2024 INSC 1009

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 5041-42 of 2012

Chandrabhan Rupchand Dakale (D)
by LR Shri Surajmal Chandrabhan Dakale (D)
by LR Shri Rajesh.

.... Appellant(s)

Versus

The State of Maharashtra & Ors.

...Respondent(s)

J U D G M E N T

C.T. RAVIKUMAR, J.

1. The captioned appeals carry challenge against the judgment dated 08.12.2008 passed by the High Court of Bombay Bench at Aurangabad in Writ Petition No.4361 of 1998 (Aurangabad), which was originally filed at Bombay Bench and numbered as WP No.2530 of 1982 (Bombay). In view of the nature of the case on hand, we make it clear that the expression 'appellant' is being used hereafter in this judgment will take in not only the

present appellant but also his predecessor(s) who contested the subject matter or allied matters at any stage or any earlier occasion, unless otherwise specifically mentioned.

2. The facts, in succinct, necessary for the disposal of the appeals are as under: -

The self-same appellant who was holding agricultural lands, but in excess of the ceiling limit in terms of the provision under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short the "Act"), filed a declaration under Section 21(2) thereof. Thereupon, the District Collector, Ahmednagar, as per order dated 17.11.1966 passed orders thereon finding 410 acres and 20 ½ *gunthas* as surplus owned land of the appellant and 634 acres and 19 ½ *gunthas* as surplus tenanted land and as such in aggregate an extent of 1045 acres as surplus. According to the appellant an extent of 113 acres and 39 *gunthas* was forcibly taken by the landlords and the said extent was also included towards his retainable holding though it was to be excluded while fixing his retainable holding. Aggrieved by the said order dated 17.11.1966, the appellant attempted to get it revised by filing Revision Petition before the Maharashtra Revenue Tribunal. It was partly

allowed vide order dated 16.01.1969 and the order of the Collector dated 17.11.1966 in so far as the inclusion of the area of 113 acres and 39 *gunthas* in the personal holding of the appellant up to the ceiling area was confirmed and the said order was modified to certain extent, in the manner specifically mentioned therein. Feeling aggrieved the appellant approached the High Court of Bombay by filing Special Civil Application No.1681/1969 under Article 227 of the Constitution of India, but the same was dismissed as per judgment dated 26.03.1972.

2.1. In the meanwhile, the landlords, who were in possession of lands earlier held by the appellant, filed Special Civil Application Nos.12/1970 and 39/1970 before the High Court of Bombay seeking to set aside the aforesaid order dated 16.01.1969 of the Revenue Tribunal filed against the order dated 17.11.1966 passed by the Collector. As per judgment dated 15.03.1974 the High Court quashed and set aside the aforesaid orders of the Collector as also the Revenue Tribunal as relates the land comprised in Survey Nos.234, 235, 236 and 269 of village Gula in Taluk Rahuri and Survey No.399/2 of village Deolali Pravara and remitted the matter back to the Collector with a direction to consider the claim of the

petitioners therein-the landlords, on merits with respect to the land comprised in the aforesaid five survey numbers. Sh. Chandrabhan Rupchand Dakale, the predecessor of the present appellant, was the third respondent therein. Obviously, in the judgment dated 15.03.1974 the High Court took note of the contention of the petitioners in the said writ petition (the landlords) that they were entitled to possession of those lands by virtue of Section 19 of the Act, because of the adverse order against Chandrabhan Rupchand Dakale passed by the Collector regarding his entitlement to retain such lands and declaration of holding of such lands as surplus so also the High Court took note of their contention that the same was rejected by the authorities based only on the State Government's notification dated 09.07.1964 under the said Section on compact blocks making them disentitled to the benefit of the said provision regarding restoration of lands to the landlords. The High Court has also taken note of the fact that the said notification dated 09.07.1964 was cancelled by a subsequent Government notification dated 23.06.1972 and as such the petitioner-landlords are entitled to have a consideration of their claims to get back possession, in the circumstances, under Section 19 of the Act, on merits. Upon

