A HIRA LAL (DEAD) BY LRS. ETC

v.

STATE OF MAHARASHTRA AND ANR.

FEBRUARY 22, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Maharashtra Agricultural Land (Ceiling of Holdings) Act, 1961:

S.6.12—Computation of ceiling area—Family of five members entitled
C *to one unit—If two more members are in the family each entitled to one unit separately—However appellant did not raise the plea that he had three daughters either before the authorities or before the High Court—Certificates produced before this Court—Very difficult to rely upon after lapse of time without investigation of a finding by any authority under the Act.*

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 319 of 1979.

From the Judgment and Order dated 1.9.78 of the Bombay High Court in S.C.A. No. 3045 of 1973.

E K. Rajendra Chowdary, for the Appellants.

D.M. Nargolker, for the Respondents.

The following order of the Court was delivered :

F This appeal arises from the order of the Bombay High Court made on September 1, 1979 in Special Civil Application No. 3045 of 1973.

The only question in this appeal is : whether the appellants are entitled to two more units under Section 6 of the Maharashtra Agricultural Land [Ceiling of Holdings] Act. 1961 [for short, the 'Act']?

G In the High Court it was stated that the Tribunal ought to have condoned the delay in filing the review petition and the failure to condone the delay was an ~~error~~ apparent on the face of record. The High Court did not agree with that contention. On merits, no challenge was made to the order of the Tribunal before the High Court. Mr. K. Rajendra Chowdhary,
H learned counsel for the appellants contended that in his return filed under

Section 12 of the Act on April 25, 1962, in the verification he had mentioned that apart from himself he had three sons and three daughters. In computation of the ceiling area, a family of five members is entitled to one unit and if two more members are in the family, each is entitled to one unit separately. If that is considered, the finding of the Tribunal is not correct and that the appellants are not in excess of 30.4 acres of land but within the ceiling limit. Therefore, the High Court was not right in dismissing the matter. In support of the contention that the appellants had three daughters, he seeks to place on record the school certificates said to have been issued by the Head-master concerned.

The only question is : whether the High Court is right in its above-stated conclusion. The counsel appearing for the appellants did not press anything on merits. He merely argued that the refusal to condone the delay in filing the review petition constitutes an error of law. It is seen that the condonation of delay is discretion of the Tribunal or the Court, as the case may be. Whether to grant or to refuse condonation of delay being within the discretionary power of the Court and the Tribunal, we find no compelling reason to disagree with the findings and the conclusion reached by the authorities. The question whether the first appellant has two members as three daughters are said to be there, it was open to him to press before the authorities but unfortunately he did not raise any plea neither before any of the authorities or before the High Court.

In these circumstances, it would be very difficult for this Court to rely upon the certificates produced before us without any investigation or a finding thereon by any authority under the Act and to act upon the same at this distance of time. We find no merit in this appeal. The appeal is accordingly dismissed. No costs.

G.N. Appeal dismissed.