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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.10796 OF 2011

Smt.Sulabai Laxman Saste & Ors. ...Petitioners
vs.
Union of India and others ...Respondents

Mr.Vishwanath Talkute for the petitioners
Mr.D.A.Nalawade a/w Mr.Jaydeep Deo for the respondent No.1
Ms M.P.Thakur, AGP for respondent Nos.4 and 5

CORAM : A.S.OKA, &
A.K.MENON, JJ.
DATE : MARCH 3, 2015

P.C.:

1 The grievance made by the petitioners by filing this Writ Petition under Article 226 of the Constitution of India relates to the applicability of Agricultural Debt Waiver and Debt Relief Scheme,2008 (for short “the Debt Relief Scheme”).

2 The first petitioner is the mother of the second petitioner. The husband of the first petitioner along with the first and second petitioners applied for grant of loan for agricultural purposes to the sixth respondent-Bank. Total advance of Rs.3,89,100/- was sanctioned by the sixth respondent under three different facilities. The petitioners were holding properties under Khata(Account) nos.987 and 1282. The description of the lands held by the petitioners is as under :

Account Number	Area H - R	Assessment Rs. - Ps.
987	0 – 83	2 – 46

<u>Mortgaged Land</u>:-

<table>
<tr><td>Gat
Number</td><td>Area
H – R</td><td>Assessment
Rs. Ps.</td><td rowspan="2">Out of 0.82 R</td></tr>
<tr><td>515</td><td>0 – 82
Pot Kharab 0 – 08
total-0.90</td><td>2 – 42</td></tr>
<tr><td>Out of 513</td><td>0 – 06</td><td>0 18</td><td>Out of 1R common land for Well</td></tr>
<tr><td colspan="3">Total mortgaged property</td><td>0 H 83 R</td></tr>
</table>

Account Number	Area H – R	Assessment Rs. - Ps.1282
1282	1 – 97	5 – 96

<u>Mortgaged Land</u>:-

<table>
<tr><td>Gat
Number</td><td>Area
H – R</td><td>Assessment
Rs.- Ps.</td><td rowspan="2">Out of 1H 96R</td></tr>
<tr><td>514</td><td>1 – 96
Pot-Kharab
0 – 19
Total 2 - 15</td><td>5 – 94</td></tr>
<tr><td>Out of 513</td><td>0 – 06</td><td>0 – 18</td><td>Out of 1 R common land for Well</td></tr>
<tr><td colspan="3">Total mortgaged property</td><td>1H 97 R</td></tr>
</table>

3 Under the Debt Relief Scheme, three categories of farmers have been defined. The said categories

are as under:

> "3.5 `Marginal Farmer' means a farmer cultivating (as owner or tenant or share cropper) agricultural land up to 1 hectare (2.5 acres).
> 3.6 `Small Farmer' means a farmer cultivating (as owner or tenant or share cropper) agricultural land of more than 1 hectare and up to 2 hectares (5 acres).
> 3.7 `Other Farmer' means a farmer cultivating (as owner or tenant or share cropper) agricultural land of more than 2 hectares (more than 5 acres)"

4 The farmers in the category of "Other Farmer'" were entitled to one time settlement scheme under the Debt Relief Scheme. They were entitled to rebate of 25% of the eligible amount subject to condition that the farmer pays balance of 75% of the eligible amount. The eligible amount for grant of debt relief is defined in clause 4.1 of the scheme. The first petitioner claimed that out of the land forming part of a Khata No.1282, only an area of 1 Hectare and 97 Ares was cultivable land and balance area of 19 Ares was known as *Pot Kharaba* land which was not cultivable. If *Pot Kharaba* land is taken into consideration for applying the definition of "Other Farmer" , the petitioners will be covered by the category of "Other Farmer", as total area of land will be more than 2 Hectares. If the *Pot Kharaba* land is excluded, the petitioners will fall

in the category of “small farmer”. Under the Debt Relief Scheme, a “Small Farmer” or “marginal farmer” were entitled to waiver of the entire eligible amount. As stated earlier, the farmers in the class of `Other Farmer' were entitled to rebate of only 25% of the eligible amount. The stand taken by the respondents is that the *Pot Kharaba* land will have to be taken into consideration for the purpose of Debt Relief Scheme, and therefore, the petitioners will not be covered by the category of “Small Farmer”. The sixth respondent-Bank of India informed the second petitioner that the petitioners will be entitled to rebate of 25% of the eligible amount as their case will be covered by the category “Other Farmers”. This is the cause of action for filing the present Writ Petition.

5 The prayer made in the petition in substance is that it may be declared that the petitioners are entitled to waiver of the entire eligible amount.

6 There is an affidavit in reply filed by Shri Jitendar Kumar Mehan, the Under Secretary to the Government of India, Department of Financial Services, Ministry of Finance, New Delhi. His contention is that the Pot Kharaba land cannot be excluded.

7 The learned counsel for the petitioners urged that while considering the holding of agricultural land, *Pot Kharaba* land has to be excluded as *Pot Kharaba* land is not capable of being cultivated.

Inviting our attention to the Debt Relief Scheme, he urged that emphasis in the scheme is on the area of the land under actual cultivation. He pointed out that the said aspect is clear from the clauses 3.5, 3.6 and 3.7 of the scheme. He urged that for the purposes of classifying the farmers into three categories, only the land under actual cultivation has to be considered and, therefore, for determining the issue of categorization of the farmers, only the area of land under actual cultivation will have to be considered. He urged that if the *Pot Kharaba* land is also taken into consideration, it will completely defeat the very object of Debt Relief Scheme. The learned counsel for the first respondent supported the decision of the sixth respondent of holding that the petitioners will have to be categorized as “Other Farmer”.

8 We have given careful consideration to the submissions. We have already reproduced the definitions of “Marginal Farmer”, “Small Farmer” and “Other Farmer'. “Other Farmer” means the farmer cultivating (as owner or tenant or share cropper) of agricultural land of more than 2 Hectares. Under the Maharashtra Land Revenue Code,1966, there are different users of the land. One of the users is of agriculture. It is not necessary that every inch of an agricultural land should be capable of being used for actual cultivation. There may be a well in the agricultural land, there may be a storage facility or there may be a farm house on non cultivable portion of a land classified as an agricultural land

under the Maharashtra Land Revenue Code,1966.

9 Traditionally, a *Pot Kharaba* land is used as a space for storage of the implements of agriculture, as a thrashing ground, as a place of storage of harvested produce etc.

10 If the intention of the framers of the Debt Relief Scheme was that only the actual area under cultivation should be considered for categorizing the farmers, the makers of the scheme would not have used the phraseology “farmers cultivating agricultural land of”. The framers of the scheme never intended to make a classification on the basis of the area of the agricultural land actually under cultivation. The area of the agricultural land under cultivation of a farmer will include the area used for the purposes which are ancillary and incidental to the use of the land for agriculture which will include the area of *Pot Kharaba* land.

11 Therefore, we are unable to agree with the submissions canvassed by the learned counsel for the petitioners. Therefore, the Authorities were right in categorizing the petitioners as “Other Farmers”.

12 There is no merit in the Writ petition. We reject the petition.

(A.K.MENON,J.) (A.S.OKA,J.)