consideration claims of the landlords who were the petitioners before the High Court, pursuant to the remand, the Collector upheld their claims as also the other similarly situated landlords. Though the appellant raised a claim before the Collector that in view of the cancellation of the earlier notification dated 09.07.1964 vide notification dated 23.06.1972 his case should also be considered afresh and the extent of his retainable holding should be refixed, the same was rejected. Aggrieved by the upholding of the claims of the landlords and the said rejection the appellant preferred a Revision Petition before the Revenue Tribunal which came to be rejected. It is in the said circumstances that he filed Writ Petition No.2530/1982 (Bombay) which was later re-numbered as Writ Petition No.4361/1998 (Aurangabad) and culminated in the impugned judgment dated 08.12.2008.

3. Heard the learned counsel appearing for the appellant, the learned counsel appearing for the contesting party respondents and the learned counsel for the State.

4. The core contention of the learned counsel for the appellant was that the High Court has erred in not considering the impact of cancellation of compact block

notification dated 09.07.1964 vide Govt. Notification dated 23.06.1972 in the correct perspective. It is also contended that the Collector, the Revenue Tribunal as also the High Court have failed to consider the vital aspect that the irrigation block was cancelled by the Irrigation Department by subsequent notification and consequently, the lands in question ought to have been treated as "dry crop land" falling outside the purview of the Act. Furthermore, it was contended that the learned member of the Revenue Tribunal could not have reopened the case as it was barred by the principle of *res judicata* and the same principle was also applicable to writ proceedings and as such the judgment in WP Nos.12/1970 and 39/1970 also could not have been passed. It was also contended that the High Court as also the authorities have committed error in holding that transfer of land by the appellant admeasuring 113 acres and 39 *gunthas* to the landlords was hit by Sections 8 and 10 of the Act. The further contention was that the High Court went in error in permitting to reopen the matter vide order dated 15.03.1974 of the High Court in Special Civil Application Nos.39 and 12 of 1970, and at any rate, in view of the dismissal of Special Civil Application No.1681 of 1969 as per order dated 26.03.1973 the

authorities and the High Court itself, were not correct in granting orders in favour of the landlords who are landlords of the lands in question.

5. The learned counsel appearing for the party respondents who belong to the category of landlords as also the learned counsel for the State would submit that the contentions raised on behalf of the appellant are absolutely bereft of merits and the appeals are liable to be dismissed. According to them the orders passed by the authorities which got confirmation with the pronouncement of the impugned judgment are not infected with any perversity or illegality and as such no interference by this Court in exercise of appellate interference is called for. It is also their case that the appellant is only attempting to misguide this Court and in fact, the question whether the appellant was entitled to get exclusion of the land admeasuring 113 acres and 39 *gunthas* claimed to be forcibly taken by the landlords, but held to be transferred in violation of the provisions under Section 8 and 10 of the Act has become final as relates the appellant and therefore, the surviving question was only with respect to their claims to the benefit of Section 19 of the Act as landlords and that was considered by the Collector as also the Revenue

Tribunal. In view of the cancellation of the notification on compact block dated 09.07.1964 as per subsequent Govt. Notification dated 23.06.1972 they are entitled to get the benefit of Section 19 in the aforesaid circumstances and as per the orders, the authorities and the High Court only recognised such rights, it was further contended. The respondent No.56 and such others on whose behalf respondent No.56 filed counter affidavit would reveal that they claim that they are landless labourers who were previously working for the appellant and as such in terms of provisions under Section 27(3)(b) and (4) of the Act, they are entitled to get ownership title over 410.29 acres of surplus owned land of the appellant. But then, they would also contend that the Civil Appeals filed by the appellant are not maintainable for suppression of material facts and the attempt on the part of the appellant is only to claim title over certain portions of land by falsely showing more dry land as against irrigated land. In short, they also canvas for the dismissal of the appeals.

