

KARSAN AMBUBHAI SINDHAV

v.

THE STATE OF GUJARAT

NOVEMBER 30, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Gujarat Agricultural Land Ceiling Act, 1960:

Section 6(38)—Family—Meaning for the purpose of determining the ceiling.

The appellant and his minor son constituted the family. Under the provisions of the Gujarat Agricultural land Ceiling Act, 1960, the Tribunal, after excluding the ceiling area of 54 acres, computed 18 acres 23-3/4 gunthas to be excess land. Appellant claimed that his father, mother and other members were residing with him. They being the members of joint family, they were entitled to separate unit, and thus he was not having land in excess of the ceiling area. This was not accepted by the Tribunal. The High Court confirmed the Tribunal's finding. Hence this appeal.

Dismissing the appeal, this Court

HELD : 1.1. By operation of the definition as contained in Section 6(3B) of the Gujarat Agricultural Land Ceiling Act, 1960 for the purpose of ceiling, the computation shall be made only in accordance with the definition given under the Act. In that definition, apart from himself, other members belonging to the family are only his minor son or son of a pre-deceased son and son or daughter of a pre-deceased son where the widow of the pre-deceased son died. [206 H, 207 A]

1.2. In the instant case, admittedly the appellant is having only himself and his minor son constituting the family. His father, mother, brothers and sisters though may be living with him, they are not members of the family much less his joint family and that, therefore, they are not entitled to any additional computation of the arrears to the extent of 1/5th of the ceiling area for each member in excess of five, so however that the total holding of the family does not exceed twice the ceiling area. Thereby, one unit was given to the appellant of an extent of 54 acres and he is liable to surrender 18 acres 28-3/4 gunthas which was found to be excessive. [207 B]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3687 of 1984.

From the Judgment and Order dated 10-9-81 of the Gujarat High Court in L.P.A. No. 32 of 1980.

B S.C. Patel for the Appellant.

Anip Sachthey and C.B. Babu for the Respondent.

The following Order of the Court was delivered :

C This appeal by special leave arises from the judgment of the High Court of Gujarat at Ahmedabad in L.P.A. No. 32/1980, dated 10-9-1981.

Section 6 (3B) of the Gujarat Agricultural Land Ceiling Act, 1960 defines 'family' as :

D "Where a family or a joint family consist of more than five members comprising a person and other members belonging to all or any of any of the following categories, namely:—

(i) minor son,

(ii) widow of a pre-deceased son,

E (iii) minor son or unmarried daughter of a pre-deceased son, where his or her mother is dead, such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five, so however that the total holding of the family doesn't exceed twice the ceiling area; and in such a case, in relation to the holding of such family, such area shall be deemed to be the ceiling area."

F It is an admitted fact that the appellant has a minor son and himself constitute the family. The Tribunal, therefore, after excluding the ceiling area of 54 acres, computed 18 acres 23-3/4 gunthas to be excess land. The G appellant claimed that his father, mother and other members etc. are residing with him, they are the members of joint family and that, therefore, they are entitled to separate unit, thereby he is not having in excess of the ceiling area. That contention was negated by the Tribunal as well as by the High Court. It is seen that by operation of the above definition, for the H purpose of ceiling, the computation shall be made only in accordance with

the definition given under the Act. In that definition, apart from himself, other members belonging to the family are only his minor son or son of a pre-deceased son and son or daughter of a pre-deceased son where the widow of the pre-deceased son died. In this case, admittedly, he is having only himself and his minor son constituting the family. His father, mother, brothers and sisters though may be living with him, they are not members of the family much less his joint family and that, therefore, they are not entitled to any additional computation of the arrears to the extent of 1/5th of the ceiling area for each member in excess of five, so however, that the total holding of the family does not exceed twice the ceiling area. Thereby, one unit was given to the appellant of an extent of 54 acres and he is liable to surrender 18 acres 28-3/4 gunthas which is found to be excessive.

The appeal is accordingly dismissed but, in the circumstances, without costs.

G.N.

Appeal dismissed.