*c*) of Article 39 of our Constitution; and in particular, but without prejudice to the generality of the foregoing declaration, to ensure that the ownership and control of the agricultural resources of the community are so distributed as best to subserve the common good and having regard to the purpose of the Bombay Act, it was open to the Ceiling Authorities to determine whether there was, in fact, a genuine tenancy."

In this case, no question similar to the question that is before us in the present matter arose on the facts. It was assumed that adjudication before the ceiling authority would include an adjudication as to whether a person was made a tenant to defeat the provisions of the

1961 Act. Based on that assumption, the question posed and answered by the Court was that it would be the ceiling authorities - and not the Bombay Tenancy Act authorities - who would be competent to answer such question. This judgment also does not, in any manner, decide the questions that have been posed before this Court, with particular reference to the language of Section 11 of the 1961 Act and partitions which took place prior to a cut-off date where even a limited deeming fiction did not become applicable.

24. In **State of Maharashtra and Anr. v. Rattanlal** (1993) 3 SCC 326, this Court was concerned with the operation and reach of Section 45 of the 1961 Act, which dealt with the revisional power of the State Government. On the facts of **Rattanlal** (supra), the Additional Commissioner had issued a show cause notice to the respondents therein, *inter alia*, for the reason that the respondent did not disclose the lands or his half share in a particular declaration, having suppressed the same. On hearing the respondent, and for reasons recorded in his order dated 09.06.1980, he remitted the case to the primary Tribunal to redetermine surplus land. The High Court held that once an appeal was preferred by the declarant under the 1961 Act,

and an order made thereon, the Commissioner or State Government is devoid of jurisdiction to determine the ceiling area. The Supreme Court set aside the judgment of the High Court, and held that it was perfectly within the jurisdiction of the Additional Commissioner under Section 45 of the 1961 Act, *suo moto*, to call for the records of a case and thereafter to decide it and pass such order thereon as it deems fit under Section 45(2) of the 1961 Act. This case again is far removed from the facts of the present case, concerning itself with the *suo moto* powers exercisable under Section 45 of the 1961 Act.

25. In **Bhupendra Singh v. State of Maharashtra** (1996) 1 SCC 277, this Court, while dealing with proceedings under the 1961 Act, held:

> "**13.** 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 and 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."
>
> (emphasis supplied)

This judgment is important in that it delineates the scope of Section 18(l) of the 1961 Act, and confines it to 'calculating ceiling area and de-limiting surplus land', albeit by the application of another statute, namely, the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974.

26. Shri Krishnan Venugopal strongly relied on the observations in **Gurdit Singh** (supra). This case dealt with Section 32-DD which was

introduced into 'The Pepsu Tenancy and Agricultural Lands Act, 1955' with retrospective effect from 1956. This Section states as follows:

> "3. The Act was amended by Act 16 of 1962 and Section 32-DD was introduced into the Act with retrospective effect from October 30, 1956. That section reads:
> "32-DD. Future tenancies in surplus area and certain judgments etc. to be ignored.— Notwithstanding anything contained in this Act, for the purposes of determining the surplus area of any person—
> (a) a tenancy created after the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, in any area of land which could have been declared as the surplus area of such person; and
> (b) any judgment, decree or order of a court or other authority, obtained after the commencement of that Act and having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored."

27. This Court repelled an argument enlarging the scope of Section 32-DD, which was based on the object sought to be achieved by the Section in the following terms:

> "**12.** … We are aware that the object of this provision in an Act like the one under consideration is to prevent circumvention of its provisions by dubious and indirect methods. But that is no reason why we should put a construction upon the section which its language can hardly bear. It would have been open to the respondents to allege and prove that the judgment was obtained

> collusively. But that could have been done only after notice to Appellants 2 and 3 and after giving them an opportunity of being heard. Therefore, to say, as the High Court has said, that no prejudice was caused to Appellants 2 and 3 for want of an opportunity to them of being heard, is neither here nor there. We think the High Court went wrong in assuming that the Collector was right when he ignored the judgment by his order dated May 20, 1963 on the ground that it had the effect of diminishing the area of the first appellant which could have been declared as his surplus."

28. Likewise, as has been held by us hereinabove, it is not possible to state that wherever the expressions "transfer" and "partition" occur in Sections 8, 10 and 11 of the 1961 Act, they must be understood as meaning transfers and partitions which are genuine. If the word "genuine" is added, it would amount to straining the language of these provisions and giving these provisions a construction which they cannot possibly bear – a construction that would go against the object of giving the Collector a limited jurisdiction to decide whether lands fall within the ceiling area, and in so doing, whether transfers and partitions between the cut-off date and commencement date should be "ignored". It may be added that the language of Section 11 also leads to the conclusion that even in case of a partition that is made after the cut-off date and before the commencement date, the power of the

Collector is not to declare such partition sham, and therefore void, which is for a Civil Court to do, but is only to ignore such partition for the purpose of calculating ceiling area.

29. Shri Krishnan Venugopal then relied upon **Uttar Chand** (supra). This case also dealt with 1961 Act, the cut-off date in that case being 04.08.1959. As both the transfers in the aforesaid case were prior to 04.08.1959, this Court held that the High Court was not justified in holding that the said transfers were either collusive or fraudulent. This Court held:

> "**5.** These sections are of no assistance to the respondent because Section 6 takes within its fold lands belonging to the owner, or his family as a single unit and is not meant to cover the separate or individual property of another member of the family which cannot be clubbed together with land of the concerned owner or family. The argument advanced by the respondent appears to have found favour with the Commissioner, but it was legally erroneous as indicated above. In these circumstances the most important fact to be determined was whether or not any transfer that had been made by the person concerned was prior to or after August 4, 1959. If the transfer was prior to August 4, 1959 then the provisions of the Act would not apply at all. In the instant case, both the transfers being three years prior to the date mentioned above, the Act would not apply to them and the Commissioner and the High Court therefore erred in holding that the lands transferred

by Nemichand to his mother should be included in the total area of the land owned by the appellant."

30. What is of importance in this case is that in a similar fact situation, if a transfer took place before the cut-off date mentioned by the 1961 Act, the 1961 Act would not apply so as to include lands subsumed in the said transfers, in calculating the ceiling area.

31. Regard being had to our finding that the Collector's jurisdiction under the 1961 Act does not go to the extent of declaring a registered partition deed that is made before the cut-off date as being sham, it is unnecessary for us to go into any of the other findings of both the learned judges of this Court in relation to Hindu Law.

32. We are, therefore, of the view that the appeal deserves to be allowed, and the impugned judgment of the Bombay High Court dated 27.11.2007 set aside for the reasons given by us. The judgment of the Sub-Divisional Officer dated 07.05.1984 stands restored, as a result.

……J.
(R. F. Nariman)

……J.
(S. Ravindra Bhat)

……J.
(V. Ramasubramanian)

New Delhi.
19th February, 2020.