6. At the outset it is to be stated that I.A. No.120749/2022 filed by respondent No.56 and others on whose behalf respondent No.56 filed the counter affidavit seeking, in essence, a direction to Tehsildar of

Rahuri, Ahmednagar, Maharashtra to enter their names in the revenue records concerned would not be gone into in the captioned appeals as the prayer(s) in the said Interlocutory Application is totally outside the scope of the very appeals. In that view of the matter, we do not propose to go into the question raised thereunder by the said respondents in these proceedings and consequently, the said Interlocutory Application viz., I.A. No.120749/2022 is closed.

7. The orders of the Collector and the Revenue Tribunal, passed pursuant to the remand would reveal that they considered mainly the tenability of the claims of the petitioners in Special Civil Application Nos.12/1970 and 39/1970 as also similarly situated landlords, as has been directed by the High Court as per judgment dated 15.03.1974. In the challenge against such orders, the High Court in the light of its earlier judgment in WP No.1681/1969 held that claim of the appellant herein as relates the extent of 113 acres and 39 *gunthas* allegedly forcibly taken by the landlords and the claim for exclusion of that much extent while fixing the retainable land holding by the appellant, could not be reconsidered merely because of the circumstances that

made the High Court to remit back the case of landlords for fresh consideration on merits.

8. As noted earlier, the indisputable and undisputed fact is that the appellant challenged the order of the Collector, Ahmednagar dated 17.11.1966 and the order of the Revenue Tribunal dismissing his Revision Petition challenging the same as per order dated 16.01.1969 unsuccessfully before the High Court. Special Civil Application No.1681/1969 carrying such challenge was dismissed as per judgment dated 26.03.1973. The contention that the landlords forcibly taken the lands by force was refuted by the landlords before the Collector and the observations and findings of the Collector in regard to the same were taken into due consideration by the High Court, as can be seen from the judgment dated 26.03.1973. The High Court furthermore observed and held therein thus:-

> "The said concurrent findings of fact regarding the handing over of the possession of the said lands to the landlords by the petitioners after August 4, 1989, are not challenged before me. What is submitted by Mr. Paranjape relying on a decision of Padhye J. in an unreported judgment in Special Civil Application No.840 of 1966 dated June 14, 1968, is that in respect of the delivery of the lands to the landlords referred to above, it could not be said that the petitioner had

transferred the lands to the landlords within the meaning of Sectio 8 and 10.''

9. After distinguishing the said decision in Special Civil Application No.840 of 1966 it was observed and held in paragraph 6 of the judgment in Special Civil Application No.1681 of 1969 dated 26.03.1973 thus:-

> ''6. In the present case the Petitioner was admittedly the tenant of the lands. He was in possession of the said lands and the lands formed part of his holding as defined under the Ceiling Act. Subsequent transfer by surrendering possession of the different lands to their respective landlords would be, therefore, clearly transfer of the right of the Petitioner to be in possession of the said lands to the landlords within the meaning of Explanation to S. 8 of the Ceiling Act. The transfers in so far as they were made between August 4, 1959 and January 26, 1962 must be presumed under the last paragraph of S. 10 to have been made in anticipation of, or in order to avoid or defeat the objects of the Act. Mr. Paranjape's contention that the lands should be excluded from the holdings of the Petitioner must, therefore, fail.''

10. Sections 8 and 10(1)(b) of the Act require reference in the contextual situation and they read thus:-

> "S. 8: No person who, on or after the appointed day, holds land in excess of the ceiling area, shall on or after that day transfer or partition any land

until the land in excess of the ceiling is determined under the Act.

S. 10(1) If –

(a) any person after the 4th day of August 1959 but before the appointed day, transfers or partitions any land in anticipation of, or in order to avoid or defeat, the objects of this Act, or;

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

If by reason of such transfer or partition the persons holding is less than the area so calculated to be in excess of the ceiling area, then all his land shall be deemed to be surplus land; and out of the land so transferred or partitioned and in possession of his 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.

All transfers and partitions made after the 4th day of August 1959 but before the appointed day, shall be deemed (unless the contrary is proved)

to have been made in anticipation of, or in order to avoid or defeat the objects of this Act."

