AN AGRICULTURIST IS DEBARRED FROM BEQUEATHING AGRICULTURAL LAND TO A NON-AGRICULTURIST THROUGH A TESTAMENTARY DISPOSITION

The Supreme Court of India in a landmark decision in the case of ***Vinodchandra Sakarlal Kapadia*** **v.** ***State Of Gujarat And Ors. [Civil Appeal No. 2573 of 2020]*** *held an assignment of an agricultural land by way of a "will" to be void as the assignment was in favour of a non – agriculturist.*

FACTS:

An agricultural land ("**said land**") was in the cultivating possession of the testator, namely Mr. Samubhai Budhiabhai who was a tenant and later became the deemed purchaser of the said land in terms of the Bombay Tenancy and Agricultural Lands Act, 1948 ("**the Act**") as he was cultivating the said land on tiller's day i.e. 1st April, 1957. The testator executed a registered will in favour of the Appellant wherein the said land was bequeathed to the Appellant. After the demise of the testator, the name of the Appellant was updated on the revenue records as the owner of the said land. Subsequently, the revenue authorities found out that the Appellant was not an agriculturist and therefore started proceedings against him under Section 84C of the Act. Although the Appellant furnished a no objection certificate from the legal heirs of the testator, the Additional Mamlatdar held that the bequest was invalid and contrary to the provisions of Section 63 of the Act and therefore declared that the said land vested in the State without any encumbrances.

The Deputy Collector, in appeal, affirmed the decision of the Additional Mamlatdar. A Revision Application was then preferred before the Gujarat Revenue Tribunal which allowed the Revision and quashed the orders passed by the Additional Mamlatdar and the Deputy Collector by observing that disposal by way of a Will would not amount to transfer and as such, it would not be hit by Section 63 of the Act. The State, being aggrieved, carried the matter before the High Court of Gujarat. In light of the contrary views being taken by various learned single Judges of the said High Court, the matter was referred to a Division Bench. The Division Bench interpreted the scope and ambit of Sections 43 and 63 of the Act and while relying on the apex court's decisions in ***State of Punjab (now Haryana) and Others*** **v.** ***Amar Singh and Anr.,***[1] **and** ***Dayandeo Ganpat Jadhav*** **v.** ***Madhav Vithal Bhaskar and Ors.,***[2] concluded that the bequest was invalid and contrary to the provisions of the Act. The High Court stated:

"We are, therefore, of the considered view that if the agriculturist is permitted to dispose agricultural property through testamentary disposition to a non-agriculturist the same will defeat the very purpose and object of the Tenancy Act which cannot be permitted by a Court of law, therefore, we hold that decision rendered by the learned Single Judges referred above earlier, otherwise, are not correct

[1] (1974) 2 SCC 70
[2] (2005) 8 SCC 340

enunciation of law and stand overruled. We, therefore, hold that Section 63 of the Bombay Tenancy Act also bars the transfer of agricultural land by an agriculturist to a non-agriculturist for non-agricultural purpose unless permission is obtained from the Collector or any authorised officer as provided in that Section."

Aggrieved by the order of the Learned Division Bench, the Appellant preferred an appeal before the Hon'ble Apex Court.

ISSUES:

(i) Whether Section 63 of the Act debars an agriculturist from bequeathing his agricultural land to a non-agriculturist under a "will"

(ii) Whether Section 43(1) of the Act restricts transfer of any land or interest purchased by the tenant under Sections 17B, 32, 32F, 32I, 32O, 32U, 33(1) or 88E or sold to any person under Section 32P or Section 64 of the Act through the execution of a will by way of testamentary disposition.

SUBMISSIONS:

The Appellant referred to and relied upon the recent decision of the Apex Court in the case of ***Mahadeo (Dead through legal representatives)*** **v.** ***Shakuntalabai***[3] to further its case and contended that since the word 'assignment' does not occur in Section 63, there is no restriction in the manner of transfer of agricultural lands to non-agriculturist through a testamentary disposition. The expressions used in Sections 43 and 63 like 'sale', 'gift', 'exchange', and 'mortgage' are suggestive of transfers by a living person and the expression 'assignment' in Section 43(1) of the Act must be read ejusdem generis with the preceding expressions appearing in that section and that the expression 'assignment' does not even appear in Section 63.

The State, on the other hand, submitted that the basic intent behind the conferral of ownership rights upon a cultivating tenant was to see that the actual tillers and cultivators must be protected and given the ownership rights upon payment of nominal charges. It was further submitted that Section 63 of the Act indicates that a transfer to a non-agriculturist is not permissible and so also any transfer which results in taking the holding of the transferee beyond ceiling limits, or if the income of the transferee was in excess of Rs.5,000/-, would be impermissible. These conditions disclose the legislative intent which lays down the relevant criteria on the basis of which the applications for transfer *inter vivos* could be considered and granted; and that any disposition by way of a testament must also be subject to similar conditions.

JUDGEMENT:

The Apex Court upheld the decision of the Division Bench of the High Court of Gujarat and held that testamentary dispositions fall within the ambit of the word 'assignment' under Section 43 of the Act. The Court discussed the object and intent of the Act and took note of various legislations, for instance, legislations which prohibit transfer of a land of tribal to a non-tribal. The Court relied upon the decision in ***Bhavarlal Labhchand Shah*** **v.** ***Kanaiyalal Nathalal Intawal***[4] which stated that a tenancy governed by a statute which prohibits assignment, cannot be bequeathed by a will

[3] (2017) 13 SCC 756

[4] (1986) 1 SCC 571

to a total stranger. The expression "assignment" in Section 43 must include testamentary disposition. By adopting such construction, in keeping with the law laid down by this Court, the statute would succeed in attaining the object sought to be achieved. On the other hand, if it is held that a testamentary disposition would not get covered by the provisions of Section 43, a gullible person can be made to execute a testament in favour of a person who may not fulfil the requirements and be eligible to be a transferee in accordance with law. The prohibition against transfers of land holding without the previous sanction of the concerned authorities was construed by the Apex Court to be furthering the cause of legislation. Therefore, the expression 'assignment' was construed to include testamentary dispositions and the actions of the testator were held void. Accordingly, the Appeal was dismissed.

The Apex Court also interpreted the scheme of the Act and held an earlier decision in the case of ***Mahadeo (Dead through legal representatives)*** **v.** ***Shakuntalabai***[5] to be incorrectly decided. The ***Mahadeo case*** had held that there is no prohibition under the Act insofar as the transfer of land by way of a Will is concerned.

[5] Supra

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.