11. It is pertinent to note that after making such observations and findings the High Court in the said judgment dated 26.03.1973 went on to hold in paragraph 9 therein thus:-

> "9. The Petitioner cannot take advantage of his own wrong by creating encumbrance by transferring possession of the lands to the respective landlords to defeat the provisions of the Ceiling Act. The fact that the Petitioner says that the landlords are in possession and the landlords c1aim to be in possession itself will be an impediment for the fulfilment of the purposes of declaration made under S. 21 of the Ceiling Act and for the further proceedings to be taken under that section with regard to the surplus land. The Collector and the Revenue Tribunal were, therefore, quite right in holding that S. 16 required them to include the suit lands in the holdings of the Petitioner fer purposes of the Ceiling Act and having regard to the encumbrance created by the Petitioner subsequent to the appointed day, the Petitioner was obliged to retain them."

12. Paragraph 13 and 14 of the said judgment dated 26.03.1973 are relevant for the purpose of this case and they are as under:-

> "13. Lastly, it was urged by Mr. Paranjape that the 19 lands which were delivered to the landlords

could not be classified as lands filing under S. 2(5)(a) as was done by the Collector and the Revenue Tribunal, because after the Petitioner parted with the possession, he ceased to take water from flow irrigation from the Government source in respect of these lands. The classification was made in accordance with law by the Revenue Tribunal and the Collector, because what is to be considered is the position of the lands on January 26, 1962. On that day, the lands admittedly were irrigated perennially by flow irrigation from the source constructed by the Government and fell within the ambit of S. 2 (5) (a).

14. In the result, the petition fails, Rule discharge with costs."

13. The fact is that despite such adverse observations, findings and dismissal of the said Special Civil Application as per the said judgment such questions qua the appellant were given a quietus as the appellant had allowed the said judgment to become final. The appellant could not be permitted, to resurrect his claims which already stood rejected, merely because of the common judgment in WP Nos.12/1970 and 39/1970 filed by the landlords. In that view of the matter and especially in view of the finding, virtually, to the effect that the appellant was attempting to take advantage of his own wrong by creating encumbrance by transferring

the lands to the respective landlords to defeat the provisions of the Ceiling Act, we decline to go into the contentions raised by the appellant qua the said concluded question(s) qua the appellant.

14. Now, we will consider the surviving question. As already noticed, it was during the pendency of Special Civil Application No.1681/1969 filed by the original appellant Chandrabhan Rupchand Dakale that challenging the very same orders which are then under challenge in the said Special Civil Application, the contesting respondents herein who are landlords qua the lands involved, but not parties therein, filed Special Civil Application Nos.12/1970 and 39/1970. The common judgment dated 15.03.1974 would reveal that Sri Chandrabhan Rupchand Dakale was respondent No.3 in Special Civil Application No.39/1970 and was also heard prior to the passing of the common judgment dated 15.03.1974. It is also relevant to note that much prior to the passing of the said common judgment dated 15.03.1974, Special Civil Application No.1681/1969 filed by Sri Chandrabhan Rupchand Dakale was dismissed on 26.03.1973 with costs. As noted earlier, it is not the case of the appellant herein that the judgment dated 26.03.1973 was successfully challenged later. That is

why we have earlier observed that the appellant had allowed the judgment dated 26.03.1973 in Special Civil Application No.1681/1969 to become final. We have already taken of the observation and finding of the High Court in the said judgment dated 26.03.1973 that the concurrent findings of fact regarding the handing over of the possession of the said lands to the landlords by the petitioner viz., Chandrabhan Rupchand Dakale the predecessor of the present appellant after 04th August, 1959 were not challenge before it in Special Civil Application No.1681/1969 were also attained finality. There is also no case for the appellant herein that though Chandrabhan Rupchand Dakale was the third respondent and was heard before passing the judgment dated 15.03.1974, he challenged the same successfully. Therefore, we will have to look into what was the manner in which Special Civil Application Nos.12/1970 and 39/1970 were allowed vide judgment dated 15.03.1974. Indisputably, the matter was remitted back to the Collector with a direction to consider the claim of the petitioners therein who are landlords qua the lands which were handed over to them by Chandrabhan Rupchand Dakale to defeat the provisions of the Act, on merits and dispose of the cases with respect to the five

survey numbers, in accordance with law. It was pursuant to such directions that their claim was considered by the Collector afresh regarding the right to get possession of 113 acres. The decision in their favour was nothing but an outcome of rightful consideration of the impact of cancellation of compact block notification dated 09.07.1964 vide Govt. Notification dated 23.06.1972, which also got seal of approval from the Maharashtra Revenue Tribunal. In fact, on that no serious consideration was required for the reason that their right to claim the benefit of Section 19 of the Act was declined earlier in view of Government Notification dated 09.07.1964 and as held by the High Court in the judgment dated 15.03.1974 in view of its cancellation they were entitled to get a consideration of their claim. Being a person who transferred such lands to them to defeat the provisions of the Act, as held by the High Court, and had chosen not to challenge the concurrent findings of handing over the possession of the said lands to the landlords after 04.08.1959 how can the petitioner now challenge the concurrent orders passed in favour of such landlords. We have no hesitation, in the totality of the circumstances, to answer the said question in the negative.

15. Still, we will consider whether the appellant's contention to assail the order of the Tribunal as also the High Court based on the principle of *res judicata* is tenable.

16. In the context of the contention, it is relevant to refer to the decision of this Court in ***Syed Mohd. Salie Labbai (D) by LRs & Ors. v. Mohd. Haneefa (D) by LRs & Ors.***[1]. As per the said decision, a plea of *res judicata* can be given effect, it shall be provided that the litigating parties are the same, the subject matter of suits are identical; the matter must be finally decided between the parties and the suit must be decided by a Court of competent jurisdiction.

17. In the decision in ***Korin alias Etwari Devi v. India Cable Company Ltd. & Ors.***[2], this Court held that there would be no *res judicata* in changed circumstances.

18. The factual position obtained in the case on hand, expatiated above in detail, would undoubtedly go to show that more than one of the circumstances specified in ***Syed Mohd. Salie Labbai****'s* case (*supra*) are not satisfied in the case on hand as relates the claim of the respondent landlords whose claims were upheld, but challenged by the appellant. That apart, it is evident that

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[1] AIR 1976 SC 1569
[2] AIR 1978 SC 312

while Special Civil Application Nos.12/1970 and 39/1970 were pending, the Govt. Notification dated 09.07.1964 as relates compact blocks which made the authorities to deny benefit of the provision under Section 19 of the Act to such landlords regarding restoration of lands was cancelled as per notification dated 23.06.1972 and it was in the said changed circumstances that their claims were directed to be considered on merits as per judgment dated 15.03.1974 and later it was upheld in their favour. Section 19 deals with the power of the Collector to restore land to landlord in certain cases. We have carefully gone through the grounds raised in the appeals to challenge the impugned judgment dated 08.12.2008. Except a very vague challenge no pointed challenge against invocation of the said power to uphold the claim of the landlords pursuant to the direction in the judgment dated 15.03.1974 have been made by the appellant besides the attempt to resurrect the already rejected grounds/claims of the appellant. In such circumstances, the appellant's contention founded on the principle of *res judicata* is devoid of any merit.

19. As a matter of fact, as held by the High Court the fate of the appellant's case was sealed by the judgment of the High Court dated 26.03.1973 in Special Civil

Application No.1681/1969 in the case of Chandrabhan Rupchand Dakale v. State of Maharashtra & Another.

20. The changed circumstances viz., cancellation of notification dated 09.07.1964 as per notification dated 23.06.1974, in no way resurrect the case of the appellant, especially in view of the surreptitious method adopted by the predecessor of the present appellant in whose shoes he stepped in, as mentioned elaborately while dismissing Special Civil Application No.1681/1969 with costs. We have already stated that in view of the aforesaid circumstances the other contentions of the appellant deserve no consideration at all.

21. For all the aforesaid reasons, the captioned Appeals must fail. Accordingly, the Appeals are dismissed. In the circumstances, there will be no order as to costs.

....., J.
(C.T. Ravikumar)

....., J.
(Sanjay Kumar)

New Delhi;
December 19, 2024.